SO ORDERED,

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: October 25, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: TERRI DENISE STATEN	**CASE NO. 15-50355-KMS**
DEBTOR	**CHAPTER 13**
PIKCO FINANCE, INC.	**CREDITOR/PLAINTIFF**
V.	**ADV. NO. 15-06017-KMS**
TERRI DENISE STATEN	**DEBTOR/DEFENDANT**

ORDER DENYING MOTION TO RECONSIDER

This matter is before the Court on the Motion to Reconsider (Adv. Dkt. No. 33), filed by Pikco Finance, Inc. Having considered the arguments and the record, the Court denies the motion.

I. Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this adversary proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I) and (O).

II. Findings of Fact[1]

Debtor Terri Staten and Creditor Pikco Finance, Inc. ("Pikco") agreed to a nondischargeable judgment in the amount of $1,347.90 on the underlying debt but left the amount of attorney's fees to the Court's determination. Adv. Dkt. No. 31. After consideration of Pikco's fee application and the relevant factors for reasonableness, the Court entered final judgment in this adversary proceeding and awarded Pikco $1,270.00 in attorney's fees and $385.00 in expenses. Adv. Dkt. No. 32 at 12. Pikco had requested $5,080.00 in attorney's fees and $385.00 in expenses. Adv. Dkt. No. 32 at 2. The Court also applied the federal judgment rate as set forth in 28 U.S.C. Section 1961 to the judgment in Pikco's favor. Adv. Dkt. No. 32 at 12.

Pikco moved for reconsideration of the fee award and application of the federal judgment rate. Adv. Dkt. No. 33. Staten responded. Adv. Dkt. No. 36. The Court set the matter for hearing on November 17, 2016. Adv. Dkt. No. 34.

III. Conclusions of Law

Pikco sought relief under Federal Rule of Civil Procedure 59(e) as applied by Federal Rule of Bankruptcy Procedure 9023. "Rule[2] 59(e) motions[] recognize[] only three possible grounds for any motion for reconsideration: (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, and (3) the need to correct a clear error of law or prevent manifest injustice." *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990); *see also Naquin v. Elevating Boats, L.L.C.*, 817 F.3d 235, 240 n.4 (5th Cir. 2016) (recognizing same grounds). A Rule 59(e) motion "cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Simon v. United States*, 891 F.2d 1154, 1159 (5th

[1] Pursuant to Federal Rule of Civil Procedure 52, made applicable to this adversary by Federal Rule of Bankruptcy Procedure 7052, the following constitutes the findings of fact and conclusions of law of the Court.

[2] For convenience, references to the Federal Rules of Civil Procedure are shortened to "Rule ____".

Cir. 1990) (internal quotation marks omitted).

Pikco raised no cognizable argument related to any of the three grounds for reconsideration of its award of attorney's fees, and the Court declines to reexamine its orders in a vacuum. The motion is denied as to the fee award.

Pikco impliedly argues that the Court reached an incorrect conclusion of law based on Fifth Circuit precedent when it applied the federal judgment rate after Pikco requested that its contract rate of interest be applied to the judgment. Prior to this motion, Pikco cited no authority for its proposition that it was entitled to its contract rate of interest post-judgment. *See Simon,* 891 F.2d at 1159 (holding that Rule 59(e) motion "cannot be used to argue a case under a new legal theory."). Nevertheless, the Court will examine whether it has indeed committed a clear error of law regarding which interest rate should apply.

The United States Code provides that "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961(a) (2000). "Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." *Id.* Currently, all three bankruptcy judges in this district apply the federal judgment interest rate. *See, e.g., Nickelson v. Franklin Check Serv., LLC (In re Nickelson),* 552 B.R. 149, 158 (Bankr. S.D. Miss. 2016) (J. Olack); *In re Gulfport Pilots Ass'n, Inc.*, 434 B.R. 380, 392 (Bankr. S.D. Miss. 2010) (J. Ellington); *Pikco Fin., Inc. v. Crumedy (In re Crumedy)*, Bankr. No. 13-50513, Adv. No. 13-05020, 2014 WL 4352066, at *5 (Bankr. S.D. Miss. Sept. 2, 2014) (J. Samson). Pikco argues that "[t]he Fifth Circuit has held that the appropriate post-judgment interest rate in bankruptcy court is the rate agreed on by the parties." Adv. Dkt. No. 33 at 2 (citing *ITT Diversified Credit Corp. v. Lift & Equip. Serv.,*

Inc. (In re Lift & Equip. Serv., Inc.), 816 F.2d 1013 (5th Cir. 1987)). In *In re Lift and Equipment Service*, the Fifth Circuit did hold that "[w]hile 28 U.S.C. § 1961 provides a standard rate of post-judgment interest, the parties are free to stipulate a different rate, consistent with state usury and other applicable laws." 816 F.2d at 1018. The Fifth Circuit more recently, however has clarified what this language means. "That case cannot stand for the proposition that any contractual rate of interest applies postjudgment. . . ." *Tricon Energy Ltd. v. Vinmar Int'l, Ltd.*, 718 F.3d 448, 459 n.22 (5th Cir. 2013).

> Despite th[e] mandatory language [of Section 1961], it is well-settled that parties may contract for a different rate "consistent with state usury and other applicable laws." *Hymel v. UNC, Inc.*, 994 F.2d 260, 266 (5th Cir. 1993) (internal quotation mark omitted). "But to do so, they must specifically contract around the general rule that a cause of action reduced to judgment merges into the judgment and the contractual interest rate therefore disappears for post-judgment purposes." *Johnson v. Riebesell (In re Riebesell)*, 586 F.3d 782, 794 (10th Cir. 2009).

Id. at 457. Pikco argues that its contract with Staten "states the interest rate on the loan . . . in clear unambiguous, and unequivocal language." Adv. Dkt. No. 33 at 2. The interest rate is clear, but nowhere in the contract does it state that that rate should apply post-judgment. Any deviation from the general rule must be clear and unambiguous. The Court finds that it has not committed a clear error of law. The motion is denied.

IT IS HEREBY ORDERED that the Motion to Reconsider (Adv. Dkt. No. 33) is DENIED.

FURTHER ORDERED that the hearing set for November 17, 2016, is cancelled.

END OF ORDER