SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: April 28, 2021

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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

WILLIAM BYRD MCHENRY, JR.,	**CASE NO. 20-00268-NPO**
DEBTOR.	**CHAPTER 7**
ALLYSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER, LLC	**PLAINTIFF**
VS.	**ADV. PROC. NO. 20-00022-NPO**
WILLIAM BYRD MCHENRY, JR.	**DEFENDANT**

ORDER DENYING MOTION TO RECONSIDER

This matter came before the Court for hearing on April 26, 2021 (the "Hearing") on the Motion and Request for Hearing to Reconsider Memorandum Opinion and Order Setting Aside Abeyance Order and Motion for Summary Judgment (the "Motion to Reconsider") (Adv. Dkt. 59)[1] filed by the debtor, William B. McHenry, Jr. ("McHenry"), asking the Court to reconsider the Memorandum Opinion and Order Setting Aside Abeyance Order and Granting Motion for Summary Judgment (the "Opinion") (Adv. Dkt. 53), entered in the Adversary on March 26, 2021;

[1] Citations to the record are as follows: (1) citations to docket entries in the above referenced adversary proceeding (the "Adversary") are cited as "(Adv. Dkt. #)"; and (2) citations to docket entries in the above-referenced bankruptcy case (the "Bankruptcy Case") are cited as "(Bankr. Dkt. #)".

the Receiver's Opposition to Motion to Reconsider (the "Receiver's Opposition") (Adv. Dkt. 62) filed by Allyson Mills in her capacity as the court-appointed receiver for the estates of Arthur Lamar Adams and Madison Timber, LLC (the "Receiver"); and the Response to Memorandum Opinion and Order Setting Aside Abeyance Order and Granting Motion for Summary Judgment (DKT #59) (the "Response to Summary Judgment Opinion") (Adv. Dkt. 63) filed by McHenry. At the Hearing, McHenry appeared on his own behalf, acting without assistance of counsel (*pro se*), and Kristen D. Amond and Lilli E. Bass appeared on behalf of the Receiver. The Court finds as follows:[2]

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A), (J), and (O). Notice of the Hearing was proper under the circumstances.

Facts

The facts are fully stated in the Opinion issued on March 26, 2021. A summary of the facts necessary for an understanding of the issues raised in the Motion to Reconsider are set forth below.

A. Bankruptcy Case

On January 24, 2020, McHenry filed a petition for relief under chapter 7 of the U.S. Bankruptcy Code (the "Code"), hoping to discharge his $3,473,320.00 debt owed to the Receiver. (Bankr. Dkt. 1). This debt arises from the Receiver's lawsuit against McHenry and his wholly-owned company, First South Investments, LLC ("First South") in the U.S. District Court for the Southern District of Mississippi (the "District Court") in a matter styled *Alysson Mills v. Michael*

[2] The Court makes the following findings of fact and conclusions of law in accordance with Rule 7052 of the Federal Rules of Bankruptcy Procedure.

D. Billings, et al., No. 3:18-cv-00679-CWR-FKB (the "District Court Litigation"). On August 16, 2019, the District Court entered an Order, granting the Receiver's motion for summary judgment on her fraudulent transfer claim against McHenry and First South. *Mills v. Billings*, No. 3:18-cv-00679-CWR-FKB, 2019 WL 387853, at *1 (S.D. Miss. Aug. 16, 2019). The District Court awarded the Receiver a $3,473,320.00 judgment against McHenry. (Op. at 4).

The Receiver obtained an order in the District Court Litigation, pursuant to Rule 69 of the Federal Rules of Civil Procedure, permitting her to examine McHenry under oath regarding his ability to pay the $3,473,320.00. (*Id.* at 5). The order required McHenry to produce certain financial documents to the Receiver by January 27, 2020. (*Id.*). McHenry's bankruptcy filing automatically stayed the District Court Litigation, including the order requiring McHenry to produce financial documents. (*Id.*). Unlike the Adversary, McHenry was represented by counsel in the Bankruptcy Case until recently. (Bankr. Dkt. 154).

On January 24, 2020, McHenry filed his bankruptcy schedules, identifying the Receiver as a judgment creditor holding an unsecured claim of $3,472,320.00. (Bankr. Dkt. 26 at 5). In Schedule A/B: Property (Op. at 6; Bankr. Dkt. 26 at 4), McHenry listed a checking account at First Commercial and no other checking, savings, or other financial accounts. (Op. at 6; Bankr. Dkt. 26 at 5). He also listed three (3) retirement accounts.

The Receiver requested, and McHenry agreed, to undergo an examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure. As a result, the Receiver filed the Notice of Intent to Take Rule 2004 Examination (the "Notice") (Op. at 6; Bankr. Dkt. 48), which included requests for the production of documents. These requests mirrored those served on McHenry in the stayed District Court Litigation. On March 5, 2020, McHenry produced some of the requested documents, which were accompanied by a letter from McHenry's counsel objecting to the

production of certain documents. (Op. at 7; Bankr. Dkt. 68-2). McHenry specifically objected to producing any documents related to First South and any of his income tax returns. On March 10, 2020, the Receiver's counsel wrote a letter to McHenry's counsel challenging McHenry's objections and requesting that McHenry produce the documents pursuant to the Notice. (Op. at 7; Bankr. Dkt. 68-3). In a letter dated March 13, 2020, McHenry's counsel agreed to produce additional bank statements from four (4) bank accounts "which Mr. McHenry utilizes," but he maintained all other objections. (Op. at 7; Bankr. Dkt. 68-4).

On April 3, 2020, the Receiver filed the Motion to Compel Debtor to Comply with Rule 2004 Requests (the "Motion to Compel") (Bankr. Dkt. 68), asserting that McHenry failed to produce all the documents described in the Notice. (Bankr. Dkt. 68 at 4). The Court held a hearing on the Motion to Compel on May 4, 2020. During discussions at that hearing, the parties appeared to have resolved their dispute, and on May 8, 2020, the Court entered the Agreed Order on Motion to Compel (the "Agreed Production Order") (Op. at 7; Bankr. Dkt. 83), ordering McHenry to produce his 2017, 2018, and 2019 tax returns to the Receiver by May 18, 2020, and provide all other documents described in the Notice by June 3, 2020.

On June 26, 2020, the Receiver filed the Motion for Sanctions for Contempt of Court Order (the "Motion for Sanctions") (Bankr. Dkt. 88), asserting that McHenry failed to comply with the Agreed Production Order. The Receiver alleged that McHenry produced some documents pursuant to the Agreed Production Order but not all. On August 11, 2020, a hearing was held on the Motion for Sanctions at which time McHenry's objection to each of the document requests in the Agreed Production Order was discussed. On August 14, 2020, the Court entered the Order on Motion for Sanctions for Contempt of Court Order (the "First Sanctions Order") (Op. at 8; Bankr. Dkt. 103), finding McHenry in contempt of the Agreed Production Order but allowing McHenry

to purge his contempt by producing to the Receiver, within fourteen (14) days and without objection, complete responses to each of the Receiver's requests through the date of the Agreed Production Order. Given McHenry's prior testimony regarding an IRA account (the "IRA Account"), which was omitted from his bankruptcy schedules, the Court ordered McHenry to amend his schedules to reflect its status at the time of the bankruptcy filing. The Court further ordered that if McHenry failed to comply fully, then the Court would require McHenry to pay the Receiver $2,000.00 in attorney's fees and $250.00 per day for each day until all documents requested were produced.

The documents that McHenry did produce pursuant to the Agreed Production Order showed that he used an account at First Commercial Bank held by First South (the "First South Account") to pay the majority of his and his wife's personal expenses. (Op. at 8). On October 7, 2020, the Receiver deposed McHenry. (Op. at 8-9). At the deposition, McHenry testified that he is the sole manager and member of First South and confirmed that he pays personal household expenses from the First South Account. (Op. at 9). McHenry also testified that he deposited funds into the First South Account from the proceeds of cash-only sales of farm equipment, which he described as "commissions" from his "buy and sell transaction business." (*Id.*). McHenry, however, was unable to provide specific information about any transaction, such as the buyer, seller, price or type of equipment.

On December 7, 2020, the Receiver filed the Re-urged Motion for Sanctions for Contempt of Court Order (the "Re-urged Sanctions Motion") (Bankr. Dkt. 112), asserting that McHenry failed to comply with the First Sanctions Order. The Receiver alleged that McHenry failed to "amend his bankruptcy schedules to accurately reflect the current status of his retirement or pension accounts" as required by the First Sanctions Order. She also alleged that McHenry failed

to produce several categories of documents described in the First Sanctions Order. (Bankr. Dkt. 103 at 3-10). The Receiver requested that the Court renew its finding of McHenry in civil contempt and require McHenry to pay the sanctions provided in the First Sanctions Order.

On January 4, 2021, McHenry filed the Debtor's Response to Receiver's Re-urged Motion for Sanctions for Contempt of Court Order (Bankr. Dkt. 123), stating that he had provided the Receiver with 496 pages of information in response to the First Sanctions Order, he recently had filed and forwarded to the Receiver his 2019 federal income tax return, and that he "cannot possibly produce what he does not have in his possession" with respect to any documents not already provided. (Bankr. Dkt. 123). Accordingly, McHenry requested that the Court deny all relief requested by the Receiver in the Re-urged Sanctions Motion.

At the hearing on the Re-urged Sanctions Motion on January 14, 2021, counsel for the Receiver acknowledged that McHenry had produced additional documents but argued that most of those documents consisted of bank statements from accounts held by companies owned by McHenry. There also were statements from the bank accounts "utilized by Mr. McHenry" for the time period "since April 19, 2018." According to the Receiver, none of these documents related to the IRA Account or revealed the source of funds deposited in the First South Account. McHenry testified that he did not believe it was necessary to amend his bankruptcy schedules because the amount of funds in the closed IRA Account was insignificant. As to the missing documents identified in the Re-urged Sanctions Motion, McHenry testified that the IRA Account had been closed many years ago and that he no longer had access to that retirement account. He also testified that he had in his office a notebook and deposit slips indicating his source of income. His office was also where he kept copies of all insurance policies. He expressed some confusion about whether he had already produced these documents to the Receiver.

On January 19, 2021, the Court entered the Order on Re-urged Motion for Contempt of Court Order (the "Second Sanctions Order") (Bankr. Dkt. 132). The Second Sanctions Order provided a step-by-step process for the production of certain documents. One step in that process required the parties to meet on January 29, 2021 at McHenry's office. The Court reserved the issue of sanctions raised by the Receiver for decision after that date so that it could consider the degree of cooperation exhibited by McHenry. On January 21, 2021, McHenry amended Schedule A/B: Property and Schedule C: The Property You Claim as Exempt (the "Schedule Amendment") and removed the closed IRA Account (Bankr. Dkt. 133, 135).

As instructed, the parties and their respective counsel met at McHenry's office on January 29, 2021 to review the documents that McHenry contended were responsive to the Receiver's requests. (Adv. Dkt. 44 at 3; Adv. Dkt. 48). On February 3, 2021, the Receiver memorialized the January 29th meeting in a letter to McHenry's counsel. (Op. at 12). On February 4, 2021, McHenry produced, through his counsel, several documents and submitted an affidavit to the Court. (Op. at 13). On March 26, 2021, the Court issued the Final Order on Re-Urged Motion for Sanctions for Contempt of Court Order (the "Final Order") (Bankr. Dkt. 159). In the Final Order, the Court resolved the Re-Urged Sanctions Motion. Because the Court, as indicated below, had denied McHenry's discharge by that time, it did not find that any further sanctions were warranted.

B. Adversary Proceeding

On April 23, 2020, shortly after entry of the Agreed Production Order in the Bankruptcy Case, the Receiver filed the Adversary Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. § 523 and § 727 (the "Complaint") (Adv. Dkt. 1). There were six (6) counts in the Complaint. Counts I, II, and III allege claims under 11 U.S.C. § 523(a)[3] related to how the debt

[3] Hereinafter, all code sections refer to the Code, unless otherwise noted.

arose, and Counts IV, V, and VI allege claims under § 727(a) related to McHenry's alleged conduct in connection with the Bankruptcy Case.

On May 28, 2020, McHenry, acting *pro se*, filed the Answer to Adversary Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. :532 [*sic*] and 11 U.S.C. :727 [*sic*] (the "Answer") (Adv. Dkt. 7). In the Answer, McHenry denied all allegations and relief sought in the Adversary. On September 25, 2020, James G. McGee, Jr. filed a notice of appearance as counsel for McHenry in the Adversary. (Adv. Dkt. 23). His representation of McHenry continued only until December 14, 2020, and McHenry acted *pro se* for the duration of the Adversary. (Adv. Dkt. 33).

On December 1, 2020, the Receiver filed the Motion for Summary Judgment (the "Motion for Summary Judgment") (Adv. Dkt. 27), seeking summary judgment as to all claims asserted in the Complaint. Pursuant to Local Rule 7056-1 of the Uniform Local Rules of the U.S. Bankruptcy Courts for the Southern and Northern Districts of Mississippi, a response and memorandum brief was due by December 23, 2020. McHenry did not file a response or a memorandum brief by the deadline. On January 6, 2021, the Receiver filed the Reply Memorandum in Support of Motion for Summary Judgment (Adv. Dkt. 35).

Because the issues presented in the Motion for Summary Judgment regarding McHenry's alleged conduct during the bankruptcy proceedings overlapped with the issues raised in the Re-urged Motion for Sanctions, the Court entered an order in the Adversary holding the Motion for Summary Judgment in abeyance pending final resolution of the Re-urged Motion for Sanctions in the Bankruptcy Case (the "Abeyance Order") (Adv. Dkt. 39). Thereafter, on February 3, 2021, the Court entered the Order Regarding Supplemental Briefing (the "Supplemental Briefing Order") (Adv. Dkt. 41) amending the Abeyance Order. In the Supplemental Briefing Order, the Court

noted that the briefing cycle for the Motion for Summary Judgment ended before the final resolution of the Re-Urged Sanctions Motion. Given that the date of the document production on January 29, 2021 had expired, the Court permitted the Receiver to file a supplemental brief to bring the pertinent facts current and to revise her corresponding arguments under § 727(a)(3) and § 727(a)(4), if necessary.

On February 24, 2021, the Receiver filed the Supplemental Memorandum in Support of Motion for Summary Judgment (the "Supplemental Brief") (Adv. Dkt. 44). On February 26, 2021, the Court entered the Order Regarding Response to Supplemental Briefing (the "Order on Response to Supplemental Briefing") (Adv. Dkt. 45), granting McHenry fourteen (14) days to file a response to the Supplemental Brief. On March 11, 2021, McHenry filed the Response to Plaintiffs [*sic*] Supplemental Memorandum in Support of Motion for Summary Judgment (the "Supplemental Response") (Adv. Dkt. 48). On March 26, 2021, the Court entered the Opinion and Final Judgment (Adv. Dkt. 54), setting aside the Abeyance Order, awarding summary judgment in favor of the Receiver, granting the relief sought in the Complaint, denying McHenry a discharge of all of his debts pursuant to § 727(a)(4), and taxing the costs of the Adversary against McHenry under 28 U.S.C. § 1920.

1. Motion to Reconsider

On March 31, 2021, McHenry filed the Motion to Reconsider, requesting that the Court permit him to "present information pertinent to the [Court's] decision making process," specifically, "missed deadlines and untimely presentation of documents to the Court . . . by retained [counsel] at the time of the requested financial disclosure and most importantly the failure to amend Schedule C of [his] bankruptcy filing." (Adv. Dkt. 59 at 1). McHenry contends that he did not knowingly omit or attempt to conceal First South's bank records from "any part of the

bankruptcy proceedings or the adversary." (*Id.* at 2). He alleges that his retained counsel advised him on what he was required to produce in the Bankruptcy Case and requests an opportunity to address "the issues that were created by the actions of legal representation." (*Id.*).

On April 14, 2021, the Receiver filed the Receiver's Opposition, arguing that in the Motion to Reconsider, McHenry does not point to a flaw in the Court's judgment, but instead asks that he be allowed to present information about his failure to amend his bankruptcy schedules. (Adv. Dkt. 62 at 1-2). The Receiver avers that the time for McHenry to present information has passed and that the Motion to Reconsider should be denied so that the Receiver "can execute on her judgment against him and collect what she can for the benefit of Madison Timber's defrauded investors." (*Id.* at 2).

On April 21, 2021, McHenry filed the Response to Summary Judgment Opinion. In which he asserts that he "was told by counsel at the time there was no need to list the [First South Account] on [his] bankruptcy filing since [First South] was not taking bankruptcy." (Adv. Dkt. 63 at 2). He avers that "on advise [sic] of counsel, [he] listed deposits only to [his] personal account." (*Id.*). McHenry maintains that he relied on his counsel's experience and advice in all matters pertaining to bankruptcy compliance.

2. McHenry's *Pro Se* Status in the Adversary

On December 14, 2020, during the briefing cycle for the Motion for Summary Judgment, McHenry's counsel filed the Motion to Withdraw as Counsel of Record (the "Motion to Withdraw") (Adv. Dkt. 31), requesting permission to withdraw as counsel of record for McHenry in the Adversary.[4] That same day, a status conference was held on the Adversary, during which

[4] On March 2, 2021, McHenry's counsel filed a Motion to Withdraw as Counsel of Record (Bankr. Dkt. 149) in the Bankruptcy Case as well. McHenry did not oppose the relief requested,

time the Court addressed the Motion to Withdraw. The Court informed McHenry that once the Court entered the order granting the Motion to Withdraw, he would be proceeding in the Adversary without the assistance of counsel unless he retained substitute counsel.[5] The Court also emphasized that although the Motion to Withdraw was filed during the briefing cycle for the Motion for Summary Judgment, McHenry would be held responsible for meeting all deadlines.[6] McHenry affirmed that he understood his responsibilities should he proceed without the assistance of counsel.[7] Later that day, the Court entered the Order Granting Motion to Withdraw as Counsel of Record (the "Order Granting Motion to Withdraw") (Adv. Dkt. 33).

Discussion

"[T]he Federal Rules of Civil Procedure do not recognize a general motion for reconsideration." *St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123 F.3d 336, 339 (5th Cir. 1997). McHenry does not cite any particular Bankruptcy Rule or provision of the Code as the basis for his Motion to Reconsider but asks the Court to reconsider the Opinion and "allow [him] to present information pertinent to the [Court's] decision making process". (Adv. Dkt. 59 at 1). A motion asking the Court to reconsider its decision constitutes either a motion to "alter or amend" under Rule 59(e) of the Federal Rules of Civil Procedure ("Rule 59") (as made applicable to bankruptcy proceedings by Rule 9023 of the Federal Rules of Bankruptcy Procedure) or a motion

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and on March 19, 2021, the Court entered the Order Granting Motion to Withdraw as Attorney (Bankr. Dkt. 154).

[5] (Status Conf. at 1:42:42-1:43:05 (Dec. 14, 2020)). The status conference was not transcribed. References to the discussions at the status conference are cited by the timestamp of the audio recording.

[6] (Status Conf. at 1:42:42-1:43:05 (Dec. 14, 2020)).

[7] (Status Conf. at 1:43:55-1:44:00 (Dec. 14, 2020)).

for "relief from judgment" under Rule 60(b) of the Federal Rules of Civil Procedure ("Rule 60(b)") (as made applicable to bankruptcy proceedings by Rule 9024 of the Federal Rules of Bankruptcy Procedure). *Tex. A&M Research Found. v. Magna Transp., Inc.*, 338 F.3d 394, 400 (5th Cir. 2003).

Under Rule 59(e), a final judgment may be amended if: (1) there is a manifest error of law or fact; (2) newly discovered evidence; or (3) an intervening change in controlling law. *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (citing *Rosenzweig v. Azurix Corp*., 332 F.3d 854, 863-64 (5th Cir. 2003)). A Rule 59(e) motion to reconsider serves a narrow purpose: "to permit a party to correct manifest errors of law or fact, or to present newly discovered evidence." *Krim v. pcOrder.com, Inc.*, 212 F.R.D. 329, 331 (W.D. Tex. 2002). A Rule 59 motion is not the proper place for "rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). Similarly, Rule 60(b) provides that the Court may "relieve a party . . . from a judgment [or] order" for certain specified reasons, including (1) "mistake, inadvertence, surprise, or excusable neglect," and (6) "any other reason that justifies relief." The Motion to Reconsider will be considered under Rule 59(e), and not Rule 60, because it was filed five (5) days after the entry of the Opinion and because Rule 59(e) motions provide relief on grounds at least as broad as Rule 60(b) motions.

McHenry does not argue that the Court made a manifest error of law or that there has been an intervening change in controlling law. McHenry alludes to an error of law by arguing that: (1) he did not intentionally hinder, delay, deceiver, or defraud a creditor or an officer of the estate; (2) he made no false oath and did not neglect to obey any order of the court; and (3) he did not intentionally make any omissions. (Adv. Dkt. 63 at 2). McHenry instead asserts, for the first time,

that his failure to list the First South Account in Schedule A/B: Property of his bankruptcy schedules was due to the advice of his counsel. This assertion does not qualify as an argument of manifest error of fact because it was not contained in the summary judgment record for the Court to consider in the first place at the time of summary judgment. The Court now considers whether McHenry's arguments qualify for relief pursuant to the only remaining basis under Rule 59—newly discovered evidence.

The Fifth Circuit Court of Appeals has held that an unexcused failure to present evidence available at the time of summary judgment provides grounds for denying a subsequent motion for reconsideration. *Russ v. Int'l Paper Co.*, 943 F.2d 589, 593 (5th Cir. 1991). On December 14, 2020, the Court entered the Order Granting Motion to Withdraw, allowing McHenry's counsel to withdraw his representation of McHenry in the Adversary. At the hearing on the Motion to Withdraw, McHenry affirmed that he understood the responsibilities of proceeding *pro se* and that he understood he would be responsible for all deadlines pertaining to the Motion for Summary Judgment.[8] A response to the Motion for Summary Judgment was due on December 23, 2020. McHenry did not file a response at all, much less a response indicating that he had relied on advice of counsel in filing his bankruptcy schedules. Following the conclusion of the overlapping events in the Bankruptcy Case, the Court entered the Order on Response to Supplemental Briefing, giving McHenry another opportunity to respond to the Motion for Summary Judgment. On March 11, 2021, McHenry filed the Supplemental Response but made no mention of his reliance on advice of counsel. (Adv. Dkt. 48). Accordingly, the Court finds that if McHenry did rely on advice of

[8] (Status Conf. at 1:42:42-1:44:00 (Dec. 14, 2020)).

counsel in preparing his bankruptcy schedules to his detriment, then he knew this at the time he filed the Supplemental Response

On these grounds alone, the Court finds cause to deny the Motion to Reconsider. Due to McHenry's *pro se* status, however, the Court affords McHenry some leniency.[9] While McHenry's counsel withdrew from the Adversary in December 2020, he did not withdraw from the Bankruptcy Case until March 19, 2021, after briefing on the Motion for Summary Judgment had concluded. (Bankr. Dkt. 154). Though McHenry does not make this argument in his pleadings, the Court considers the fact that he was still represented by his counsel in the Bankruptcy Case when he amended his schedules, which once again omitted the First South Account. Accordingly, it is possible that McHenry did not make the arguments contained in the Motion to Reconsider at that time because he was still represented by his counsel in the Bankruptcy Case. Therefore, the Court liberally construes McHenry's argument as potentially qualifying as newly discovered evidence and next considers whether evidence of reliance on counsel would have changed the result reached in the Opinion.

As a matter of law, advice of counsel is not a defense to an action under § 727(a)(4) where a debtor has knowingly sworn to false information. *Sholdra v. Chilmark Fin. LLP, (In re Sholdra),* 249 F.3d 380, 383 (5th Cir. 2001) (holding that inexperience with financial affairs or reliance on incorrect advice or information, even if true, cannot withstand summary judgment."); *see Casey v. Alberton's Inc.*, 362 F.3d 1254, 1259-60 (9th Cir. 2004) (alleged attorney malpractice not generally

[9] The Fifth Circuit recognizes a general willingness to construe *pro se* filings liberally while still requiring *pro se* litigants to "abide by the rules that govern the federal courts." *E.E.O.C. v. Simbaki, Ltd.*, 767 F.3d 475, 484 (5th Cir. 2014) (quoting *Frazier v. Wells Fargo Bank, N.A.*, 541 F. App'x 419 (5th Cir. 2013)). The Court has afforded McHenry some leniency regarding his pleadings, as instructed by the U.S. Supreme Court. *McNeil v. United States*, 508 U.S. 106, 113 (1993) (internal citation omitted).

a basis to set aside a judgment pursuant to Rule 60(b)(1)); *see also Furr v. Godley (In re Godley),* 164 B.R. 780, 782 (Bankr. S.D. Fla. 1994) (rejecting debtor's claim that he was ill-advised by counsel that it was not necessary to list the omitted assets on the bankruptcy schedules). Similarly, the U.S. Supreme Court has made it clear that "a client is held accountable for the actions and omissions of his counsel." *Pioneer Inv. Servs. Co. v. Brunswick Assos., Ltd. P'ship.*, 507 U.S. 380, 397 (1993). Therefore, the Court finds that even if McHenry had presented evidence of his alleged reliance on advice of counsel, it would not have changed the result reached in the Opinion.

There are two goals a court considers when it decides a motion to reconsider: (1) the need to bring litigation to an end, and (2) the need to render a decision based on all the facts. *Templet*, 367 F.3d at 479. A court must balance the two goals in making its decision. *Id.* Here, the Court has considered all the facts before it and finds no basis to disturb the findings in the Opinion. Further, the Court finds that to grant a motion to reconsider, in circumstances such as these where the movant's grounds are his alleged reliance on advice of counsel, would make it difficult to attain the goal of finality in litigation. Accordingly, the facts in this case do not warrant the extraordinary relief associated with granting a motion for reconsideration. *See id.* at 479-80. As a final note, the Court finds that McHenry is not unfairly prejudiced by this decision because the denial of the Motion to Reconsider in no way precludes him from addressing any grievances he may have with his former counsel if he so wishes. *See In re Babcock*, 258 B.R. 646, 650 (Bankr. E.D. Va. 2001).

Conclusion

McHenry's allegations in the Motion to Reconsider hinge on his purported reliance on advice of counsel. This argument was available to him at the time of summary judgment, but he did not raise it in any pleadings. Regardless, the Fifth Circuit has held that reliance on advice of counsel as a defense cannot withstand summary judgment. Accordingly, the Court finds that the

Motion to Reconsider does not overcome the factual or legal burden for the Court to reconsider the Opinion and, therefore, finds that the Motion to Reconsider should be denied.

IT IS, THEREFORE, ORDERED that the Motion to Reconsider is hereby denied.

END OF ORDER