

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
GREEN FIELD ENERGY SERVICES, INC.,	)	Case No. 13-12783 (KG)
<i>et al.</i> ,	)	(Jointly Administered)
	)	
<u>Debtors.</u>	)	
ALAN HALPERIN, AS TRUSTEE OF THE	)	
GFES LIQUIDATION TRUST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Pro. No. 15-50262 (KG)
	)	
MICHEL B. MORENO; MOR MGH	)	
HOLDINGS, LLC; MOR DOH HODLINGS,	)	
LLC; SHALE SUPPORT SERVICES, LLC;	)	
DYNAMIC GROUP HOLDINGS, LLC;	)	
DYNAMIC INDUSTRIES, INC.; FRAC	)	
RENTALS, LLC; TURBINE GENERATION	)	
SERVICES, LLC; AERODYNAMIC, LLC;	)	
CASAFIN II, LLC; MORENO PROPERTIES,	)	
LLC; ELLE INVESTMENTS, LLC; LQT	)	
INDUSTRIES, LLC (k/a DYNAMIC ENERGY	)	
SERVICES INTERNATIONAL LLC,	)	
	)	
<u>Defendants.</u>	)	Re: D.I. 465

**MEMORANDUM ORDER ON TRUSTEE'S  
MOTION FOR RECONSIDERATION**

Plaintiff, Alan Halperin, as Trustee (the "Trustee") of the GFES Liquidation Trust (the "Trust") has moved for reconsideration (the "Motion") of the Court's Opinion and Order Regarding Cross-Motions for Partial Summary Judgment (the "Opinion"), dated January 24, 2018. D.I. 463 and 464.

The Trustee moves for reconsideration pursuant to Fed. R. Bankr. P. 9023. The question the Trustee raises relates to the Court's ruling on Counts 11 and 12 of the Complaint which the Trustee calls a "clear error of law."

The error the Court made, according to the Trustee, is that while the Court found that MOR MGH and MMR breached the 2012 SPA and the first two quarters of the 2013 SPA and thereby failed to pay the sum of \$15,961,923, the Court denied the Trustee summary judgment. Instead, the Court ruled that the Trustee had to show at trial how the failure to make the payments damaged GFES.

The Trustee argues in the Motion that under New York law, which is the applicable law, when a party breaches a contract by failing to make a required payment, the non-payment is an "expectation damage" and the complaining party "is entitled to recover the unpaid amount due under the contract plus interest." *House of Diamonds v. Borgioni, LLC*, 737 F. Supp. 162, 172 (S.D.N.Y. 2017). The Trustee cites numerous cases which he argues hold that if "the breach of contract was a failure to pay money, the plaintiff is entitled to recover the unpaid amount due under the contract plus interest." *Winik Media LLC v. One Up Games, LLC*, 2017 WL 4539292, at \* 3 (S.D.N.Y. 2017). The Trustee argues that because he is seeking direct damages only, he is entitled to the damages of \$15,961,923, plus prejudgment interest of \$6,612,941.36 which increases by \$3,935.82 per day. The Trustee asserts confidently that because he seeks damages based upon the unpaid amount, he needs no further proof. The proof, says the Trustee, "begins and ends with establishing failure to pay in accordance with the terms of the contract." Reply Memorandum at 4 (D.I. 469).

The Defendants argue that the Court was correct in ruling that the Trustee failed to show that there was no material issue of fact regarding any damage to GFES caused by the non-payment. The Defendants had argued in the summary judgment briefing that other payments which Defendants made, coupled with the poor financial condition of GFES, meant that the non-payment of the 2012 SPA and two quarters of the 2013 SPA resulted in no damage to GFES.

Thus, the issue raised is whether a breach of contract by non-payment of money results in liability, or whether the complainant must also prove that it was damaged by the non-payment. The Court has read the cases which the parties cite in support of and in opposition to the Motion. From its reading, when applied to the facts presented, the Court concludes that its ruling was not a “clear error of law” and was correct in holding that the Trustee was not entitled to summary judgment on the issue. The Court will therefore deny the Motion.

The cases the Trustee cites in support of the Motion are just not persuasive. The Court does not read *Scavenger, Inc. v. GT Interactive Software Corp.*, 289 A.D. 2d 58 (N.Y. App. Div. 2001) to establish automatic liability for a party that does not pay money and thereby breaches a contract. The *Scavenger* court, on appeal, addressed the amount of damages and whether additional damages were appropriate. The *Scavenger* court did not address the causation of damages. The Trustee’s citation of *Winik Media* is also not convincing of the Trustee’s argument. *Winik Media* stands for the proposition that a breach of contract claim requires proof of damages. Here, the damages will be ascertained from an analysis of the economic condition of GFES as an entirety at the time

of the non-payments. The question remains whether the breach of the 2012 SPA and 2013 SPA damaged GFES. *Winik Media* also provides that a plaintiff must prove its damages with evidence, and that the plaintiff is entitled to damages that will put it in the same economic position it would have been if there had not been a breach of contract. *Id.* at \* 2-3. Whether GFES was or was not in the “same economic position” that it would have been without the breach of contract is an issue that remains for trial. Many of the Trustee’s other cited cases involve default judgments and are not helpful.

Reconsideration is an extraordinary remedy which courts should grant “sparingly.” *In re Tribune Co.*, 464 B.R. 208, 213 (Bankr. D. Del. 2011). The Trustee was required to show either (1) a change in the law, (2) new evidence is available, or (3) the need to prevent manifest injustice or to correct a clear error of fact or law. *In re Energy Future Holdings Corp.*, 575 B.R. 616, 628 (Bankr. D. Del. 2017). The Trustee brought the Motion under the third category which the Court has rejected. Accordingly, the Motion is denied. SO ORDERED.

Dated: February 23, 2018

  
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KEVIN GROSS, U.S.B.J.