

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

In re:	)	Chapter 11
	)	
FRUEHAUF TRAILER CORPORATION, et al.	)	Case No. 96-01563 (PJW)
	)	
Debtors.	)	
<hr style="width: 40%; margin-left: 0;"/>		
	)	
CHRISS W. STREET, as Former Trustee of the End of the Road Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 08-50295 (PJW)
	)	
DANIEL W. HARROW, as Successor Trustee of the End of the Road Trust,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION**

David L. Finger  
FINGER & SLANINA, LLC  
One Commerce Center  
1201 N. Orange Street, 7<sup>th</sup> Floor  
Wilmington, DE 19801-1186

Chriss W. Street  
220 Newport Center Drive  
#11-800  
Newport Beach, CA 92660

Pro Se

Robert T. Kugler  
Robert L. DeMay  
David G. Parry  
Adine S. Momoh  
LEONARD, STREET AND DEINARD,  
P.A.  
150 South Fifth Street  
Suite 2300  
Minneapolis, MN 55402

Attorneys for Defendant  
Daniel W. Harrow, as  
Successor Trustee of the  
End of the Road Trust

Dated: February 17, 2012

WALSH, J 

This brief opinion is with respect to Chriss W. Street's ("Street") motion (the "Motion" - Doc. # 75) for reconsideration of my July 15, 2011 Order (Doc. # 74) denying Street's request for leave to file an amended complaint. For the reasons set forth below, I will deny the Motion.

For background I incorporate by reference my Memorandum Opinion of July 15, 2011 (Doc. # 73).

"A motion for reconsideration ... is an extraordinary means of relief in which the movant must do more than simply reargue the facts of the case or [the] legal underpinnings." Calyon N.Y. Branch v. Am. Home Mortg. Corp., 383 B.R. 585, 589 (Bankr. D. Del. 2008) (quoting HHCA Tex. Health Servs., L.P. v. LHS Holdings, Inc. (In re Home Health Corp. of Am., Inc.), 268 B.R. 74, 76 (Bank. D. Del. 2001)). The motion "must rely on one of three major grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error [of law] or prevent manifest injustice.'" Id.; accord N. River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995) (same). "Generally, a motion for reconsideration is not granted unless the moving party can point to controlling decisions or data that the court overlooked - matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Calyon, 383 B.R. at 589 (internal quotation marks

omitted); see also Dentsply Int'l., Inc. v. Kerr Mfg. Co., 42 F. Supp. 2d 385, 419 (D. Del. 1999) (motions for reconsideration "should not be used to rehash arguments already briefed or allow a never-ending polemic between the litigants and the Court") (internal quotation marks omitted).

Street does not cite to a change in controlling law, or argue there has been one. To the contrary, the handful of cases cited in the Motion were decided prior to his motion to amend the complaint. (Doc. # 75, at 11.) Instead, Street seeks reconsideration "based on the Court's manifest injustice in errors of fact and law; and new evidence." (Id. at 11.)

Although Street seeks reconsideration "based on the Court's manifest injustice in errors of fact and law," he fails to point to any controlling authority he believes the Court overlooked when ruling on the motion to amend the complaint. (Id.) The only Delaware law cited in the Motion is three unpublished Court of Chancery decisions addressing spoliation as a discovery sanction. (Id. at 15.) These cases do not apply to Street's motion to amend because, as discussed in the Court's Memorandum Opinion, spoliation is an evidentiary rule, not an independent cause of action under Delaware law. (Doc. # 73, at 21-22.)

Because the Motion is quite verbose with many irrelevant and unconnected factual assertions, I will address only the highlights as to why the Motion has no merit.

The Motion starts off with five paragraphs of what Street calls "new evidence". These are:

(1) Street asserts:

Chriss Street ("Street") was the unsuccessful high bidder for Fruehauf de Mexico ("FdM") in a Bankruptcy Trust sale managed by Trustee Daniel Harrow ("Harrow"), who claimed to be selling the company as a disinterested person. On February 17, 2011 Daniel Harrow boasted to Ronald Campbell, an investigative reporter with the Orange County Register, for a newspaper article:

"I wish I owned some piece of Fruehauf because it's a company that's doing extra well[,] " Harrow said. The creditors have paid him performance bonuses for managing the company but have never allowed him to buy a stake in the company[,] he said."

The statement appears to indicate Harrow was not a "disinterested person" under Delaware Trust Law and U.S. Law.

(Doc. # 75, at 5.) I have no idea what law Street is referring to or how the quoted statement "appears to indicate" anything. In any event this is irrelevant because the assets of the Trust were not sold. Instead, the Trust effected a distribution to beneficiaries of the Trust. That distribution was pursuant to an order entered by this Court on May 10, 2007. (Case No. 96-1563 (PJW), Doc. # 1945.)

(2) Street asserts:

The FdM website appears to demonstrate Successor Trustee Harrow and Anastasia Dolan knowingly filed false and dishonest FdM Financial reports in violation of Delaware Trust Law and U.S. Bankruptcy Law. Chriss Street relied on the FdM Financial Statements in his unsuccessful bid to buy FdM.

(Doc. # 75, at 5.) Since I do not know how the FdM website "appears to demonstrate," I give no weight to this assertion. In any event, the sale process was abandoned in favor of the distribution to the Trust beneficiaries.

(3) Street asserts that a Trust employee had "restated" financial statements. (Id. at 5-6.) Street does not state how those restatements affected the financial affairs of the Trust or any other person or entity. Street asserts that he "had never received any information regarding accounting restatements when Street was the unsuccessful bidder for ATII." (Id.) There was no successful bidder. Since the sale process was abandoned in favor of the distribution to the Trust beneficiaries, this point is not only confusing, it is irrelevant.

(4) Street asserts that an attorney for the Trust threatened James Wong, an associate of Street's. According to Street, the attorney advised Wong: "When we are done with Chriss [Street] we are coming after you [Wong]. James Wong said that he has a family to worry about and could not talk to me anymore. [Declaration of Street]" (Id. at 6.) According to Street, this constituted witness tampering. (Id.) There is nothing in the record, including the Fruehauf bankruptcy case record, that suggests that any party in interest intended to call Mr. Wong as a witness in any court proceedings. In any event, I do not

understand how this allegation has any bearing on the motion for reconsideration or the motion to file an amended complaint.

(5) Finally, Street asserts that his signature was forged on 401(k) closing documents. (Doc. # 75, at 6.) Assuming this allegation is true, it is irrelevant because Street does not assert how that fact was adverse to him. As Street readily acknowledges, he was never a beneficiary of the Trust and the Court approved the distributions to the Trust beneficiaries. That procedure mooted any sale transaction to which Street claims he should have been invited.

Thus, I find that Street's "new evidence" proves nothing relevant to his motion for reconsideration.

Street asserts:

Mr. Mojdehi and Mr. Harrow individually and together made representations and warranties that Street would be paid his compensation through October 27, 2005, his percentage fee, any bonuses due, all benefits due, continue to benefit from his existing interest in the insurance coverage in force, and be welcomed to bid to buy Trust assets; if Chriss Street agreed to sign early resignation statement . . . Chriss Street signed the resignation statement on the expectation he would be paid Compensation through October 27, 2005, his percentage fee, any bonuses due, all benefits due, continue to benefit from his existing interest in the insurance coverage in force, and be welcomed to be [sic] bid to buy the Trust assets.

On or about August 4, 2005, Daniel Harrow sent a letter complaining that the Trust had no money and reneging on all the representations and warranties made by the "group" to induce Chriss Street to resign before the end of his term.

(Doc. # 75, at 17-18.)

When Harrow became successor trustee presumably he, acting alone, had the authority to renege on the deal. I do not understand how that can be attributed to the "group." When Harrow allegedly reneged on the representations and warranties made to Street, at that point Street may well have had a cause of action. However, when Street filed his complaint on July 12, 2007, he filed suit only against Harrow and only with respect to the insurance coverage. As set forth in the Memorandum Opinion, that narrow claim against one individual does not warrant a relation back so as to avoid the statute of limitations on multiple claims against multiple defendants. Any other counts against any other defendants have long since been barred by the applicable statute of limitations.

Street effectively acknowledges in his Motion that his proposed amended complaint asserts generalized allegations against a group of defendants. Street does not challenge the case law authority for the proposition that Federal Rule of Civil Procedure 9(b) requires that the plaintiff separately plead the allegedly fraudulent acts of each defendant. Street simply asserts that "some level of group-pleading must be acceptable at this stage of litigation." (Doc. # 75, at 16.) Not so, according to the case law authority cited in my Memorandum Opinion.

Street asserts:

Trust attorney, Robert Kugler (Leonard, Street & Deinard) at a Court Hearing on December 19, 2006 knowingly made a false and dishonest blanket representation to Street and his attorneys to induce Street to not file a Tender Offer under the Williams Act of the Securities Act of 1934 to acquire majority control of the Trust by stating:

**"And just so that everyone is clear, we wouldn't close any transaction that we move forward with and that would certainly give Mr. Street the opportunity to respond."** [Hearing 12/19/07]

(Doc. # 75, at 21.)

The quoted statement attributed to Mr. Kugler is incorrect. According to the December 19, 2006 hearing transcript, what Mr. Kugler stated is:

And just so that everyone is clear, we wouldn't close any transaction without getting Court approval first. So we would seek Court approval for any transaction that we move forward with and that would certainly give Mr. Street the opportunity to respond.

(Hr'g Tr., 17, Dec. 19, 2006, Doc. # 1913.) Mr. Kugler was referring to a sale transaction that the Trust later abandoned in favor of the distribution to the Trust beneficiaries. Of course, over Street's objection, this Court entered an order on May 10, 2007, approving that distribution. That order effectively mooted Street's claim that he was denied an opportunity to bid for Trust property. In any event, if Street was harmed by being denied the right to bid for the purchase of the properties, the statute of limitations has long passed for asserting that claim.

With respect to the spoliation claim, as pointed out in my Memorandum Opinion, case law authority says that spoliation is not an independent cause of action. Street now requests that I make it such a cause of action. I decline to do so.

#### **CONCLUSION**

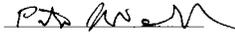
For the reasons set forth above, Street's motion for reconsideration will be denied.

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

In re:	)	Chapter 11
	)	
FRUEHAUF TRAILER CORPORATION,	)	Case No. 96-01563 (PJW)
et al.	)	
	)	
Debtors.	)	
<hr/>		
	)	
CHRISS W. STREET, as Former	)	
Trustee of the End of the Road	)	
Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 08-50295 (PJW)
	)	
DANIEL W. HARROW, as Successor	)	
Trustee of the End of the Road	)	
Trust,	)	
	)	
Defendant.	)	

**ORDER**

For the reasons set forth in the Court's memorandum opinion of this date, Chriss W. Street's motion (Doc. # 75) for reconsideration of the Court's July 15, 2011 Order is **denied**.



Peter J. Walsh  
United States Bankruptcy Judge

Dated: February 17, 2012