IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
CHAMA, INC., DCH, INC., CALLAWAY COMMUNITY HOSPITAL ASSOCIATION, MEDICAL CENTER OF WINNIE, INC. and COLUSA COMMUNITY HOSPITAL ASSOCIATION,	)	Case No. 98-2252 (MFW)
	)	(Jointly Administered)
Debtors.	)	
	)	
CHAMA, INC., and COLUSA COMMUNITY HOSPITAL ASSOCIATION,	)	
	)	Adversary No. A-99-301 (MFW)
Plaintiffs,	)	
v.	)	
FIRST NORTHERN BANK AND TRUST,	)	
Defendant.	)	

MEMORANDUM OPINION[1]

I. INTRODUCTION

The issue before this Court is the Motion of First Northern Bank and Trust ("the Defendant") for Reconsideration and Reargument of our Opinion and Order dated April 26, 2000. In the April 26 decision, we held that the Defendant did not have a perfected interest in certain equipment and was not entitled to adequate protection. The basis for the Defendant's motion is an

[1] This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

alleged mistake of fact by this Court in finding that title to the equipment was never transferred from the Defendant to the City of Colusa ("the City"). The Official Unsecured Creditors' Committee ("the Committee") and Chama, Inc. ("the Debtor"), have both opposed the Defendant's motion, asserting that the Defendant simply seeks another bite at the apple. As discussed herein, the Court agrees with the Committee and the Debtor and, therefore, denies the Defendant's motion.

II. DISCUSSION

A motion for reconsideration under Federal Rule of Bankruptcy Procedure 9023 is an extraordinary means of relief in which the movant must do more than simply reargue the facts of the case or legal underpinnings. See North River Ins. Co v. Cigna Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)(a motion to reconsider 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")(quoting Natural Resources Defense Council v. United States Envtl. Protection Agency, 705 F.Supp. 698, 702 (D.D.C. 1989)); Harsco Corp. v. Zlotnicki, 779 F.2d 906, 908 (3d Cir. 1985)("The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence"); Dentsply Int'l., Inc. v. Kerr Mfg. Co., 42 F. Supp.2d 385, 417 (D. Del. 1999)("[motions for reargument]

should be granted sparingly and should not be used to rehash arguments already briefed or allow a 'never-ending' polemic between the litigants and the Court").

The Defendant cites three cases in support of a lower standard which would allow reconsideration and reargument where: (1) the Court made any error of law or fact and (2) would have rendered a different result if it had been aware of the mistake. See Walsh v. State of Delaware, 1993 WL 837872 (D. Del. May 5, 1993); Karr v. Castle, 768 F. Supp. 1087 (D. Del 1991), aff'd, 22 F.3d 303 (3d Cir. 1994), cert denied, 513 U.S. 1084; Bills Dollar Stores, Inc. v. New Orleans Printing Svcs., Inc., 200 B.R. 18, 19 (Bankr. D. Del. 1994). These cases were all decided prior to the Third Circuit's decision in North River, however, and to the extent they suggest a lower standard, they are no longer good law.

We are bound by, and therefore follow, the standards elucidated by the Third Circuit in North River. The Defendant has not argued that there is any new evidence or a change in controlling case law; therefore the Defendant's motion can be premised only upon a "manifest" or "clear" error.

In this case, the facts were presented by stipulation which stated that the Debtor acquired legal title to the equipment under the lease and sublease which were made part of the record. The stipulation never squarely addressed the issue of whether the City ever held title.

However, the Defendant had the opportunity to brief the issue, and did, in fact, raise the issue in the Background Facts section of its Opening Brief in which it asserted: "[p]ursuant to the Lease, the City assigned all of its right, title and interest in and to the Sublease . . . to First Northern." Moreover, the issue of whether the City obtained rights in the collateral was discussed in the argument sections of both parties' briefs.

We reviewed the parties' arguments (including the Defendant's argument that the City obtained rights in the Collateral which were sufficient to permit perfection under California law), and the documents submitted in support thereof, and concluded that the City never held title to the equipment at issue because "the equipment was at all times owned by Colusa." Opinion, dated April 26, 2000 at page 9.[2]

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[2] While we may not have explained our original decision as fully as we might have, it seems clear to us that the issue of whether title ever vested in the City was obvious from the documents. Subsection 6.1 of the lease between the Defendant and the City, which was labeled "TITLE," provides: "[s]o long as an event of default has not occurred. . . legal title to the Equipment . . . shall be in Sublessee [Debtor-Colusa] pursuant to the Sublease. Upon the occurrence of an event of default . . . legal title to the Equipment shall pass to Lessor [Defendant], and [City] and [Colusa] shall have no further interest therein."

Section 3.3 of the lease, labeled "Lease; Enjoyment; Inspection" (which the Defendant now urges us to read as evidence of the City's title) did not dissuade us in our conclusion. The section labeled "TITLE" section is more convincing indicia of who actually held title to the Equipment.

III. CONCLUSION

Having already reviewed this once, and for the reasons set forth above, we now conclude that we have not made a “clear” or “manifest” error. The Defendant has therefore failed to meet the standards required for reconsideration or reargument. Accordingly, the Defendant’s motion is denied.

An appropriate Order is attached.

BY THE COURT:

Dated: September 21, 2000

Mary F. Walrath
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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Defendant.	)	

O R D E R

AND NOW, this **21ST** day of **SEPTEMBER, 2000**, upon consideration of the Motion of First Northern Bank and Trust for Reconsideration and Reargument of our Opinion and Order dated April 26, 2000 ("the Motion"), for the reasons set forth in the accompanying Opinion, it is hereby

ORDERED that the Motion is **DENIED**.

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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