Dated: March 07, 2022
The following is ORDERED:

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re: Case No. 14-25856
Jeffrey Hines Farmer, Jr. Chapter 7
Debtor

Estate of Phillip Bittker and
The Phillip L. Bittker Trust by
Allan M. Bittker, as Executor,
Plaintiffs,
v. Adv. Proc. No. 15-00370

Jeffrey Hines Farmer, Jr.,
Defendant.

ORDER DENYING PLAINTIFFS' MOTION TO RECONSIDER, ALTER OR AMEND ORDER PURSUANT TO FED. R. BANKR. P. 9023 OR, IN THE ALTERNATIVE, FOR RELIEF FROM ORDER PURSUANT TO FED. R. BANKR. P. 9024

This matter is before the Court on Plaintiffs' Motion to Reconsider, Alter or Amend Order Pursuant to FED. R. BANKR. P. 9023 or, in the Alternative, for Relief from Order Pursuant to FED. R. BANKR. P. 9024 (the "Motion") [DE 79], which seeks relief from the Court's Opinion and Order Granting Defendant's Motion for Judgment on Partial Findings Under FED. R. CIV. P. 52(C) and BANKR. R. CIV. P. 7052 [DE 70 and 71]. Plaintiffs' Motion only addresses the Court's dismissal of Count I (Plaintiffs' 727(a)(3) claim) and does not seek relief as to the dismissal of Count II and Count IV. Defendant objected to Plaintiffs' Motion [DE 82], and the Court heard arguments from Counsel on February 2, 2022, and took this matter under advisement. The Court now considers the Plaintiffs' Motion pursuant to the applicable Rules.

Federal Rule of Bankruptcy Procedure 9023

Plaintiffs first assert that the Court should reconsider, alter or amend its prior Order pursuant to BANKR. R. CIV. P. 9023, which incorporates FED. R. CIV. P. 59. Rule 59 provides, in pertinent part:

> (e) A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

FED. R. BANKR. P. 9023; FED. R. CIV. P. 59(e). The Sixth Circuit has determined that judgments should be altered or amended only in circumstances where there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice, *GenCorp., Inc. v. Am. Int'l. Underwriters,* 178 F.3d 804, 834 (6th Cir. 1999) (*reh'g denied*) (citations omitted), and the burden of proof lies with the moving party. *Morris v. Zimmer (In re Zimmer)*, 624 B.R. 92, 97 (Bankr. W.D. Pa. 2021) (citations omitted). "The standard for relief is high." *Id.*, citing *In re Secivanovic,* No. 06-3098, 2006 WL 3109007 at *3 (D.N.J. 2006). "Motions for reconsideration should not be used merely to relitigate the issues already decided." *Hogrobrooks v. Educ. Mgmt. Co. (In re Hogrobrooks)*, 2006 WL 6630689, at *2 (Bankr. W.D.

Tenn. Dec. 6, 2006). Instead, movants must demonstrate "manifest errors of fact or law." *In re Oak Brook Apartments of Henrico County, Ltd.,* 126 B.R. 535, 536 (Bankr. S.D. Ohio 1991).

The Court has considered the statements of counsel, the pleadings and the entire record in this case, and finds no cause to reconsider its prior ruling based on BANKR. R. CIV. P. 9023. Plaintiffs failed to provide proof of any of the *GenCorp* criteria set forth above. They have offered no new evidence nor demonstrated any manifest errors of law or fact made by the Court. Plaintiffs essentially seek to reargue the same issues already considered by the Court.

> It is not the function of a motion to reconsider either to renew arguments already considered and rejected by a court or "to proffer a new legal theory or new evidence to support a prior argument when the legal theory or argument could, with due diligence, have been discovered and offered during the initial consideration of the issue.

In re Thomas, No. 16-27850, at 16-17 (Bankr. W.D. Tenn. Jan. 12, 2017), quoting *McConocha v. Blue Cross & Blue Shield Mut. of Ohio,* 930 F. Supp. 1182, 1184 (N.D. Ohio 1996).

Further, "[i]n addition to demonstrating one of the grounds for relief under [Rule 9023], the movant must also be able to show that correcting the defect by altering or amending the judgment 'will result in a different disposition of the case.'" *In re Thomas* at 16, citing *Shepard v. United States,* 2009 WL 3106554, *1 (E.D. Mich. Sept. 18, 2009). The Plaintiffs in this case have made no such showing. In reality, Plaintiffs are merely asking the Court to reexamine its initial conclusions without new evidence to support a different result. Such is not the purpose of a motion to reconsider. Rule 9023 "is not intended to be used by an 'unhappy litigant' as a means for rehashing matters a court has already decided. If the court has ruled and the movant is dissatisfied with the outcome, oftentimes an appeal is the more appropriate remedy." *In re Thomas,* at 17, citing *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC,* 477 F.3d 383, 395 (6th Cir. 2007) and *Liberte Capital Grp. v. Capwill,* 630 F. Supp. 2d 835, 838 (N.D. Ohio 2009).

For the reasons set forth above, the Court finds no reason under the facts and circumstances presented, and applicable law, to reconsider, alter or amend its prior Order pursuant to BANKR. R. CIV. P. 9023.

Federal Rule of Bankruptcy Procedure 9024

As an alternative means of relief, Plaintiffs seek relief from the Court's prior judgment under BANKR. R. CIV. P. 9024, which incorporates into the Bankruptcy Rules FED. R. CIV. P. 60(b). Rule 60(b) sets forth the grounds for relief from a final judgment, order or proceeding, and states as follows:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

FED. R. BANKR. P. 9024; FED. R. CIV. P. 60(b). As Plaintiffs have not alleged any circumstances to be applied under the first five grounds for relief under the Rule, the Court will focus its attention on factor number six – "any other reason that justifies relief."

Plaintiffs bear the burden of establishing the prerequisites set forth in Rule 60(b) are satisfied. *Rogan v. Countrywide Home Loans, Inc. (In re Brown),* 413 B.R. 700, 705 (B.A.P. 6th Cir. 2009), citing *McCurry v. Adventist Health Sys/Sunbelt, Inc.* 298 F.3d 586, 592 (6th Cir. 2002). Further, "a motion made under Rule 60(b)(6) is addressed to the trial court's discretion which is *'especially broad'* given the underlying equitable principles involved." *Hopper v.*

Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th Cir. 1989), citing *Overbee v. Van Waters & Rogers,* 765 F.2d 578, 580 (6th Cir. 1985) and *Matter of Emergency Beacon Corp.,* 666 F.2d 754, 760 (2nd Cir. 1981) (emphasis added).

The Sixth Circuit has determined that Rule 60(b)(6) comes into play "only 'as a means to achieve substantial justice when 'something more' than one of the grounds contained in Rule 60(b)'s first five clauses is present,'" which '"must include unusual and extreme situations where principles of equity mandate relief 'coupled with a showing that if relief is not granted *extreme and undue hardship will result*." *In re Brown* 413 B.R. at 705, citing *Olle v. Henry & Wright Corp.,* 910 F.2d 357, 365 (6th Cir. 1990) and *Frontier Ins. Co. v. Blaty,* 454 F.3d 590, 597 (6th Cir. 2006) (emphasis added). Plaintiffs "may not use a Rule 60(b) motion as a substitute for an appeal . . . or as a technique to avoid the consequences of decisions deliberately made yet later revealed to be unwise." *Hopper*, 867 F.2d at 294 (citations omitted).

In this case, Plaintiffs have failed to demonstrate any exceptional circumstances to justify relief under Rule 60(b)(6), or that "extreme and undue hardship will result" from the Court's failure to vacate its prior judgment. Rule 60(b) is not a means to give Plaintiffs another bite at the §727(a)(3) apple in this Court. Plaintiffs' motion presents nothing that the Court did not already consider when making its prior ruling. The Court, in its broad discretion, finds that the Plaintiffs have failed to carry their burden of proof under BANKR. R. CIV. P. 9024 and FED. R. CIV. P. 60(b). For the reasons set forth herein, the Court finds no reason under the facts and circumstances presented, and applicable law, to grant the Plaintiffs' request for alternative relief pursuant to BANKR. R. CIV. P. 9024. The Plaintiffs' motion is accordingly DENIED.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested parties:

Steven N. Douglass
Harris Shelton Hanover & Walsh, PLLC
40 S. Main Street, Ste 2210
Memphis, TN 38103

Michael P. Coury
Glankler Brown PLLC
6000 Poplar Avenue, Ste 400
Memphis, TN 38119

Bettye Sue Bedwell
Bedwell Law Firm, Inc.
200 Jefferson Avenue, Ste 202
Memphis, TN 38103

U.S. Trustee
Office of the U.S. Trustee
One Memphis Place
200 Jefferson Avenue, Suite 400
Memphis, TN 38103