IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
ORION REFINING CORP.,	)	Case No. 03-11483 (MFW)
	)	
Debtor.	)	
	)	
MICHAEL G. SYRACUSE d/b/a INTERSTATE SUPPLY CO., and TEXAS ICO, INC.,	)	
	)	Adv. Proc. No. 03-53939
Plaintiffs,	)	
	)	
v.	)	
	)	
ORION REFINING CORP.	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION[1]

Before the Court is the Motion of Michael G. Syracuse ("Syracuse") for Reconsideration of the Court's April 17, 2006, ruling that he did not have title to certain moveable property (the "Surplus Materials") located at the Norco, Louisiana, facility of Orion Refining Corporation (the "Debtor"), which became property of the Debtor's estate as of the petition date. For the reasons stated herein, the Court will deny the Motion.

I. BACKGROUND

The factual background of this case is recited in the Court's Memorandum Opinion dated April 17, 2006, and will not be

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

repeated here. Syracuse v. Orion Ref. Corp. (In re Orion Ref. Corp.), 341 B.R. 470 (Bankr. D. Del. 2006). On April 27, 2006, Syracuse filed his Motion for Reconsideration. Oral argument on the Motion was initially heard on June 6, 2006, at which time the Court granted the Motion in part and directed that proceeds from the sale of the Surplus Materials remain in escrow until a final decision on the merits is rendered.[2] The Court continued the hearing to June 28, 2006, to consider the remainder of the arguments raised by the Motion for Reconsideration. At the oral argument held on that date, the Court granted the parties' request for additional briefing. Post-argument briefs were filed on July 11 and 21, 2006. The matter is now ripe for decision.

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[2] At the time of the sale of the Debtor's assets to Valero Energy Corporation and Valero Refining-New Orleans, LLC (collectively "Valero"), the parties had stipulated to the escrow of $1.5 million in sale proceeds related to the Surplus Materials. That Stipulation provided that the funds would not be released until:

> [A] determination by a final order of this Court . . . that (i) [Syracuse] owned some or all of the Surplus Materials at the time of the Sale and some or all of the Surplus Materials did not become property of the Debtor's bankruptcy estate pursuant to section 541 of the Bankruptcy Code upon the commencement of the Debtor's bankruptcy case; . . . then [Syracuse's] ownership Interest in such Surplus Materials shall be deemed to have attached to the Escrow Amount . . . .

(Docket No. 336, ¶ 57, in Case No. 03-11483) (emphasis added).

II. JURISDICTION

The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), (E), (N), & (O).

III. DISCUSSION

A. Standard of Review

A motion for reconsideration is not specifically addressed in the Federal Rules of Civil Procedure; rather, such motions generally fall within the parameters of Rule 59(e), which allows a party to file a motion to alter or amend a judgment. Fed. R. Bankr. P. 9023; 12 Moore's Federal Practice - Civil § 59.30[2][a] (3d ed. 2005) ("[A] Rule 59(e) motion involves the reconsideration of matters properly encompassed in a decision on the merits.").

A motion for reconsideration is an extraordinary means of relief in which the movant must do more than simply reargue the facts or law of the case. See North River Ins. Co v. Cigna Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995) (concluding that motion to alter or amend judgment "must rely on one of three major grounds: '(1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or] (3) the need to correct clear error [of law] or prevent manifest injustice'.") (citations omitted); 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."); Stanziale v. Nachtomi, No. 01-403, 2004 WL 1812705, at *2-3 (D. Del. Aug. 6, 2004) (stating that a court may grant a motion for reconsideration "if it appears that the court has patently misunderstood a party, has made a decision outside the adversarial issues presented by the parties, or has made an error not of reasoning, but of apprehension."); Dentsply Int'l, Inc. v. Kerr Mfg. Co., 42 F. Supp. 2d 385, 417 (D. Del. 1999) ("[motions for re-argument] 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").

B. Grounds for Reconsideration

In his Motion, Syracuse argues that the Court misapprehended the issue that the parties submitted to the Court for decision, that the Court made decisions outside the adversarial issues presented by the parties, and that the Court made clear errors of law.

1. Misapprehension of the Issue

Syracuse contends that the Court addressed the wrong issue, as indicated by the Court's statement that title to the Surplus Materials had passed to the purchaser of the Debtor's Norco facility, Valero Energy Corporation and Valero Refining-New Orleans, LLC (collectively "Valero"). Syracuse agrees that

Valero currently has title to the Surplus Materials, but states that the proper issue was whether Syracuse "owned some or all of the Surplus Materials at the time of the Sale and [whether] some or all of the Surplus Materials did not become property of the Debtor's bankruptcy estate."

Syracuse is incorrect. In the Opinion, the Court correctly identified the issue as follows:

> Syracuse argues that the Agreement was a contract of sale. Consequently, he asserts that title to the surplus materials passed to him at the time of execution. As a result, he contends that the items were not property of the Debtor's bankruptcy estate and could not be sold to Valero.
>
> The Debtor argues that the Agreement was for services. Consequently, the Debtor contends that it retained title to surplus materials that were not timely removed by Syracuse.

341 B.R. at 473-74. The Court resolved that issue as follows:

> The Court concludes that Syracuse's performance of his clean-up services was a suspensive condition to his obtaining title to the surplus materials in the designated areas. Rowley Co., 350 So. 2d at 192-93. Until Syracuse removed an item from a designated area and cleaned that area, title to that item did not pass from the Debtor to Syracuse. Consequently, the Court finds that title to the items remaining at the Debtor's facility had not passed to Syracuse at the time of the Debtor's bankruptcy filing.

Id. at 474.

Therefore, the Court did not misapprehend the issue presented by the parties, but did in fact address and decide the very issue the parties identified: did title to the property pass to Syracuse before the Debtor filed its bankruptcy petition.

2. Making Decisions Outside the Adversarial Issues Presented

In his Motion, Syracuse argues that the Court erred in determining that his contract with the Debtor was a sale subject to a suspensive condition inasmuch as the contract did not contain the term "suspensive condition" and the Debtor had not raised that classification as a defense. Moreover, Syracuse contends that neither he nor the Debtor intended a suspensive condition to apply to the contract, and if there was any ambiguity, it should have been construed against the Debtor.

Syracuse argued that the parties' contract was one of sale; the Debtor argued that it was one for services. Id. at 473-74. Contrary to Syracuse's assertion, the Court did not conclude in its Opinion that the contract was a sale contract. Instead, the Court found that it was unnecessary to classify the parties' contract as one of sale or one for services, "because even if classified as a contract of sale, it was a contract subject to a suspensive condition that – until fulfilled – prevented title to the surplus materials from passing to Syracuse." Id. at 474.

Because the parties' contract is governed by civilian principles, the classification of the contract is determined by reference to the Civil Code.[3] In classifying a contract in the

[3] La. Civ. Code art. 1916 ("Nominate contracts are subject to the special rules of the respective titles when those rules modify, complement, or depart from the rules of this title [conventional obligations or contracts].").

absence of a controlling Civil Code article, "the process is a creative one, since the judge ultimately has the power to accept or reject the analogies, or chose between them." Clarence J. Morrow, Louisiana Blueprint: Civilian Codification and Legal Method for State and Nation, 17 Tul. L. Rev. 351, 553-54 (1943).

No controlling Civil Code title exists that specifically classifies a conventional obligation that calls for both a sale of a moveable and a performance of a service when the sale and the service are both integral to the fulfillment of the object of the contract. Consequently, the Court followed the lead of the Louisiana Fourth Circuit Court of Appeals in Jefferson Parish School Bd. v. Rowley Co., 350 So. 2d 187, 192-93 (La. Ct. App. 1977), which held that when a contract calls for both a sale and an act of performance, the performance is a suspensive condition to the act of sale. 341 B.R. at 474.

Because the parties put at issue what the contract was (one of sale or one for services), it was proper for the Court to determine, after considering Louisiana law, what the effect would be if the contract was a sale contract. Consequently, the Court finds no reason to reconsider its decision on this point.

3. Clear Error of Law

a. Suspensive Condition to Sale of Movables

Syracuse argues that the Court made a clear error of law because it is a legal impossibility to have a suspensive

condition to the sale of a moveable. This argument is without merit.

It is true that, in principle, Louisiana does not recognize the common law doctrine of conditional sales of moveables. Barber Asphalt Paving Co. v. St. Louis Cypress Co., 46 So. 193, 196 (La. 1908) ("[T]o suppose a sale without a transfer of the property in the thing which forms the object of the sale is simply to suppose an impossibility.").

Nonetheless, Louisiana law does recognize that title to moveables does not always pass at the time of contract.[4] In particular, Louisiana law recognizes a sale of moveables subject to a suspensive condition – which postpones the transfer of title. Barber Asphalt Paving, 46 So. at 197 ("The reason why a sale under a suspensive condition does not transfer the ownership is that it is not a sale. . . . When a sale is made under a suspensive condition, there is no sale until the condition has been fulfilled."); Rowley, 350 So. 2d at 192-93 (holding that the

[4] For example, when goods in stock are sold, title does not pass until the particular items of stock are individualized. La. Civ. Code art. 2547. Similarly, when moveables are sold by weight, tale, or measure, ownership does not pass until the seller, with the buyer's consent, weighs, counts, or measures the things. La. Civ. Code art. 2458. In Syracuse's post-hearing brief, he suggests that title passes at the execution of a contract despite the existence of a condition that would otherwise postpone the transfer of title. The case cited by Syracuse for that proposition, however, interpreted a prior version of article 2458. See Louisiana State Rice Milling Co. v. McCowan, 156 So. 213, 214 (La. 1934).

sale of uninstalled cabinets – moveables – was subject to a suspensive condition).

Therefore, the Court concludes that there was no clear error of law in its conclusion that, even if the contract was a sale, it was subject to a suspensive condition.

b. Implied Suspensive Condition

In his post-argument brief, Syracuse argues that the Court's conclusion was erroneous because there is no mention of the term "suspensive condition" in the parties' contract. This is not necessary, however, when that is the effect of the contract's classification under the Civil Code. The contract at issue in Rowley did not contain the term either, yet the Rowley Court concluded that the sale at issue was subject to a suspensive condition. 350 So. 2d at 189-92.

The cases cited by Syracuse are not to the contrary, but merely stand for the unremarkable proposition that courts must look to the contract as a whole to determine if a suspensive condition exists. See Southern States Masonry, Inc. v. J.A. Jones Constr. Co., 507 So. 2d 198, 201-02 (La. 1987) (holding that a "pay when paid" clause in a contract between a general and a subcontractor would not be construed as a suspensive condition when the parties did not contemplate that the subcontractor would be the insurer of the owner's solvency); Schexnayder v. Capital Riverside Acres, Inc., 129 So. 139, 143 (La. 1930) (declining to

construe a stipulation to a contract as a condition precedent when the language of the contract did not compel that result); Hampton v. Hampton, Inc., 713 So. 2d 1185, 1190-91 (La. Ct. App. 1998) (inferring the existence of a suspensive condition after reading the contract as a whole); Tilley v. Lowery, 511 So. 2d 1245, 1247 (La. Ct. App. 1987) (holding that an affirmative predial servitude of use was created by the parties' agreement and that the identification of its exact location was not a suspensive condition that delayed the creation of the servitude).

Syracuse also argues that the Court's ruling on this point is in error because the parties never intended the result reached by the Court. This also is not necessary. See, e.g., Thomas v. Philip Werlein Ltd., 158 So. 635, 637 (La. 1935) ("Where all the essential elements and conditions for an absolute sale are present in a contract between parties, the effects flowing legally from that particular contract follow, whether the parties foresaw and intended them or not, and though they may refer to the contract as an agreement to sell or as a conditional sale.").

In his post-argument brief, Syracuse fails to distinguish the law on which the Court relied.[5] Therefore, the Court will not reconsider its conclusion (that even if the parties' contract was a sale, it was a sale subject to a suspensive condition)

[5] It was on this issue specifically that Syracuse asked permission to submit a brief.

because it is well-founded in Louisiana law.

c. Removal as Suspensive Condition

In his post-argument brief, Syracuse also argues that in its Opinion the Court found that the suspensive condition to the contract was the requirement that Syracuse clean the designated areas. Syracuse asserts that at oral argument the Court, for the first time, suggested that the suspensive condition was the removal of the equipment.

This is inaccurate. In the Opinion, the Court expressly found that "[t]he Agreement, however, also required [Syracuse] to remove the materials and clean those areas. . . . Until Syracuse removed an item from a designated area and cleaned that area, title to that item did not pass from the Debtor to Syracuse." 341 B.R. at 474.

d. Retroactive Fulfillment of Suspensive Condition

Syracuse asserts that the Court also erred by not addressing Syracuse's argument that it was legally deemed to have obtained title to the Surplus Materials before the Debtor's bankruptcy filing based on the Debtor's alleged bad acts. He argues that under Louisiana law his title would be retroactive to the date of the Debtor's bad acts, which was before the Debtor's bankruptcy filing. See La. Civ. Code art. 1772 ("A condition is regarded as fulfilled when it is not fulfilled because of the fault of a party with an interest contrary to the fulfillment.").

In fact, the Court did address this issue in its Opinion and concluded that, as a matter of law, Syracuse could not establish title to the Surplus Materials even if he succeeded in proving that the Debtor interfered with his performance. 341 B.R. at 475-76. That ruling was premised on Louisiana law which protects the intervening rights of third parties. Id. at 475 (stating that article 1775 of the Louisiana Civil Code "protects 'the rights of third persons against retroactive effects of the fulfillment of a condition'.") citing Wampler v. Wampler, 118 So. 2d 423, 426 (La. 1960) ("There is nothing in the language of the Article [dealing with suspensive conditions] which lends support to the contention that, when the suspensive conditions are performed, title to the property contracted for vests retrospectively in the grantee to the date the engagement was contracted.") and Ober v. Williams, 35 So. 2d 219, 223 (La. 1948) (holding that article 1775 does not have the effect of vesting title retrospectively to the date of the agreement).

In his post-argument brief, Syracuse ignores the cases referenced by the Court in its Opinion and the effect of article 1775, while continuing to assert that article 1772 controls. Even the comments to article 1772, however, acknowledge that title may not pass retroactively: "the party not at fault may have to content himself with damages rather than specific performance if the latter has become impossible because of the

nonfulfillment of the condition." La. Civ. Code art. 1772, cmt. c. That is exactly what the Court determined in its Opinion; Syracuse has at most a claim for damages for breach of contract. 341 B.R. at 476.

e. Wrong Third Party

In his post-argument brief, Syracuse argues that the Court, in its Opinion, determined that the third party whose rights prevented the retroactive fulfillment of the suspensive condition was Valero. This is erroneous, Syracuse contends, because the parties stipulated that the sale to Valero would not affect their respective claims of title to the Surplus Materials and that their interests would attach to the proceeds of the sale of that property. He asserts that the Court changed its ruling and suggested, for the first time at the oral argument, that the third party was the Debtor's estate.

Syracuse's premise is erroneous. The Court determined in its Opinion that the third party that cut off Syracuse's rights was the Debtor's bankruptcy estate. Id. at 476. The Court concluded that the Debtor's bankruptcy estate acquired property rights in the Surplus Materials pursuant to section 541(a)(1) of the Bankruptcy Code as of the commencement of the case thereby preventing any retroactive fulfillment of the suspensive condition. Id. ("When the Debtor filed its bankruptcy case, the estate obtained an interest in the surplus materials. This

occurred before the suspensive condition could be regarded as fulfilled.").

f. Improvement of Position

In his post-argument brief, Syracuse also argues that the Debtor's bankruptcy estate cannot receive any better title in the Surplus Materials than the Debtor had and that, because the suspensive condition was deemed fulfilled as to the Debtor, it must be as to the estate as well. To hold otherwise, argues Syracuse, would allow the Debtor to improve its position simply because it filed bankruptcy. See, e.g., In re Squyres, 172 B.R. 592, 594 (Bankr. C.D. Ill. 1994) ("[The debtor's interests in an asset or his rights against others are not expanded by the filing of a bankruptcy proceeding.").

The Court disagrees. The filing of a petition in bankruptcy creates a new legal entity, the bankruptcy estate. The estate succeeds to the debtor's rights in most respects but possesses property rights and legal attributes in addition to those of the pre-petition debtor. For example, property of the estate includes recoveries for transfers avoidable under chapter 5 of the Bankruptcy Code. 11 U.S.C. §§ 541(a)(7), 544, 547, 548 & 549. In particular, the estate has the power to avoid interests of third parties in property of the debtor that were unperfected as of the petition date. Id. at § 544. Any improvement in position that the estate may have over the position of the debtor

absent a bankruptcy filing does not inure to the benefit of the debtor; it is for the benefit of creditors. The creation of a bankruptcy estate is to fulfill the purposes of the Bankruptcy Code, which "aims, in the main, to secure equal distribution among creditors." Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co., 126 S. Ct. 2105, 2109 (2006).

Because in this case the bankruptcy estate came into existence and obtained title to the Surplus Materials before Syracuse's rights were adjudicated, Syracuse cannot obtain title to the Surplus Materials under Louisiana law. Once a person[6] obtains an interest in property, Louisiana law protects that person's rights against the retroactive effects of the fulfillment of a suspensive condition. La. Civ. Code art. 1775, cmt. (b) (stating that article 1775 protects "the rights of third persons against retroactive effects of the fulfillment of a condition.").

Section 541(d) of the Bankruptcy Code does make property of the estate subject to a constructive trust claim. This is of no

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[6] Under Louisiana law, "[t]he right of ownership may exist only in favor of a natural person or a juridical entity." La. Civ. Code art. 479. The Debtor's estate is a legal entity that can hold property, and the trustee (or debtor in possession) is its representative and has the capacity to sue and be sued on behalf of the estate. 11 U.S.C. §§ 101(15), 323 & 1107(a). Thus, the bankruptcy estate has attributes of a personality and is, therefore, a juridical person under Louisiana law. La. Civ. Code art. 24 (defining a "juridical person" as an entity to which the law attributes personality . . . .").

help to Syracuse, however, because constructive trust claims are not recognized under Louisiana law. See, e.g., Chiasson v. J. Louis Matherne & Assocs. (In re Oxford Management), 4 F.3d 1329, 1336 (5th Cir. 1993).

Consequently, there is no provision in the Bankruptcy Code or Louisiana law that establishes Syracuse's rights in the Surplus Materials are superior to the title acquired by the Debtor's estate on the filing of the petition. See Rine & Rine Auctioneers v. Douglas County Bank & Trust Co. (In re Rine & Rine Auctioneers, Inc.), 74 F.3d 854, 858 (8th Cir. 1996) (providing that state law controls questions concerning the nature and extent of a debtor's interest in property, but federal bankruptcy law determines the extent to which that interest is property of the estate).

Thus, while Syracuse may have been able to use article 1772 to obtain title to the Surplus Materials in the absence of the Debtor's bankruptcy filing, once the Surplus Materials became property of the estate, Syracuse lost his right to obtain title to those items. Syracuse merely has a "claim" against the Debtor's estate. See 11 U.S.C. § 101(5) (defining a "claim" to be a "(A) right to payment . . . or (B) right to an equitable remedy for breach of performance . . . .").

g. Waiver

Syracuse also argues that the contract cannot be classified as a sale subject to a suspensive condition because Syracuse sold some of the Surplus Materials without ever moving them before the Debtor filed bankruptcy, even selling some of the Surplus Materials back to the Debtor. These actions, Syracuse contends, demonstrate that title to certain items passed before removal and clean-up services required by the Agreement could be performed.

In its Opinion, the Court stated that "[r]emoval of the surplus materials could not be accomplished unless Syracuse was also concomitantly cleaning up the designated areas. Without the satisfaction of the suspensive condition – the clean up of the designated areas – title to the Surplus Materials could not have passed from him to the Debtor." 341 B.R. at 475. The fact that the Debtor may have agreed that Syracuse did not have to remove some of the Surplus Materials that it purchased from him does not invalidate the Court's classification of the Agreement as a sale subject to a suspensive condition.

Syracuse argues, however, that if the Debtor waived the requirement that Syracuse remove some items from the Norco facility, it was a waiver of the suspensive condition itself. The Defendant responds in its post-argument brief that the parties' contract expressly provides that "[a] waiver . . . of any term, provision, or condition of this contract shall not

constitute a precedent or bind either party hereto to a waiver of any succeeding breach of the same or any other terms, provision, or condition of this contract." (Contract, Exh. A, Item 18.) Consequently, the Court concludes that, if the Debtor did waive the suspensive condition as to some of the sales, it did not constitute a waiver of the suspensive condition as to all sales.

IV. CONCLUSION

For the above-stated reasons, the Court will deny Syracuse's motion for reconsideration.

An appropriate order is attached.

By the Court,

Dated: August 8, 2006

Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
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Debtor.	)	
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MICHAEL G. SYRACUSE d/b/a INTERSTATE SUPPLY CO., and TEXAS ICO, INC.,	)	
	)	Adv. Proc. No. 03-53939
Plaintiffs,	)	
	)	
v.	)	
	)	
ORION REFINING CORP.	)	
	)	
Defendant.	)	
	)	

ORDER

AND NOW, this **8th** day of **AUGUST**, **2006**, upon consideration of the Motion for Reconsideration filed by Michael G. Syracuse, and the Debtor's response thereto, and after oral argument, it is hereby

ORDERED that the Motion for Reconsideration filed by Michael G. Syracuse is **DENIED**.

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Judge

cc: Christopher M. Winter, Esquire[1]

[1] Counsel shall serve a copy of this Opinion and Order on all interested parties and file a Certificate of Service with the Court.

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