



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed December 29, 2010

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE	§	
	§	CHAPTER 7
RENAISSANCE HOSPITAL – GRAND	§	
PRAIRIE, INC., D/B/A RENAISSANCE	§	CASE NO. 08-43775-DML-7
HOSPITAL – GRAND PRAIRIE, <i>ET AL.</i> ,	§	
	§	JOINTLY ADMINISTERED
DEBTORS.	§	

Memorandum Order

Before the court are the *Motion of Metropolitan Professional Electrical Services, Inc. to Alter or Amend Judgment and Brief in Support* (the “Metro MTR”), the *Motion of Hajoca Corporation, d/b/a Easter & Sons Supply, for Itself and as Assignee of Innovative Plumbing Services, Inc. to Alter or Amend Judgment and Brief in Support* (the “Hajoca MTR” and, with the Metro MTR, the “Reconsideration Motions”), and *First National Bank’s Motion for New Trial* (the “FNB Motion”). Metrobank, N.A. (“Metrobank”) joined the FNB Motion by *Metrobank, N.A.’s Joinder in First National Bank’s Motion for New Trial* (the “Joinder”).

By the Reconsideration Motions, Metropolitan Professional Electrical Services, Inc. d/b/a Metro Electric and Hajoca Corporation, d/b/a Easter & Sons Supply (“Hajoca” and, with Metro Electric, the “Lien Claimants”) ask the court to alter or amend a judgment (docket no. 1579) (the “Judgment”). The Lien Claimants specifically ask the court to alter the Judgment to give their liens priority over those of Metrobank and First National Bank (“FNB” and, with Metrobank, the “Lenders”) and to grant them money judgments.

By the FNB Motion, the Lenders (Metrobank by the Joinder) ask the court for a new trial and to reform the Judgment to overrule Innovative Plumbing Services, Inc.’s (“IPS”) objection to the *Joint Motion Under Bankruptcy Rule 9019 to Approve Compromise and Settlement with First National Bank and MetroBank, N.A.* (the “9019 Motion”).

The Lenders filed joint responses to both of the Reconsideration Motions, and Easter filed a response to the FNB Motion.

The relevant facts and procedural history leading to the Judgment are described in the court’s memorandum opinion of August 25, 2010 (docket no. 1525) (the “Prior Opinion”). *In re Renaissance Hosp. – Grand Prairie, Inc.*, 2010 Bankr. LEXIS 2883 (Bankr. N.D. Tex. Aug. 25, 2010).

This matter is subject to the court’s core jurisdiction. 28 U.S.C. §§ 1334 and 157(b)(2)(k). This memorandum order embodies the court’s findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and 9014.

I. Discussion

A. The Reconsideration Motions

By the Metro MTR, Metro Electric argues that the Judgment should be altered or amended to explicitly grant priority to its lien over those of the Lenders. In the Prior Opinion, the court noted that “Metro Electric’s M&M Lien is entitled to priority over the Lenders’ Lien.” Prior Opinion at 19. Metro Electric is correct: the Judgment should be reformed to conform to the Prior Opinion and to grant Metro Electric’s lien priority over those of the Lenders.

By the Hajoca MTR, Hajoca makes a similar argument as that of Metro Electric – the judgment should be reformed to grant its lien priority over those of the Lenders. In the Prior Opinion, the court noted that “[t]he M&M Lien of IPS is . . . entitled to priority over the Lenders’ Lien.” Prior Opinion at 21. Unlike Metro Electric, however, IPS assigned its lien to a third party – Hajoca, which entered into a Stipulation (as defined in the Prior Opinion) that stated that IPS did not perform any work at the Hospital (as defined in the Prior Opinion) until after the Lenders’ Inception Date (as defined in the Prior Opinion). In footnote 23 of the Prior Opinion, the court stated that it would not hold IPS to the Stipulation because the attorney that signed the Stipulation on behalf of IPS, Misti Beanland, did not represent IPS, but only represented Hajoca as assignee of IPS’s lien. Prior Opinion at 13.

In Metrobank, N.A. and First National Bank’s Response to Motion of Hajoca Corporation, d/b/a Easter & Sons Supply, for Itself and as Assignee of Innovative Plumbing Services, Inc. to Alter or Amend the Judgment (the “IPS Response”), the

Lenders argue that IPS's assignment of its lien gave Hajoca the right to bind IPS in litigation related to the Hospital. During trial, the court stated:

Yes, but I think [the Stipulation] was [] by Hajoca, and since [IPS is] not a party, I don't see that they... I think Hajoca is stuck with the stipulation.... I'm not going to let Hajoca say, "Well, we're entitled to the part that we paid for Innovative because the work related back to that." I'm going to hold them to their stipulation at this point.

Hearing Transcript from 4/7/2010 (docket no. 1498), pg. 16.

IPS is not bound by the stipulation because it did not sign it.¹ Hajoca is, however, bound by the Stipulation – including to the extent that Hajoca would be entitled to proceeds paid to IPS. However, the court cannot determine whether the Stipulation is actually binding on anyone, including Hajoca, because the Stipulation was for the purpose of “Lenders’s [sic] Summary Judgment Motion.” Stipulation (docket nos. 1430 and 1432) at 2. The court did not receive sufficient input from the parties to determine whether the Stipulation should be binding on any party at a trial on the merits, considering that the court issued an order relating to the Lenders’ summary judgment motion on January 26, 2010. For these reasons, the court will not reform the Judgment to give IPS’s lien priority over those of the Lenders. Rather, the issue of relative priority of IPS’s – by assignment, Hajoca’s – lien must be reserved for further proceedings.

The Lien Claimants further argue that, under state law, they are entitled to a money judgment. In support of this, they point to *Diversified Mortgage Investors v. Blaylock*, 576 S.W.2d 794 (Tex. 1978). *Blaylock* supports the Lien Claimants’ contention that they are entitled to a money judgment if their liens are superior to those of the

¹ The Lenders complain of the court’s conclusion to this effect in the FNB Motion. However, it is clear from the record that Hajoca’s counsel, who signed the stipulation, did not represent IPS. See Hearing Transcript from 4/7/2010 (docket no. 1498), pg. 5 (Misti Beanland: “Your Honor, I was going to bring it up later, but [IPS] is not a party to this case and we don’t represent them.”).

Lenders. Therefore, Metro Electric is entitled to a money judgment in the amount of \$1,450,621.31. IPS is not entitled to a money judgment at this time because the court will not reform the Judgment respecting its lien's priority to those of the Lenders.

B. The FNB Motion

The FNB Motion is denied to the extent not granted above. Specifically, the Lenders have shown no basis under FED. R. BANKR. P. 9023 that would entitle them to a new trial.

FED. R. BANKR. P. 9023 adopts the language of FED. R. CIV. P. 59. Under Rule 59, a new trial is appropriate in several circumstances including if there is newly discovered evidence or the court made a manifest mistake of fact or error of law. 12 *Moore's Federal Practice* §§ 59.13[2][d] and [3][a] (Matthew Bender 3rd. ed. 2007). A new trial should only be granted if there are "substantial reasons" to do so. *See, e.g., Sanders v. Bell Helicopter Textron, Inc.*, 2005 U.S. Dist. LEXIS 46920, *2 (N.D. Tex. Oct. 25, 2005); 12 *Federal Practice* §§ 59.13 [3][a] (Matthew Bender 3rd. ed. 2007). Here, the Lenders have not shown "substantial reasons" that justify a new trial; therefore, the Lenders are not entitled to one.

II. Conclusion

For the foregoing reasons, it is therefore **ORDERED** that

1. the Metro MTR is granted.
2. the Hajoca MTR is denied.
3. the FNB Motion is granted in part and denied in part.

4. Counsel for Metro Electric is instructed to submit, within 30 days, a new form of judgment conforming the Judgment to this memorandum order.

END OF MEMORANDUM ORDER