

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

SOUTHERN ILLINOIS RAILCAR CO.,

Bankruptcy Case No. 02-30456  
(Jointly Administered with 02-30457)

Debtor.

OPINION

This matter having come before the Court on a Motion to Alter or Amend Order and Opinion Pursuant to Rules 9023 and 7052 Regarding Award of Sanctions filed by the Debtor, and Objection to Debtors' Motion to Alter, the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

On July 23, 2004, this Court entered its Opinion and Order sanctioning Creditor, Caldwell-Baker Company and Attorney Linus Baker, jointly and severally, in the amount of \$15,000. The sanctions were based upon and made under Rule 9011 of the Federal Rules of Bankruptcy Procedure. Subsequently, on August 3, 2004, the Debtor filed its Motion to Alter or Amend Order and Opinion Pursuant to Rules 9023 and 7052 Regarding Award of Sanctions. Rule 9023 of the Federal Rules of Bankruptcy Procedure makes applicable Rule 59 of the Federal Rules of Civil Procedure.

In the Motion to Alter or Amend, Debtor indicates that, while this Court is free to enter sanctions against both Caldwell-Baker Company and Linus Baker pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure, Debtor believes that there is additional and alternate justification for sanctions pursuant to Federal Rule of Bankruptcy Procedure 7037, 28 U.S.C. § 1927, and 11 U.S.C. § 105(a). In this regard, the Court has reviewed its Opinion and Order of July 23, 2004, and finds that the procedure employed to enter sanctions pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure was appropriate and that no other bases for entering sanctions were before the Court at that time.

In essence, in its Motion, Debtor seeks to advance additional theories upon which to enter sanctions. A review of the case law causes the Court to find that a motion to alter or amend a judgment pursuant to Rule 59(e) of the Federal Rules of Procedure cannot be used to advance additional legal theories which could have been made

before the Court rendered its original opinion. See: LBCredit Corp. v. Resolution Trust Corp., 49 F.3d 1263 (7th Cir. 1995). Rather, under Rule 59(e), a movant must establish either a manifest error of law or fact or must present newly discovered evidence. Id., at 1267. In its Motion and argument before the Court at hearing on August 27, 2004, the Debtor did not establish a manifest error of law or fact and did not present any newly discovered evidence. As such, the Court finds that the relief requested by the Debtor is inappropriate at this time.

As stated above, the Court has reviewed Rule 9011 of the Federal Rules of Bankruptcy Procedure and finds that the imposition of sanctions pursuant to Rule 9011(c) was appropriate and that both Caldwell-Baker Company and Attorney Linus Baker were provided notice and a reasonable opportunity to respond to the Motion which was filed by the Debtor pursuant to Rule 9011 (c)(1)(A).

ENTERED: September 2, 2004.

S/Gerald D. Fines  
GERALD D. FINES  
United States Bankruptcy Judge