UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

RONNIE JACKIE GREEN and
AMIE ADAMS GREEN,

Debtors. No. 7-05-16399 TR

LINDA BLOOM, Trustee,

Plaintiff,

v. Adv. No. 11-1023 T

THE BEHLES LAW FIRM, P.C.,
RON MILLER & ASSOCIATES, and
THE UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO RECONSIDER

This matter came before the Court on the defendants The Behles Law Firm, P.C.'s and Ron Miller & Associates, P.C.'s Motion for a Re-Hearing, or Reconsideration, filed November 28, 2012, doc. 50 (the "Motion"). In the Motion Defendants ask the Court to reconsider its Partial Summary Judgment Against Defendant Behles Law Firm, P.C. in Favor of Plaintiff Linda Bloom, Trustee, entered November 14, 2012, doc. 48 (the "Judgment"). The Court, having reviewed the Motion and being otherwise sufficiently advised, finds that the Motion is not well taken and should be denied.

Motions for reconsideration filed within 14 days of the entry of a judgment or order are governed by Fed.R.Civ.P. 59(e), as incorporated into the bankruptcy rules by Fed.R.Bankr.P.

9023. *See Buchanan v. Sherrill*, 51 F.3d 227, 230, n. 2 (10th Cir. 1995) ("No matter how styled, we construe a post-judgment motion filed within [14] days challenging the correctness of the judgment as a motion under Rule 59(e).").

Motions for reconsideration may be granted to "'correct manifest errors of law or fact or to present newly discovered evidence under limited circumstances.'" *In re Hodes*, 239 B.R. 239, 242 (Bankr. D. Kan. 1999), quoting *In re American Freight System, Inc.*, 168 B.R. 245, 246 (D. Kan. 1994). "Appropriate circumstances for a motion to reconsider are where the court has obviously misapprehended a party's position on the facts or the law, or the court has mistakenly decided issues outside of those the parties presented for determination." *In re Sunflower Racing, Inc.*, 223 B.R. 222, 223 (D. Kan. 1998). Here, the Court finds no manifest errors of law or fact, and therefore finds no reason to grant the Motion. The Court's reasoning is set out below.

1. No Oral Argument Needed. First, Defendants' complain that they were not given an opportunity to support their position with oral argument. Motion, p. 2. Contrary to Defendants' argument, there is no right to oral argument or final hearing on a motion for summary judgment. The local practice is generally to decide such motions on the briefs. The local rule cited by Defendants in support of their argument (NM LBR 9011-4(c)) has nothing to do with hearings on motions.

2. The Fact that Defendants' Financing Statement Had Lapsed Does Not Change the Result. In the Motion, Defendants argue for the first time that Plaintiff's proof about the results of a "standard" search using the debtor's legal name does not take into account the fact that Defendants' financing statements had lapsed when Plaintiff conducted her search. Motion, p. 9. That may be true, but the fact nevertheless is undisputed that when the debtor filed bankruptcy in

2005, a search of the Secretary of State's UCC records using the debtor's legal name (Ronnie Brown) would not have revealed Defendant's financing statements (all filed under Ron Brown).

3. Certification of the Issue to the New Mexico Supreme Court is Not Required. Defendants next argue that the Court should certify this question to the New Mexico Supreme Court. Motion, pp. 3-5. The certification procedure, outlined in N.M.R.A. 12-607, is an option for federal courts addressing open questions of New Mexico law. It is not mandatory, however, and the Court believes that the issue addressed by the Judgment and the accompanying memorandum opinion did not have to be certified to the New Mexico Supreme Court. Certification of state law questions "rests in the sound discretion of the federal court." *In re Mozer*, 10 B.R. 1002, 1004 (Bankr. D. Colo. 1981), citing *Lehman Brothers v. Schein,* 416 U.S. 386, 391 (1974); *Society of Lloyd's v. Reinhart*, 402 F.3d 982, 1001 (10th Cir. 2005) (certification is never compelled, even if available, and rests with the discretion of the trial court); *Woods v. Nationbuilders Ins. Services, Inc.*, 2012 WL 4478948, *9 (D. Colo. 2012). The Court exercised its discretion in deciding the issue without certifying it to the New Mexico Supreme Court, and does not believe the decision to proceed without certification needs to be revisited.

4. Defendants' Argument About Common Law Name Changes is Not Persuasive. Finally, Defendants argue that the common law allows debtors to change their names without a court order, citing *Petition of Variable for Change of Name v. Nash,* 144 N.M. 633, 190 P.3d 354 (Ct. App. 2008) and *Leone v. Commissioner, Indiana Bureau of Motor Vehicles*, 933 N.E.2d 1244 (Ind. 2010). Because of this, Defendants argue, the "legal name" of the debtor is "Ron Brown" rather than hithes birth name of "Ronnie Brown," and Defendants' financing statements were properly filed. Motion, p. 6.

Leone contains an interesting discussion of the history of individual names and the common law right of an individual to change his or her name without a court order. *Leone*, however, does not stand for the proposition Defendants advocate. Rather, the *Leone* court is careful to distinguish between a citizen's private right to assume any name he or she desires, and the right of third parties and government agencies to insist upon a court order before recognizing the purported new name. 933 N.E.2d at 1254. Similarly, *Petition of Variable*, which addresses a First Amendment issue rather than the Uniform Commercial Code, nevertheless holds that "Petitioner is entitled to assume whatever name he desires, absent fraud or misrepresentation, but any statutory name change will be subject to the district court's scrutiny." 144 N.M. at 635. The Court believes that New Mexico law requires a debtor to obtain an official, court-approved name change before a creditor would be required to file a UCC financing statement using the debtor's new name. Informal, common law name changes such as the one allegedly made by the debtor are insufficient.

IT IS THEREFORE ORDERED that the Motion is denied.

Hon. David T. Thuma,
United States Bankruptcy Judge

Entered on the docket: December 4, 2012.

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