

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION—BAY CITY

In re:

Case No. 18-21439

IN RE EUGENE J PRINCO,

Chapter 13

Debtor.

Hon. Daniel S. Opperman

GERALD C. SOUCH,

Plaintiff,

v.

Adv. Proc. No. 18-2061

EUGENE J PRINCO,

Defendant.

ORDER DENYING PLAINTIFF’S FRCVP RULE 60 (B) MOTION—FRAUD CLAIM

On November 14, 2023, Plaintiff filed a Motion entitled, “FRCVP Rule 60(B) Motion—Fraud Claim.” The Defendant filed a Response in opposition to the Motion on November 28, 2023. The Court has reviewed the pleadings and finds that the relevant law and facts have been set forth in the pleadings and that oral argument will not aid in the disposition of the Motion. Accordingly, pursuant to E.D. Mich. LR 7.1(f)(2), the Court finds that the Motion shall be decided on the pleadings submitted.

In the instant Motion, Plaintiff requests that this Court “reverse its decision” and determine that any debt Defendant owes Plaintiff not be discharged. Plaintiff asserts that Defendant failed to support his defense in this case and that “the facts laid out in the letters

[offered by Defendant] were all a fabrication by Defendant, and there was no truth to his statements by defendant.” Plaintiff otherwise re-argues that any debt Defendant owed Plaintiff should not be discharged in Defendant’s bankruptcy.

The Court’s Opinion Regarding Adversary Proceeding entered on February 27, 2023, was decided based upon Plaintiff’s and Defendant’s agreement to submit the case to the Court on pleadings and waiving a trial. Both Plaintiff and Defendant filed Proposed Findings of Fact and Conclusions of Law. The Court concluded that the debt at issue was dischargeable, specifically concluding on Page 21 of the Opinion:

While Defendant’s offer of proof has some inconsistencies, the Court would find that Defendant has answered Plaintiff’s claims to the point that Plaintiff has not met his burden of proof. . . . Based upon the record before the Court, the Court concludes that Plaintiff has failed to meet his burden of proving by a preponderance of the evidence that the debt owing to him is nondischargeable under 11 U.S.C. § 523.

Plaintiff appealed this decision to the District Court, which dismissed the appeal by Final Order on May 30, 2023 for want of prosecution.

Under Federal Rule of Civil Procedure 60(b), made applicable to this matter by Federal Rule of Bankruptcy Procedure 9024, relief from a judgment or final order may be sought for different reasons. While Plaintiff does not specify a particular subsection, the only three subsections that may possibly be applicable are subsections (b)(1)—for “mistake, inadvertence, surprise, or excusable neglect”; or (b)(2) for “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(h)”; or (b)(6) for “any other reason that justifies relief.”

The Court denies Plaintiff’s Motion for two reasons. First, there is no basis for relief under any of these subsections of Rule 60. Plaintiff argues that the Court’s decision was based on

misrepresentations of Defendant, but the Court made its decision based upon the submissions of the parties, which they agreed was complete. The Court weighed the evidence and concluded that Plaintiff had not met his burden of proof. Plaintiff has not offered new evidence; he only asserts that the evidence the Court relied upon consisted of misrepresentations of Defendant.

Second, Plaintiff had the opportunity to appeal this Court's decision and took advantage of that opportunity, then failed to follow through on the appeal. The Court concludes that filing a Rule 60(b) motion now in this Court to be an improper attempt at an end run around Plaintiff's failure to prosecute the appeal.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion for Clerk To Enter Default is DENIED.

Signed on December 7, 2023



/s/ Daniel S. Opperman

Daniel S. Opperman
United States Bankruptcy Judge