

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:)	
)	
LANNY DENE DIEL,)	Case No. 00-10618
CHRISTINE DAWN DIEL,)	Chapter 7
)	
Debtors.)	
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FARMERS STATE BANK - HARDTNER,)	
)	
Plaintiff)	
)	
v.)	Adversary No. 00-5145
)	
LANNY DENE DIEL,)	
CHRISTINE DAWN DIEL,)	
)	
Defendants.)	
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MEMORANDUM AND ORDER

Lanny Dene Diel (“Diel”) moves the Court to alter or amend its Judgment on Decision and Memorandum and Opinion entered in this adversary proceeding on May 16, 2002. Diel asserts that in light of the Court’s finding that Farmers State Bank of Hardtner did not have a valid security interest in Diel’s crops, its finding that he committed actual fraud by retaining Boever’s bad checks for the sale of hay and seeking payment in cash which he failed to turn over to the Bank can not be a violation of 11 U.S.C. § 523(a)(2)(A).¹ Farmers State Bank responds in part that when the hay was cut, it became “crop proceeds” or “farm products” which was included in the security agreement, and therefore satisfies the requirements of a valid security interest under the Kansas

¹All statutory references are to the Bankruptcy Code, Title 11, United States Code, unless otherwise noted.

version of the Uniform Commercial Code. See Kan. Stat. Ann. 84-9-203(1). After review of the record and the memoranda submitted by the parties, the Court makes the following clarification of its conclusions of law.

ANALYSIS

Motions to alter or amend are brought under Fed.R.Bankr.P. 9023, which provides that Fed.R.Civ.P. 59 applies in Bankruptcy Court. Motions to alter and amend judgment serve a limited purpose. Such motions are only appropriate when a court has misapprehended the facts, a party's position, or controlling law. See Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000). It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing. See Servants, 204 F.3d at 1012; Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991). Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law; (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. See Servants, 204 F.3d at 1012; Brumark Corp. v. Samson Resources, Corp., 57 F.3d 941, 948 (10th Cir. 1995). Under Rule 59(e), a motion to alter or amend judgment must be filed within ten days after entry of the judgment. Diel timely filed his Motion to Alter or Amend Judgment within ten days after this Court filed its Memorandum and Opinion. Therefore the Court has jurisdiction to hear his Rule 59(e) motion.

The Court finds that Diel has failed to demonstrate either that the Court has misapprehended the facts, a party's position, or controlling law. Nor is there an indication that failing to grant the requested relief will result in manifest injustice to Diel. However, some clarification of the Court's findings is in order. Diel's argument, which relies on his understanding that the Bank did not have a security interest in his crops and therefore in the hay sold to Boevers,

fails to recognize the Uniform Commercial Code's distinction between growing crops and harvested or cut crops. In the security agreement dated January 20, 1995, Lanny Diel granted to Farmers State Bank a security interest in all livestock, machinery and equipment, crops, and general intangibles. It describes "Crops" as "includ[ing] but not limited to annual and perennial crops growing or to be grown, *whether harvested or unharvested*, regardless of where stored. . . ." (emphasis added). "[A]ll feed, both hay and grain owned by debtor" is included in the security agreement's description of "Livestock."

The relevant statute in effect at the time this case was filed, Kan. Stat. Ann. § 84-9-203(1), sets forth the requirements for a security interest to attach and become enforceable. Under section 84-9-203(1), "a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless (a) the collateral is in possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, *when the security interest covers crops growing or to be grown*. . . a description of the land concerned; and (b) value has been given; and (c) the debtor has rights in the collateral." Section 84-9-203 requires a description of the land concerned only when the creditor seeks to secure its interest in crops growing or to be grown. The security agreement's failure to describe the land was the basis for the Court's finding that Farmer State Bank's interest in the growing wheat grazed by the Yazel cattle never attached. Farmers State Bank had a valid security interest in the harvested hay sold to Cody Boevers. Although the January 20, 1995 security agreement provided no description of the land concerned, a description was not necessary for the security interest in cut crops to attach. With respect to Diel's harvested crops or hay, the three requirements for attachment of a security interest had been met. Diel, has signed a security agreement which contains a detailed description of the collateral, "Crops," including harvested

crops, and “Livestock,” including “all feed, both hay and grain owned by debtor.” Value was given pursuant to the promissory note in the amount of \$49,800 dated July 30, 1999. Finally, Diel had rights in the crops.

While the Bank successfully demonstrated the attachment of its security interest in harvested crops and hay, it failed to prove that Diel fed wheatlage in which the Bank claimed a security interest to Mike Yazel’s cattle. Thus, the Bank did not bear its burden to prove that its property interest had been maliciously damaged as required by § 523(a)(6).

Finally, although not requested in the Motion before the Court today, the Court has reviewed the record in this case and notes that, at the close of the evidence, Farmers State Bank of Hardtner dismissed all of its causes of action as to Christine Dawn Diel. This dismissal should have been mentioned in this Court’s original Memorandum and Opinion. The Judgment on Decision entered herein of May 16, 2002, should, therefore, be amended to reflect that the Bank’s complaint is dismissed as against Christine Dawn Diel on the Bank’s motion and that the judgment entered May 16, 2002, and modified today, applies to Lanny Dene Diel only.

Lanny Dene Diel’s Motion to Alter or Amend is denied. The Court’s Memorandum and Order and Judgment on Decision entered May 16, 2002 are clarified as set forth above.

IT IS SO ORDERED.

Dated this 11th day of July, 2002.

ROBERT E. NUGENT, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **Memorandum and Order** were deposited in the United States mail, postage prepaid on this 11th day of July, 2002, to the following:

U.S. Trustee
500 Epic Center
301 N. Main
Wichita, KS 67202

Eric D. Bruce
Bruce, Bruce & Holt, L.L.C.
439 N. McLean, Suite 100
P.O. Box 75037
Wichita, KS 67275

David G. Arst
150 N. Main, Suite 515
Wichita, KS 67202

Edward J. Nazar
Redmond & Nazar, L.L.P.
200 West Douglas, 9th Floor
Wichita, KS 67202

Lanny and Christine Diel
302 Hardtner Street
P.O. Box 73
Kiowa, KS 67070

David D. Gaumer
349 N. Main
P.O. Box 113
Kingman, KS 67068

Janet Swonger,
Judicial Assistant

