

**UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF KENTUCKY**

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|-----------------------------|---|--------------------------|
| IN RE: |) | |
| |) | |
| BROOKS SAND AND GRAVEL, LLC |) | CASE NO. 06-30259(1)(11) |
| |) | |
| _____ Debtor(s) |) | |
| |) | |
| COBALT VENTURES, LLC |) | A. P. NO. 06-3158 |
| COBALT MINING, LLC |) | |
| |) | |
| Plaintiff(s) |) | |
| |) | |
| v. |) | |
| |) | |
| BANK OF AMERICA, N.A. |) | |
| |) | |
| _____ Defendants. |) | |

MEMORANDUM-OPINION

This matter is before the Court on the Motion to Reconsider, Alter or Amend Memorandum-Opinion and Order entered February 13, 2007 of Plaintiffs Cobalt Ventures, LLC and Cobalt Mining, LLC (“Cobalt”). The Court considered the filings in support of Cobalt’s Motion, the Objection to Motion to Reconsider of Defendant Bank of America, N.A. (“Bank”) and the arguments of counsel presented at the hearing held March 14, 2007. For the following reasons, the Court **DENIES** Cobalt’s Motion. An Order incorporating the findings herein accompanies this Memorandum-Opinion.

PROCEDURAL BACKGROUND

The procedural background of this matter is set forth in the parties filings and the Court’s Memorandum-Opinion entered February 13, 2007.

LEGAL ANALYSIS

Cobalt seeks to have this Court reconsider and alter or amend its Order entered February 13, 2007 dismissing Cobalt's Complaint pursuant to Rules 7052, 9023 and 9024 of the Federal Rules of Bankruptcy Procedure and Rule 59(e) of the Federal Rules of Civil Procedure. The Court's Memorandum-Opinion of February 13, 2007 clearly sets forth that Cobalt's claims are barred by the terms of the Final Financing Order and Settlement Order. Dismissal of the Complaint was warranted.

In order for the Court to grant a motion for reconsideration under Fed. R. Civ. P. 59(e), the movant must show (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law, or (4) a need to prevent manifest injustice. Henderson v. Walled Lake Consol. Schs., 469 F.3d 479, 496 (6th Cir. 2006); In re Quality Stores, Inc., 272 B.R. 643, 649 n.12 (Bankr. W.D. Mich. 2002). In light of this standard, the Court finds no basis for altering or amending the Memorandum-Opinion.

There has been no change in the applicable law since the Court issued its ruling on February 13, 2007. Although Cobalt submits a copy of its demand letter to the Trustee, this is not "new" evidence. It is immaterial to the Court's findings as the parties have been well aware of Cobalt's position with respect to the Bank's claims. Finally, the Court's Order contains no clear legal error and it will not cause manifest injustice.

The Court reiterates its Findings and Conclusions of Law as set forth in the February 13, 2007 Memorandum-Opinion. The Final Financing Order and Settlement Order were each final Orders. Cobalt's claims asserted in this adversary proceeding are barred by the doctrine of *res judicata*. Cobalt can hardly claim that it has been denied due process. Prior to entry of each of the

Orders, Cobalt had an opportunity to object and each of its objections were heard, considered by the Court and overruled. The Court carefully weighed the parties' claims and objections in approving the settlement related to Bank of America's claim. The Court relied on the business judgment of the Trustee after determining that the Trustee conducted an adequate investigation of Cobalt's allegations. The Court also considered the expense and inconvenience of delay related to continued litigation of the claim and found it to be in the best interest of the creditors and the estate to enter the Final Financing Order and Settlement Order. For all of these reasons, the Court declines to alter or amend its Order dismissing this adversary proceeding.

CONCLUSION

For all of the above reasons, the Motion to Reconsider, Alter or Amend the Memorandum-Opinion and Order entered February 13, 2007 of Plaintiffs Cobalt Ventures, LLC and Cobalt Mining, LLC is **DENIED**. An Order incorporating the findings herein accompanies this Memorandum-Opinion.

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ORDER

Pursuant to the Memorandum-Opinion entered this date and incorporated herein by reference,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Reconsider, Alter or Amend Memorandum-Opinion and Order entered February 13, 2007 of Plaintiffs Cobalt Ventures, LLC and Cobalt Mining, LLC, be and hereby is, **DENIED**.