

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

In re:)	Chapter 7
)	
PIKE NURSERY HOLDING, LLC,)	Case No. 07-79129-MGD
)	
Debtor.)	Judge Diehl
_____)	

**OBJECTION TO THE MOTION TO RECONSIDER APRIL 9, 2008 ORDER
DENYING PNC BANK, NATIONAL ASSOCIATION'S MOTION FOR ORDER
DIRECTING PAYMENT IN ACCORDANCE WITH DIP FACILITY**

Marcus A. Watson, as the Chapter 7 Trustee for Pike Nursery Holding, LLC (the "Trustee"), files his Objection to the Motion to Reconsider April 9, 2008 Order Denying PNC Bank, National Association's Motion for Order Directing Payment in Accordance with DIP Facility and respectfully shows the Court the following:

1. The Trustee opposes the motion to reconsider for three (3) reasons. First, and most importantly, the Trustee anticipates that the motion to reconsider will shortly become moot because the Trustee and PNC Bank, National Association ("PNC") have entered into a settlement agreement, which is subject to court approval. If the Court approves the Trustee's motion to approve the settlement agreement, this motion will not need to be decided.

2. Second, PNC's motion to reconsider is improper. The Northern District of Georgia has recognized the limited grounds for reconsideration:

[It is an improper use of] the motion to reconsider to ask the Court to rethink what the Court [has] already thought through-rightly or wrongly. The motion to reconsider would be appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the

submission of the issue to the Court. Such problems rarely arise and the motion to reconsider should be equally rare.

Godby v. Electrolux Corp., 1994 WL 470200, *1-2 (N.D. Ga. 1994) (quoting Above the Belt, Inc. v. Mel Bohannon Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983)). Indeed, it is well established that motions to reconsider “should not be used to raise arguments which . . . could have been raised before judgment was issued.” Britt’s Home Furnishing, Inc. v. Hollowell (In re Hollowell), 242 B.R. 541, 542 (Bankr. N.D. Ga. 1999). The case PNC cites as a basis for its right to have the Court reconsider its earlier ruling acknowledges as much. In fact, Judge Drake reasoned that the court would make an exception to the general rule only because the motion to reconsider raised issues about the court’s jurisdiction. See Ellenberg v. Board of Regents of the Univ. of Ga. (In re Midland Mech. Contractors, Inc.), 200 B.R. 453, 456 (Bankr. N.D. Ga. 1996).

3. In this case, it is clear that PNC has no basis to seek reconsideration. In paragraphs ten (10) and sixteen (16) of its motion, PNC attempts to justify reconsideration based on a letter PNC sent on April 10, 2008. (A copy of the letter is attached to PNC’s motion as Exhibit “A.”) The letter states that the PNC has terminated its postpetition loan agreement based on a litany of events. At least one of the events – the appointment of the trustee – had occurred well in advance of the April 7, 2008 hearing. Therefore, it is clear that PNC could have easily sent the letter in advance of the hearing. As such, the April 10 letter is hardly the type of “new evidence,” which justifies a court reconsidering an earlier ruling.

4. Moreover, Delta Air Lines, Inc. v. Pan Am Corporation (In re Pan Am Corporation), 162 B.R. 667 (S.D.N.Y. 1993), cited in paragraphs thirteen (13) and fourteen (14) of PNC’s motion, does not support PNC’s argument that the Court should reconsider its ruling. First, in that case, unlike in this case, it was undisputed that there were sufficient funds to pay administrative expense claims. See 162 B.R. 667, 669. Second, that court acknowledged that

section 364(e) of the Bankruptcy Code **does not** protect a lender from a bankruptcy court reconsidering a debtor-in-possession financing motion. See id. at 672.

5. Third, if the Court does not deny PNC's motion, the Trustee requests that the Court continue the hearing. The Trustee submits that a continuance is appropriate under the circumstances.

WHEREFORE, Marcus A. Watson, as the Chapter 7 Trustee for Pike Nursery Holding, LLC, respectfully requests that the Court deny the Motion to Reconsider April 9, 2008 Order Denying PNC Bank, National Association's Motion for Order Directing Payment in Accordance with DIP Facility and grant such other and further relief as is just.

Jeffrey N. Pomerantz (Calif. Bar No. 143717)
jpomerantz@pszjlaw.com
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Boulevard, 11th Floor
Los Angeles, California 90067-4100
(310) 277-6910 Telephone
(310) 201-0760 Facsimile

Special Counsel to the Trustee

/s/ Robert M.D. Mercer
Robert M.D. Mercer (Ga. Bar No. 502317)
rmercerc@pogolaw.com
POWELL GOLDSTEIN, LLP
One Atlantic Center, 14th Floor
1201 West Peachtree Street, N.W.
Atlanta, Georgia 30309-3488
(404) 572-6600 Telephone
(404) 572-6999 Facsimile

Special Counsel to the Trustee