



The following constitutes the order of the Court.

Hamilton DeWayne Hale
United States Bankruptcy Judge

Signed August 15, 2005

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

VARTEC TELECOM, INC., et al.,

Debtors.

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Case No. 04-81694-SAF-11

ORDER DENYING MOTION FOR RECONSIDERATION

Came before the Court for consideration, the motion for reconsideration of the July 29, 2005 sale order (“Motion”), filed by the Official Committee of Excel Independent Representatives, on August 8, 2005. The Court considered the Motion without oral argument, as prescribed by Local Rule of the Northern District of Texas 7.1(g). After consideration, the Court finds that the Motion should be denied.

In nonjury trials, a motion for new trial should usually be based upon manifest error of law, mistake of fact, or newly discovered evidence. *Lavespere v. Niagara Machine & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990), *cert. denied*, 114 S.Ct. 171 (1993). The same is true for motions to alter or amend pursuant to Federal Rule of Civil Procedure 59(e). *See*

Lavespere, 910 F.2d at 173; *Waltman v. International Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989) (stating that the purpose of motions for reconsideration under Fed. R. Civ. P.59(e) is to correct manifest errors of law or fact or to present newly discovered evidence). A motion to alter or amend is left up to the considerable discretion of the trial court. *Id.* Such a motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment. *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990).

The Court held a hearing on the Debtors' motion to sell substantially all of the Debtors' remaining assets on July 27, 2005. At that hearing, counsel for the RTFC stated on the record that all payments made to the RTFC from the sale proceeds are subject to disgorgement. The Court finds that this should alleviate the concerns of counsel for the IR Committee in its Motion. The Court further finds that the Motion fails to show an error of law, mistake of fact, or newly discovered evidence. It is therefore,

ORDERED that the Motion is **DENIED**.

###End Of Order###