NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. PR 15-011

Bankruptcy Case No. 14-02172-BKT

MARCELO JUNIOR MEDINA LORENZO,
Debtor.

SCOTIABANK DE PUERTO RICO,
Appellant,

v.

MARCELO JUNIOR MEDINA LORENZO,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of Puerto Rico
(Hon. Brian K. Tester, U.S. Bankruptcy Judge)

Before
Hillman, Deasy, and Harwood,
United States Bankruptcy Appellate Panel Judges.

Wallace Vazquez Sanabria, Esq., on brief for Appellant.

Aileen Pérez Polanco, Esq., on brief for Appellee.

July 24, 2015

Harwood, U.S. Bankruptcy Appellate Panel Judge.

Scotiabank de Puerto Rico ("Scotiabank") appeals from the following orders of the bankruptcy court entered on January 22, 2015: (1) the order denying various motions in which Scotiabank sought to alter the order disallowing in part its claim for attorney's fees, and to set aside the confirmation order; and (2) the order disallowing Scotiabank's amended proof of claim.

For the reasons set forth below, we **AFFIRM.**

BACKGROUND[1]

On March 21, 2014, Marcelo Junior Medina Lorenzo (the "Debtor") filed a chapter 13 petition. In his schedules, the Debtor listed Scotiabank as a secured creditor with a claim in the amount of $13,102.93 secured by a mortgage on his property.

On April 11, 2014, Scotiabank filed a proof of claim (the "Claim") asserting a secured claim in the amount of $13,354.51, including $3,218.30 for pre-petition arrears and charges, broken down as follows: $1,680.00 in arrears, $26.30 for late charges, $27.00 for inspection charges, and $1,485.00 for attorney's fees.

In his chapter 13 plan, the Debtor proposed to pay Scotiabank's secured claim in the amount of $13,102.93 in full through the plan. Scotiabank objected to confirmation of the plan on the grounds that it was insufficiently funded because it did not provide for payment of post-petition interest which accrued under the terms of the promissory note. On July 29, 2014, the chapter 13 trustee filed an unfavorable report on plan confirmation indicating the plan was

[1] Unless expressly stated otherwise, all references to "Bankruptcy Code" or to specific statutory sections shall be to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101, et seq. All references to "Bankruptcy Rule" shall be to the Federal Rules of Bankruptcy Procedure, and all references to "Rule" shall be to the Federal Rules of Civil Procedure.

underfunded, Scotiabank had objected to the plan, and the Debtor had failed to provide certain information to the trustee.

On August 6, 2014, the Debtor filed an objection to the Claim, asking the bankruptcy court to disallow, in part, the Claim to the extent it included $1,485.00 in attorney's fees, which the Debtor claimed were excessive and/or not owed. On September 9, 2014, Scotiabank filed a response to the Debtor's objection to the Claim, arguing that the reasonableness standard of § 506 and Bankruptcy Rule 2016 did not apply to pre-petition fees and charges, and it was entitled to attorney's fees as part of its pre-petition agreement with the Debtor and could collect those fees as part of its arrearage claim.[2] On September 22, 2014, the trustee filed another unfavorable report on plan confirmation, indicating the plan could not be confirmed because Scotiabank had objected to the plan, the Debtor had failed to provide certain information to the trustee, and the Debtor's objection to the Claim was still pending.

[2] According to Scotiabank, it charged a flat rate of $660.00 for attorney's fees on loans involved in bankruptcy, and the remaining $825.00 of asserted attorney's fees related to the pre-petition filing of a foreclosure proceeding. In support of its flat rate fee, Scotiabank pointed generally to the promissory note and mortgage, which Scotiabank asserts refer to "3 extensions of 10% to cover interest, fees and costs," without identifying any specific provisions of the note and mortgage. The note itself is dated November 10, 2007 in the original principal amount of $21,800, and provides at paragraph 6(E): "If the Note Holder has notified me that I am required to pay immediately in full as described above, or the Note Holder seeks judicial collection or collection in a bankruptcy proceeding, the Note Holder shall be entitled to collect its costs and expenses to enforce this Note (including, but not limited to, attorneys' fees), which are fixed at the agreed and liquidated amount of ten percent (10%) of the original Principal amount." Even assuming that Scotiabank was contractually authorized to charge a flat $2,180 (10% of the original principal amount of $21,800), the $1,485 that it sought in its proof of claim does not square with the language in the note. To the extent that the flat fee sought by Scotiabank is contained in a separate agreement between Scotiabank and its counsel, that agreement does not appear to be part of this record.

The bankruptcy court held a confirmation hearing on October 2, 2014. Scotiabank was not present at the hearing. After the hearing, the bankruptcy court entered an order ("Order Disallowing Attorney's Fees") providing as follows:

> As agreed in open Court, the trustee is allowed fourteen (14) days to file a new recommendation, unless another amendment is filed within seven (7) days. If a favorable recommendation is filed, the plan will be confirmed without further notice.
>
> The Court grants, in part, the debtor's objection to claim #3-1 by Scotiabank de Puerto Rico (docket #19). The attorney's fees claimed are disallowed for $1,385.00 instead of $1,485.00 and the difference of $100.00 is allowed for the preparation, review of the case and filing of the claim. The pre-petition arrears left are in the amount of $1,733.30.

Scotiabank did not file a notice of appeal or request reconsideration of the Order Disallowing Attorney's Fees within 14 days.

On October 14, 2014, the trustee filed a favorable recommendation for confirmation ("Trustee's Report"), and the following day, the bankruptcy court entered an order confirming the plan.

On October 24, 2014, Scotiabank filed the following (collectively, the "October 24th Motions"):

> (1) a motion pursuant to Rule 59(e) seeking to alter the Order Disallowing Attorney's Fees ("Motion to Alter Order Disallowing Attorney's Fees");
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> (2) an objection to the Trustee's Report in which it sought to set aside the confirmation order for failure to provide due process ("Objection to Trustee's Report");
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> (3) a motion pursuant to Rule 59(e) and Rule 60(b) seeking to set aside the confirmation order ("Motion to Set Aside Confirmation Order"); and
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> (4) a motion to dismiss the bankruptcy case for failure to make post-petition payments ("Motion to Dismiss").

As grounds for the October 24th Motions, Scotiabank argued that it did not attend the October 2, 2014 confirmation hearing because the Debtor's objection to its Claim was not scheduled for a hearing, and Scotiabank erroneously concluded the matter was not ready for confirmation due to the trustee's unfavorable report which identified pending issues other than Scotiabank's plan objection. Moreover, Scotiabank argued that the bankruptcy court's disallowance of its claim for attorney's fees was incorrect as a matter of law; that the confirmed plan did not comply with § 1322(b)(2) because it did not provide for payment of post-petition interest and other charges arising under the mortgage and note; and that the Trustee's Report was incorrect as a matter of law and did not comply with PR LBR 9013-1(c). The Debtor opposed each of the October 24th Motions.

On October 28, 2014, Scotiabank filed an amended proof of claim asserting a secured claim in the increased amount of $18,692.30 ("Amended Claim"), including both pre- and post-petition interest and other charges, as well as the amount of attorney's fees previously disallowed by the bankruptcy court. On December 18, 2014, the Debtor filed an objection to the Amended Claim because it included the amount of attorney's fees disallowed by the bankruptcy court, and other interest amounts which were never requested prior to the confirmation of the plan. According to the Debtor, the confirmed plan was binding on all creditors, including Scotiabank, and the Amended Claim was an invalid backdoor objection to confirmation and the disallowance of its claim for attorney's fees.

On January 22, 2015, the bankruptcy court entered one order denying all of the October 24th Motions ("Order Denying October 24th Motions"). In denying the October 24th Motions, the bankruptcy court determined: (1) the Debtor's objection to the Claim was ripe for

adjudication at the October 2, 2014 confirmation hearing and neither the Bankruptcy Code nor the Bankruptcy Rules require that a hearing be held; (2) PR LBR 3015-2(h)(2) requires a creditor objecting to confirmation to attend the confirmation hearing, and further provides that if the creditor fails to do so, the bankruptcy court may overrule the objection for failure to prosecute; (3) Scotiabank's counsel had adequate notice of the scheduled confirmation hearing and chose not to appear at his peril; (4) the trustee was not required to include the "required response time language" set forth in PR LBR 9013-1(c) in the Trustee's Report recommending confirmation; (5) Scotiabank's attempt to set aside the confirmation order through a motion was "procedurally misplaced" as such an attempt required an adversary proceeding; and (6) Scotiabank was bound by the terms of the confirmed plan and could not "collaterally attack" the confirmed plan by filing an amended claim after confirmation.

The bankruptcy court also entered a separate order ("Order Disallowing Amended Claim") sustaining the Debtor's objection to the Amended Claim and disallowing the Amended Claim "in its entirety for the reasons stated in Debtor's Objection and in accordance with th[e] Court's Order [Denying October 24th Motions] dated 1/22/2015."

Scotiabank filed a notice of appeal with respect to the Order Denying October 24th Motions and the Order Disallowing Amended Claim.

JURISDICTION

A bankruptcy appellate panel is "'duty-bound'" to determine its jurisdiction before proceeding to the merits, even if not raised by the litigants. Boylan v. George E. Bumpus, Jr. Constr. Co. (In re George E. Bumpus, Jr. Constr. Co.), 226 B.R. 724, 725-26 (B.A.P. 1st Cir.

1998) (quoting Fleet Data Processing Corp. v. Branch (In re Bank of New Eng. Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998)).

A. Scope of Appeal[3]

As a preliminary matter, it is important to understand the scope of this appeal. Scotiabank appealed two orders: (1) the Order Denying October 24th Motions, in which the bankruptcy court denied four separate motions (namely, the Motion to Alter Order Disallowing Attorney's Fees, the Motion to Set Aside Confirmation Order, the Objection to Trustee's Report and the Motion to Dismiss); and (2) the Order Disallowing Amended Claim.

Scotiabank did not address in its brief the bankruptcy court's denial of its Objection to Trustee's Report or the denial of its Motion to Dismiss and, therefore, any issues relating to those

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3 The following is a timeline of the relevant events:

03/21/14 – Debtor files chapter 13 plan

04/11/14 – Scotiabank files the Claim

07/24/14 – Scotiabank files objection to plan confirmation

08/06/14 – Debtor files objection to the Claim

10/02/14 – Confirmation hearing held; Court enters Order Disallowing Attorney's Fees

10/14/14 – Trustee files favorable recommendation for plan confirmation

10/15/14 – Court enters order confirming plan

10/16/14 – Appeal period for Order Disallowing Claim for Attorney's Fee expires

10/24/14 – Scotiabank files the October 24th Motions (within 14 days of confirmation order)

10/28/14 – Scotiabank files Amended Claim

01/22/15 – Court enters Order Denying October 24th Motions; Court enters the Order Disallowing Amended Claim

02/04/15 – Scotiabank files notice of appeal

rulings have been waived. See Canning v. Beneficial Me., Inc. (In re Canning), 706 F.3d 64, 70 n.8 (1st Cir. 2013) (explaining failure to brief an argument constitutes waiver).

Moreover, Scotiabank did not identify either the Order Disallowing Attorney's Fees or the confirmation order in its notice of appeal. An appeal from an order denying reconsideration is "generally not considered to be an appeal from the underlying judgment." Batiz Chamorro v. Puerto Rican Cars, Inc., 304 F.3d 1, 3 (1st Cir. 2002) (citation omitted). Notwithstanding this general rule, where the notice of appeal names only the post-judgment order, the Panel occasionally has reviewed both the post-judgment order and the underlying judgment itself under certain circumstances. See, e.g., Municipality of Carolina v. Baker González (In re Baker González), 490 B.R. 642, 646 (B.A.P. 1st Cir. 2013); Bellas Pavers, LLC v. Stewart (In re Stewart), No. MB 12-017, 2012 WL 5189048, at *4-5 (B.A.P. 1st Cir. Oct. 18, 2012) (citing cases); Vicenty v. San Miguel Sandoval (In re San Miguel Sandoval), 327 B.R. 493, 504 (B.A.P. 1st Cir. 2005). First, the Panel has extended the scope of the appeal to encompass the underlying order only when the appeal involved a Rule 59(e) motion, whose timely filing tolled the appeal period for the underlying order by operation of Bankruptcy Rule 8002(b)(1)(B) or (C).[4] In re Baker González, 490 B.R. at 646 (citation omitted). Second, the Panel has reviewed both orders only when it was clear the appellant intended to appeal both orders, and where both

[4] The appeal period may be tolled by filing a motion: (1) to amend or make additional findings of facts under Bankruptcy Rule 7052 (Rule 52); (2) to alter or amend the judgment under Bankruptcy Rule 9023 (Rule 59); (3) for a new trial under Bankruptcy Rule 9023 (Rule 59); or (4) for relief under Bankruptcy Rule 9024 (Rule 60). See Fed. R. Bankr. P. 8002(b)(1). Such a motion must be filed within 14 days after the judgment. Id.

parties briefed issues relating to the underlying judgment. See id. (citations omitted); In re Stewart, 2012 WL 5189048, at *4-5 (citing cases); In re San Miguel Sandoval, 327 B.R. at 504.

Here, both parties addressed issues relating to the confirmation order, and Scotiabank filed its Motion to Set Aside Confirmation Order within 14 days of the date of the confirmation order. Therefore, the Panel can review both the confirmation order and the bankruptcy court's denial of its Motion to Set Aside Confirmation Order. The parties also addressed issues relating to the Order Disallowing Attorney's Fees. Scotiabank did not, however, file its Motion to Alter Order Disallowing Attorney's Fees until 22 days after that order was entered; therefore, the motion did not toll the appeal period for the Order Disallowing Attorney's Fees. Thus, even if Scotiabank had included the Order Disallowing Attorney's Fees in its notice of appeal, it would have been untimely. Accordingly, with respect to the Order Disallowing Attorney's Fees, the Panel limits its review to the denial of the Motion to Alter Order Disallowing Attorney's Fees.

Consequently, the orders before the Panel are:

1. Denial of Motion to Alter Order Disallowing Attorney's Fees;
2. Confirmation Order and Denial of Motion to Set Aside Confirmation Order; and
3. Order Disallowing Amended Claim.

B. Finality

The Panel has jurisdiction to hear appeals from a final judgment of the bankruptcy court. 28 U.S.C. § 158(a)(1). A bankruptcy court order denying a motion to alter a judgment under Rule 59(e) or to set aside a judgment under Rule 60(b) is a final appealable order if the underlying order is final and together the orders end the litigation on the merits. See Garcia Matos v. Oliveras Rivera (In re Garcia Matos), 478 B.R. 506, 511 (B.A.P. 1st Cir. 2012). A

bankruptcy court order confirming a debtor's chapter 13 plan is a final order. See Carrión v. Martínez Rivera (In re Martínez Rivera), 490 B.R. 130, 133 (B.A.P. 1st Cir. 2013) (citing, among others, United Student Aid Funds, Inv. v. Espinosa, 559 U.S. 260 (2010)). Therefore, the bankruptcy court's denial of the Motion to Set Aside Confirmation Order is also final. In addition, "a bankruptcy court order sustaining an objection to a proof of claim is a final, appealable order." U.S. Bank Nat'l Ass'n v. Blais (In re Blais), 512 B.R. 727, 733 (B.A.P. 1st Cir. 2014) (quoting B-Real, LLC v. Melillo (In re Melillo), 392 B.R. 1, 4 (B.A.P. 1st Cir. 2008)). Therefore, the bankruptcy court's denial of the Motion to Alter Order Disallowing Attorney's Fees is also final. Finally, a bankruptcy court's decision to allow or disallow an amended claim is also a final, appealable order. See Woburn Assocs. v. Kahn (In re Hemingway Transp., Inc.), 954 F.2d 1 (1st Cir. 1992).

Thus, the Panel has jurisdiction.

STANDARD OF REVIEW

The bankruptcy court's findings of fact are reviewed for clear error and its conclusions of law are reviewed de novo. See Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 592 F.3d 267, 269 (1st Cir. 2010). The Panel reviews a bankruptcy court's decision to deny a motion for reconsideration of a previous order for abuse of discretion. See Aguiar v. Interbay Funding, LLC (In re Aguiar), 311 B.R. 129, 132 (B.A.P. 1st Cir. 2004). It also reviews a bankruptcy court's decision to allow or disallow an amendment to a proof of claim for an abuse of discretion. See In re Hemingway Transp. Inc., 954 F.2d at 10. "A court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of

material fact." De Jounghe v. Lugo Mender (In re De Jounghe), 334 B.R. 760, 765 (B.A.P. 1st Cir. 2005) (citation omitted).

DISCUSSION

Scotiabank argues that the bankruptcy court erred by: (1) entering the Order Disallowing Attorney's Fees as the Debtor's objection to the Claim was not scheduled for a hearing on October 2, 2014, and Scotiabank was entitled to the claimed attorney's fees pursuant to its pre-petition agreement with the Debtor; (2) confirming the Debtor's plan because it did not provide for payment of post-petition interest and other charges, and therefore did not comply with §§ 1322 and 1325; and (3) disallowing its Amended Claim as claim amendments are liberally allowed in the First Circuit.

I. Denial of Motion to Alter Order Disallowing Attorney's Fees

Although Scotiabank sought to alter the Order Disallowing Attorney's Fees under Rule 59(e), it did not file the motion within 14 days of the entry of that order. See Fed. R. Bankr. P. 9023 ("A motion . . . to alter or amend a judgment [under Rule 59(e)] shall be filed . . . no later than 14 days after entry of judgment."). Thus, the motion would usually be treated as one brought under Rule 60(b). See Rodriguez Rodriguez v. Banco Popular de Puerto Rico (In re Rodriguez Rodriguez), 516 B.R. 177, 184 (B.A.P. 1st Cir. 2014). Courts, however, have treated motions filed under Rule 59(e) or Rule 60(b) regarding the disallowance of a claim as filed under § 502(j) and Bankruptcy Rule 3008. In re Baker González, 490 B.R. at 651 (citation omitted). Section 502(j) provides in pertinent part: "A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case." 11 U.S.C. § 502(j). Bankruptcy Rule 3008 provides in pertinent part: "A

party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate." Fed. R. Bankr. P. 3008.

A party moving for reconsideration of an order disallowing its claim bears the burden of showing "cause," without which there can be no basis for the allowance of a previously disallowed claim according to the equities of the case. See In re Baker González, 490 B.R. at 651 (citations omitted). The meaning of the term "cause" is not defined in the Bankruptcy Code. Instead, the bankruptcy court is given wide discretion in determining what constitutes cause for the reconsideration of a claim. Id. (citation omitted). Cause may exist when relief would be justified under Rule 60(b).[5] Id. (citation omitted).

Scotiabank did not invoke the specific standards for relief set forth in Rule 60(b) or § 502(j). It requested, however, the bankruptcy court to alter the Order Disallowing Attorney's Fees because: (1) the matter was not scheduled for a hearing at the October 2, 2014 confirmation hearing; and (2) it was entitled to pre-petition attorney's fees as a matter of law.

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[5] Rule 60(b) provides in pertinent part:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

Section 501(a) provides that a creditor may file a proof of claim. A timely filed proof of claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). Section 502(b) provides that "if such objection to a claim is made, the court, *after notice and a hearing*, shall determine the amount of such claim . . . and shall allow such claim in such amount," unless one of the listed grounds for disallowance exists. 11 U.S.C. § 502(b) (emphasis added). Bankruptcy Rule 3007 adds that once an objection is filed, a "copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant . . . at least 30 days prior to the hearing." Fed. R. Bankr. P. 3007(a). Both sections seem to imply that a hearing is required in every situation where an objection to a claim has been asserted.

Section 102(1) provides, however, that the phrase "after notice and a hearing" means "after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances . . . ." 11 U.S.C. § 102(1)(A). It also "authorizes an act without an actual hearing if such notice is given properly and if . . . such a hearing is not requested timely by a party in interest" or "there is insufficient time for a hearing to be commenced before such act must be done . . . ." 11 U.S.C. § 102(1)(B). Consequently, "[§] 102(1) makes it clear that a hearing is not statutorily required, but only that the parties are given an opportunity for a hearing and may have a hearing if it is so requested." In re Nicole Gas Prod., Ltd., 502 B.R. 773, 779-80 (Bankr. S.D. Ohio 2013) (citation omitted). Scotiabank did not argue that it did not receive notice of the Debtor's objection to the Claim or that it requested a hearing on the objection to the Claim. Therefore, a separate hearing was not statutorily required and the matter was ripe for adjudication.

Scotiabank also argues the bankruptcy court should have altered the Order Disallowing Attorney's Fees because it was entitled to its claimed attorney's fees as a matter of law. In its Motion to Alter Order Disallowing Attorney's Fees, however, Scotiabank merely restated the same arguments presented in its response to the Debtor's objection to the Claim which were rejected by the bankruptcy court -- namely, that it was entitled to the claimed attorney's fees pursuant to the pre-petition loan documents and applicable non-bankruptcy law. It is well settled, however, that a motion for reconsideration "does not provide a vehicle for a party to undo its own procedural failures . . . ." Fábrica de Muebles J.J. Álvarez, Incorporado v. Inversiones Mendoza, Inc., 682 F.3d 26, 31 (1st Cir. 2012) (citation omitted) (internal quotations omitted). Thus, Scotiabank could not use its motion for reconsideration to overcome its failure to attend the October 2, 2014 hearing and present its opposition to the Debtor's objection to the Claim. Moreover, a party cannot use a motion for reconsideration "to rehash arguments previously rejected." Soto-Padró v. Pub. Bldgs. Auth., 675 F.3d 1, 9 (1st Cir. 2012). Thus, cause for reconsideration under § 502(j) and/or Rule 60(b) does not include disagreement with the court about the disposition of the motion.

In light of the foregoing, the bankruptcy court did not abuse its discretion in denying the Motion to Alter Order Disallowing Attorney's Fees.

II. Confirmation Order and Denial of Motion to Set Aside Confirmation Order

Scotiabank argues the bankruptcy court erred in confirming the Debtor's plan because it did not provide for payment of post-petition interest and other charges due to Scotiabank under the terms of the promissory note and, therefore, the plan did not comply with §§ 1322(b) and 1325.

It is well established that for a bankruptcy court to confirm a plan, each of the requirements set forth in § 1325 must be present. "Section 1325(a)(5) . . . references secured creditors and mandates plan confirmation if (1) the secured creditor accepts the plan; (2) the plan provides that the secured creditor retain its lien and be paid the full amount of the allowed claim; and (3) the debtor surrenders the property securing the claim to the creditor." In re Jimenez Galindez, 514 B.R. 79, 89 (Bankr. D.P.R. 2014) (quoting Universal Am. Mortg. Co. v. Bateman (In re Bateman), 331 F.3d 821, 829 (11th Cir. 2003)).

Scotiabank objected to confirmation of the plan on the grounds that the plan failed to provide for payment of post-petition interest and charges due under the terms of the promissory note. The plan, however, was sufficiently funded to pay the Claim to the extent allowed by the bankruptcy court (after disallowance of all but $100.00 of the claimed attorney's fees), and Scotiabank did not amend the Claim prior to the confirmation hearing to include any additional interests or charges to be paid through the plan. Moreover, Scotiabank failed to appear at the confirmation to prosecute its objection.[6]

PR LBR 3015-2(h)(2) provides:

> Any creditor who objects to confirmation of the plan shall attend the contested confirmation hearing if the objection is not resolved or withdrawn prior to the hearing. If the objecting creditor does not appear at the contested confirmation hearing, the court may overrule the objection for failure to prosecute the same.

PR LBR 3015-2(h)(2). Thus, the bankruptcy court was authorized to overrule Scotiabank's objection due to its failure to prosecute. Scotiabank's failure to prosecute its objection

[6] Scotiabank does not dispute it received proper notice of the confirmation hearing.

constituted acceptance of the plan for purposes of § 1325(a)(5)(A). See Flynn v. Bankowski (In re Flynn), 402 B.R. 437, 443 (B.A.P. 1st Cir. 2009) (citing cases).

Scotiabank also argues that despite its failure to prosecute its objection at the confirmation hearing, the trustee had a duty to ensure the plan met the requirements of the Bankruptcy Code. This argument also lacks merit. As one court stated:

> While we do not understate the importance of the obligation of the bankruptcy court or the trustee to determine that a plan complies with the appropriate sections of the Bankruptcy Code prior to confirmation of the plan, we nonetheless recognize that the affirmative obligation to object to the . . . plan rested with [the creditor], not with the bankruptcy court or the trustee. . . . [C]reditors are obligated to take an active role in protecting their claims. . . . Otherwise, [Bankruptcy] Rules 3017 and 3020(b), which set a deadline for filing objections to a plan, would have no substance.

In re Szostek, 886 F.2d 1405, 1414 (3d Cir. 1989). Scotiabank had an affirmative obligation to prosecute its objection and that obligation did not rest with either the chapter 13 trustee or the bankruptcy court. The bankruptcy court was required only to ensure the chapter 13 plan met the minimal requirements of § 1322(a), and it fulfilled that obligation. Id. Thus, the bankruptcy court did not err in confirming the Debtor's chapter 13 plan.

Similarly, the bankruptcy court did not abuse its discretion in denying the Motion to Set Aside Confirmation Order. It is well settled that a motion brought under Rule 59(e) must be based upon newly discovered evidence or a manifest error of law or fact. Banco Bilbao Vizcaya Argentaria P.R. v. Santiago Vázquez (In re Santiago Vázquez), 471 B.R. 752, 760 (B.A.P. 1st Cir. 2012) (citing Aybar v. Crispin-Reyes, 118 F.3d 10, 16 (1st Cir. 1997)). A party cannot use a Rule 59(e) motion "to rehash arguments previously rejected." Soto-Padró v. Public Bldgs. Auth., 675 F.3d at 9. "Reconsideration of a judgment under Rule 59(e) is an extraordinary

remedy, which is used sparingly and only when the need for justice outweighs the interests set forth by a final judgment." In re Garcia Matos, 478 B.R. at 516 (citation omitted).

Here, the Motion to Set Aside Confirmation Order contained nothing new, except for Scotiabank's argument that it did not attend the October 2, 2014 confirmation hearing because it erroneously concluded the matter was not ready for confirmation due to the trustee's unfavorable report which identified pending issues other than Scotiabank's plan objection. Scotiabank did not, however, provide any factual or legal support for its motion, nor did it allege or establish any manifest error of law or fact, or any newly discovered evidence, which would merit the extraordinary remedy of reconsideration. Therefore, the bankruptcy court did not abuse its discretion in denying the Motion to Set Aside Confirmation Order.

III. Order Disallowing Amended Claim

Generally, creditors may amend their proofs of claim. "Amendments to proofs of claim timely filed are to be freely allowed, whether for purposes of particularizing the amount due under a previously-asserted right to payment, or simply to cure technical defects in the original proof of claim." In re Hemingway Transp. Inc., 954 F.2d at 10 (citation omitted); see also In re Jimenez Galindez, 514 B.R. at 88. The decision to grant or deny an amendment to a timely filed proof of claim rests with the sound discretion of the bankruptcy court. See In re Ruiz Martinez, 513 B.R. 779, 785 (Bankr. D.P.R. 2014) (citations omitted). "Although amendments to proofs of claim should in the absence of contrary equitable considerations or prejudice to the opposing party be freely permitted, such amendments are not automatic." Id. at 784 (citation omitted) (internal quotations omitted).

The Bankruptcy Code does not specifically address the issue of amending a timely filed proof of claim. The Jimenez Galindez court recently discussed the requirements that must be satisfied for an amended claim to be allowed, stating as follows:

> ["]Upon the filing of an objection, the allowance of an amended proof of claim is an equitable determination often approached using a two-part test: (1) was a timely similar claim asserted against the bankruptcy estate by a prior formal proof of claim or informal proof of claim; and (2) is it equitable to permit the amendment." Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, 4th Edition, § 284.1, at ¶[3], Sec. Rev. May 5, 2010, www.Ch13online.com. Thus, the first step is to determine whether there was a timely assertion of a similar claim or demand evidencing an intention to hold the bankruptcy estate liable. If the first prong is satisfied, then the court must determine whether it was equitable to allow the amendment. "The equitable determination to allow or disallow an amendment to a proof of claim timely filed is entrusted to the sound discretion of the bankruptcy court." In re Hemingway Transp., 954 F.2d at 10. "The court must scrutinize both the substance of the proposed amendment and the original proof of claim to ensure that the amendment meets three criteria." Id. Amendments to proof[s] of claim[ ] are reviewed under the following three (3) criteria: (i) "the proposed amendment must not be a veiled attempt to assert a distinctly new right to payment as to which the debtor estate was not fairly alerted by the original proof of claim;" (ii) "the amendment must not result in unfair prejudice to other holders of unsecured claims against the estate;" and (iii) "the need to amend must not be the product of bad faith or dilatory tactics on the part of the claimant." Id.; [s]ee also [ ] In re Crane Rental Co., 341 B.R. [118, 120-121 (Bankr. D. Mass. 2006)].

514 B.R. at 88.

"[T]here is no deadline in the [Bankruptcy] Rules or Code after which amendment of [a] claim is prohibited." Id. (internal quotations omitted). "Theoretically, a timely filed proof of claim can be amended at any time while the case is pending, at least until payments are completed under the plan." Id. (citation omitted) (internal quotations omitted). An amended claim, however, cannot be used as "a backdoor objection to confirmation." Id. (citations omitted) (internal quotations omitted).

In this case, Scotiabank filed the Claim setting forth a secured claim in the amount of $13,354.51 based on a promissory note and a mortgage on real property with a value of $96,000.00. Scotiabank included in the Claim $3,218.30 for pre-petition arrears and charges, which were broken down as follows: $1,680.00 for arrears, $26.30 for late charges, $27.00 for inspection charges, and $1,485.00 for attorney's fees. The bankruptcy court allowed $100.00 of the claimed attorney's fees, disallowed the remaining $1,385.00, leaving pre-petition arrears in the amount of $1,733.30. Thus, the bankruptcy court allowed the Claim in the amount of $11,969.51 ($13,354.51 minus $1,385.00).

In its Amended Claim, Scotiabank asserted a secured claim in the increased amount of $18,692.30 based on a promissory note and a mortgage on real property with a value of $96,000.00. Scotiabank included in the Amended Claim the $1,485.00 in attorney's fees set forth in the Claim, plus additional interest, charges, and fees it did not include in the Claim. Although the Amended Claim did not constitute a new claim, it was clearly an attempt to bypass the Order Disallowing Attorney's Fees--which denied $1,385.00 of the $1,485.00 in claimed attorney's fees--and to include additional charges not previously asserted as a "backdoor objection to confirmation" despite its failure to prosecute its objection to confirmation. Moreover, allowance of the Amended Claim would have the effect of making the confirmed plan insufficiently funded. Clearly, under these circumstances, it would not be equitable to allow the Amended Claim. As such, the bankruptcy court did not abuse its discretion in sustaining the Debtor's objection to the Amended Claim and disallowing the Amended Claim.[7]

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[7] The bankruptcy court relied upon the binding effect of plan confirmation under § 1327(a), holding that plan confirmation is a final order with res judicata effect, and that confirmation of a plan, after notice and opportunity for a hearing, bars the creditor's later filed claim. However, the binding effect of plan

CONCLUSION

For the reasons set forth above, we **AFFIRM.**

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confirmation does not occur until the appeal period has passed without any action taken. See, e.g., Celli v. First Nat'l Bank of N. N.Y. (In re Layo), 460 F.3d 289, 293 (2d Cir. 2006) (quoting 8 Collier on Bankruptcy ¶ 1327.02 (15th ed. Rev.) ("*Absent timely appeal*, the confirmed plan is res judicata and its terms are not subject to collateral attack . . .") (emphasis added)). To say otherwise would mean a creditor could never appeal a confirmation order due to its binding effect. Here, Scotiabank filed its Motion to Set Aside Confirmation Order within 14 days of the confirmation order, which tolled the appeal period. It then filed a notice of appeal within 14 days after the bankruptcy court denied the Motion to Set Aside Confirmation Order. Thus, the confirmation order was the subject of a timely appeal.