

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

HORIZON SHIPBUILDING, INC.,

Case No. 02-10415-MAM-11

Debtor.

MARINE ENTERPRISES, INC.,

Plaintiff,

v.

Adv. No. 02-1078

HORIZON SHIPBUILDING, INC.,

Defendant.

**ORDER DENYING MARINE ENTERPRISES, INC.'S**  
**MOTION TO ALTER OR AMEND JUDGMENT**

Jaime W. Betbeze, Mobile, Alabama, Attorney for the Plaintiff  
Irvin Grodsky, Mobile, Alabama; D.E. "Skip Brutkiewicz, Jr., Mobile Alabama,  
Attorneys for the Defendant

This matter is before the Court on the motion of Marine Enterprises, Inc. ("MEI") to alter or amend the Court's judgment in favor of Horizon Shipbuilding, Inc. ("Horizon") for \$1.00. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is denying MEI's motion.

**FACTS**

Horizon, the debtor in possession, is a marine vessel construction and repair firm based in Bayou La Batre, Alabama. On March 3, 2001 Horizon entered into a contract with MEI under which MEI was to perform electrical and ventilation work on Hull 43, a vessel Horizon was

building. During the course of the contract, Horizon and MEI disagreed about both the meaning of the phrase “progress payments” in their contract as well as the quality of MEI’s work on Hull 43.

MEI filed a complaint against Horizon seeking damages under its contract; Horizon counterclaimed seeking damages for its costs to complete work on Hull 43. After the trial of an adversary proceeding, the Court granted judgment in favor of Horizon against MEI in the amount of \$1.00. The Court found the following:

1. The payment term in the contract between Horizon and MEI was ambiguous.
2. The ambiguous payment term is construed against MEI, the drafter; therefore, the contract required monthly payments by Horizon to MEI based upon the percentage of actual physical completion of the job.
3. Both Horizon and MEI breached the contract.
4. MEI waived Horizon’s breach; Horizon did not waive MEI’s breach.
5. Horizon, the nonbreaching party, suffered damages because it had to both rework certain work by MEI that was substandard as well as complete work that MEI was obligated to perform under the contract.

The Court found that Horizon was due damages because MEI breached its contract with Horizon. Horizon claimed that its total cost to complete work on Hull 43 was \$327,936.47. The Court reduced Horizon’s claim under equitable grounds to \$228,883.59. The Court then further reduced Horizon’s claim by subtracting the amount Horizon owed to MEI for the reasonable value of MEI’s work and materials on Hull 43. The Court held that Horizon could recover a maximum of \$120,406.26 if its claimed damages were reasonable; however, the Court found that it could not award Horizon any exact amount for the damages it claimed because the amounts

Horizon entered into evidence were too broadly categorized. Accordingly, the Court awarded Horizon \$1.00 in nominal damages in its September 30, 2002 opinion. MEI filed a motion to alter or amend the Court's judgment on October 3, 2002.

### LAW

A motion to alter or amend judgment may be brought pursuant to Federal Rule of Civil Procedure 59(e). Fed. R. Bankr. P. 9023. "Rule 59(e) does not set forth any grounds for relief and the district court has considerable discretion in reconsidering an issue;" *Sussman v. Salem, Saxon & Nielson*, 153 F.R.D. 689, 694 (M.D. Fla. 1994) (citing to *American Homes Assur. Co. v. Glenn Estess & Associates Inc.*, 763 F.2d 1237, 1238-39 (11th Cir. 1985) however, "the courts have delineated three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; (3) the need to correct clear error or prevent manifest injustice." *Id.* (citing to *Decker Coal Co. v. Hartman*, 706 F.Supp. 745, 750 (D. Mont. 1988) (quoting *All Hawaii Tours v. Polynesian Cultural Center*, 116 F.R.D. 645, 649 (D. Haw. 1987)). There has not been an intervening change in controlling law since this Court issued its September 30, 2002 opinion, nor is new evidence available. Accordingly, MEI's motion may only proceed under the third ground for reconsideration - the need to correct clear error or prevent manifest injustice.

MEI's motion to alter or amend seeks to have the Court enter an \$108,480.33 award of damages in its favor. MEI arrives at this amount by subtracting \$1.00, the amount of damages awarded to Horizon, from \$108,481.33, the amount of Horizon's liability to MEI for the reasonable value of MEI's work and materials on Hull 43. The crux of MEI's argument is that "[its] claim should not have been set off against Horizon's claim 'off the top,' but only after Horizon's reasonable costs had been determined (which they were - - \$1.00)." *MEI's Motion To*

*Alter or Amend Judgment*, p. 2. “Because the Court did not engage in extensive discussion of [this issue] in its prior order, it will now take this opportunity to expand upon its reasoning more fully.” *Decker Coal Co. v. Hartman*, 706 F. Supp. 745, 750 (D. Mont. 1988).

MEI’s assertion that the Court awarded Horizon \$1.00 because that amount is the reasonable value of Horizon’s costs to complete Hull 43 is incorrect. The Court did not find that Horizon’s reasonable cost to complete Hull 43 was \$1.00; rather, the Court held that it could not award Horizon an amount greater than \$1.00 in damages because it could not distinguish between work that was absolutely necessary to meet certification standards and work that may have been unnecessary. The Court felt quite comfortable setting off MEI’s \$108,481.33 counterclaim though.

After reducing Horizon’s total claim against MEI under equitable grounds, Horizon’s remaining claim against MEI was \$228,883.59. Horizon could recover this entire amount, less the \$108,481.33 value of MEI’s work and services on Hull 43, if Horizon could prove that its costs were reasonable. See *Union Springs Telephone Co. v. Green*, 255 So. 2d 896, 900 (Ala. Civ. App. 1971). Based on the evidence presented and the testimony of the witnesses for both parties, the Court found that the reasonable value of Horizon’s work to complete Hull 43 justified setting off Horizon’s \$108,481.33 claim and awarding Horizon \$1.00 in nominal damages.

MEI now moves this Court to alter or amend its prior judgment based on the third ground justifying reconsideration - the need to correct clear error or prevent manifest injustice. Courts have held that a motion of this type must give a “reason why the Court should reconsider its prior decision, and must set forth facts or law of a strongly convincing nature to induce the Court to reverse its prior decision.” *Sussman* at 694. MEI has “not set forth facts or law of a strongly

convincing nature to induce the Court to” alter or amend its prior judgment in favor of Horizon. Id. at 695. Accordingly, the Court concludes that it should deny MEI’s motion to alter or amend its prior judgment. The denial of a Rule 59(e) motion is reversible only for abuse. Id. at 694 (citing to *Huff v. Metropolitan Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982)).

IT IS ORDERED and ADJUDGED that Marine Enterprises, Inc.’s motion to alter or amend the Court’s judgment is denied.

Dated: October 28, 2002

/s/ Margaret A. Mahoney  
MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE