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Subject:02-01205-s Doc. 135 Gonzales v. Albuquerque Tortilla Company, Inc. et al -- Order on

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U.S. BANKRUPTCY COURT

New Mexico

Notice of Electronic Filing

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Case Name: Gonzales v. Albuquerque Tortilla Company, Inc. et al

Case Number: [02-01205-s](#)

WARNING: CASE CLOSED on 03/26/2008

Document Number: [135](#)

Docket Text:

Order Denying Motion to Extend Time (Related Doc # [134]) (jeb)

The following document(s) are associated with this transaction:

Document description:Main Document

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[STAMP bkecfStamp_ID=1021991579 [Date=4/2/2008] [FileNumber=1319807-0]

[e7848fbf7368ca341ac8a2b8ceaadf97ff471d5ead92f615aa80d20a3297e4bd0da201314efc3723d6c7895cbf012c7a9fd8b9c7c00e821e741a2b3a7f75735f]]

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Notice will not be electronically mailed to:

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

FURRS SUPERMARKETS, INC.,
Debtor.

NO. 7-01-10779 SA

YVETTE GONZALES, TRUSTEE,
Plaintiff,

v.

Adv. No. 02-1205 S

ALBUQUERQUE TORTILLA COMPANY, INC.,
F & R FOODS, L.L.C., a New Mexico limited liability company,
M.I. DISTRIBUTING, an unincorporated entity,
M.I. DISTRIBUTING, INC., a Texas corporation,
and ROBERT MARTINEZ,
Defendants.

ORDER DENYING MOTION FOR ENLARGEMENT OF TIME

This matter is before the Court on the motion of M.I. Distributing, M.I. Distributing, Inc. and Robert Martinez (collectively, "M.I.") for enlargement of time. M.I. seeks an Order enlarging the time for filing a Motion to Reconsider. For the reasons set forth, the Court finds that the Motion must be denied. This is a core proceeding. 28 U.S.C. § 157(b)(2).

On April 21, 2008, this Court entered in this case a Memorandum Opinion (doc 132) and a Judgment for Plaintiff (doc 133). M.I. filed its Motion for Enlargement of Time on April 1, 2008, which was 11 days after entry of the Judgment.

M.I. admits that its Motion to Reconsider would be construed as a Motion for a new trial, and that the deadline for such a motion was March 31, 2008. Doc 134 ¶ 6. See Bankruptcy Rule

9023, incorporating Fed.R.Civ.P. 59¹. M.I. argues excusable neglect under Rule 9006(b)(1) subparagraph (2).

Bankruptcy Rule 9006(b) governs enlargements of time. That rule provides, in part:

(1) In general

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) Enlargement not permitted

The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

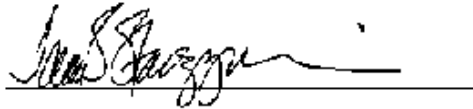
(Emphasis added.)

Because M.I.'s request is based on Rule 9023, the Court is without power to grant the relief. See Home & Family, Inc. v. England Resources Corp. (In re Home & Family, Inc.), 85 F.3d 478, 481 (10th Cir. 1996)(holding that the "plain language" of Rule 9006(b)(2) prevents the court from enlarging the time for taking action under Rule 9023.); In re Bryan Road, LLC, 382 B.R. 855,

¹Fed.R.Civ.P. 59(e) states: "Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment."

856 (Bankr. S.D. Fla. 2008)("The language of [Rule 9006(b)(2)] could not be clearer. I may not enlarge the time for the filing of a motion for reconsideration under either Rule 9023 or Rule 9024."); In re LaClair, 360 B.R. 388, 396 (Bankr. D. Mass. 2006) (holding that the deadline for filing Rule 9023 motions is 10 days and may not be enlarged.); Schwab v. J.R. Trucking & Rigging, Inc. (In re Old Summit Mfg., LLC), 324 B.R. 557, 560 (Bankr. M.D. Pa. 2005)(holding that court has no discretion, nor do the rules grant it authority, to extend the time to file a request for reconsideration.)

IT IS ORDERED that the Motion for Enlargement of Time (doc 134) is denied.



Honorable James S. Starzynski
United States Bankruptcy Judge

Date Entered on Docket: April 2, 2008

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