

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT L. MOY, III,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 01-CV-5693
	:	
M&T MORTGAGE CORPORATION and	:	
JOHN DOES (1-5),	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

May 15, 2002

Defendant M&T Mortgage Corporation (“M&T”) seeks reconsideration of the Court’s April 5, 2002 Order denying its Motion to Dismiss the complaint of Plaintiff Robert L. Moy, III (“Plaintiff”).

I. FACTS

In its Motion to Dismiss, M&T argued that Plaintiff lacked standing to prosecute this action under O’Dowd v. Trueger (In re O’Dowd), 233 F.3d 197 (3d Cir. 2000). In summary, in that case, the Third Circuit held that a debtor could not maintain the cause of action at issue because it constituted property acquired by the estate (rather than the debtor) after the commencement of the bankruptcy case, pursuant to § 541(a)(7) of the Bankruptcy Code. That court’s holding relied partly on the fact that the claim at issue was “traceable directly” to a separate cause of action that *had* accrued before the bankruptcy filing, and had become part of

the estate at the time the action began pursuant to § 541(a)(1). M&T argued that, under O’Dowd, Plaintiff lacked standing to bring this case because Plaintiff’s cause of action was similarly “traceable directly” to conduct that occurred before Plaintiff filed for bankruptcy.

In a memorandum dated April 5, 2002, the Court denied M&T’s motion, and rejected M&T’s application of O’Dowd to the case at bar. The Court did so partly because, in contrast to O’Dowd, there was no suggestion that the pre-petition conduct to which the cause of action was allegedly directly traceable gave rise to a separate cause of action that accrued *before* the filing of the petition, and which also became part of the original bankruptcy estate under § 541(a)(1). Therefore, O’Dowd provided no reason why Plaintiff’s cause of action in this case should also be considered property acquired by the estate after the commencement of the bankruptcy case pursuant to § 541(a)(7).

In its memorandum, the Court noted that M&T did not argue that Plaintiff’s cause of action had accrued *before* the filing of Plaintiff’s bankruptcy case. If that were the case, since Plaintiff did not seek to exclude the claim from the bankruptcy estate, the cause of action would immediately become part of the estate upon commencement of the action under § 541(a)(1), and Plaintiff would lack standing to pursue to claim. See, e.g., Feist v. Consolidated Freightways Corp., 100 F. Supp. 2d 273, 275 (E.D. Pa. 1999), aff’d, 216 F.3d 1075 (3d Cir. 2000).

In its Motion for Reconsideration, M&T now argues that Plaintiff’s cause of action accrued *before* the filing of the bankruptcy action. For the reasons discussed below, M&T’s motion is DENIED.

II. DISCUSSION

The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986). Under Rule 59(e), a party must rely on one of three grounds: (1) the availability of new evidence not previously available, (2) an intervening change in controlling law, or (3) the need to correct a clear error of law or to prevent manifest injustice. See Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). “Because federal courts have a strong interest in finality of judgments, motions for reconsideration should be granted sparingly.” Continental Casualty Co. v. Diversified Indus., 884 F. Supp. 937, 943 (E.D. Pa. 1995).

M&T does not even attempt to assert one of the required three grounds, completely bypassing the legal standard for a motion for reconsideration. M&T claims only that “this motion for reconsideration is appropriate because it speaks to the concern of the Court, namely, the determination of whether plaintiff’s claims accrued pre-petition.” However, this point could have been *M&T’s* concern in its original motion. Parties cannot make additional arguments in a motion for reconsideration which should have been made before judgment. See Smith, 155 F.R.D. at 97. Similarly, “a motion for reconsideration may not advance new facts, issues, or arguments not previously presented to the court.” Vaidya v. Xerox Corp., No. 97-547, 1997 WL 732464 at *2 n.3 (E.D. Pa. Nov. 25, 1997).

M&T attempts to do precisely that with this motion. In its Motion to Dismiss, M&T relied upon O’Dowd, a case in which the cause of action at issue accrued *after* a bankruptcy petition was filed but was nonetheless found to be property belonging to the

bankruptcy estate, rather than the debtor. Now, after consideration of the Court's April 5, 2002 memorandum, M&T reverses course and argues that the cause of action accrued *before* the filing of the bankruptcy case. Nothing prevented M&T from advancing this straightforward argument – which has nothing to do with the holding in O'Dowd – in its original motion. It did not. On a Motion for Reconsideration, the Court simply will not entertain such an argument.

The Court also notes that the question of precisely when a cause of action accrues is fact specific. See Horn v. A.O. Smith Corp., 50 F.3d 1365, 1370 (7th Cir. 1995). Therefore, even if it were to address the merits of M&T's argument, the Court would be hesitant to conclude, on a motion to dismiss, that it is “beyond doubt that the plaintiff can prove no set of facts” such that a claim accrued after his bankruptcy filing. If it so chooses, M&T may argue that Plaintiff's cause of action accrued before the bankruptcy filing upon a developed factual record at the summary judgment stage.

An appropriate order follows.

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Defendants.	:	

ORDER

AND NOW, this 15th day of May 2002, upon consideration of Defendant M&T Mortgage Corporation's Motion for Reconsideration (Docket No. 11) and Plaintiff's response thereto (Docket No. 14), it is hereby **ORDERED** that Defendant's motion is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.