

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

CIVIL ACTION NO. 00-688-JBC

SIEMENS BUILDING TECHNOLOGIES, INC.

PLAINTIFF,

VS.

**ORDER**

BTS, INC.

DEFENDANT.

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This matter is before the court upon the plaintiff's motion to alter or amend (No. 56). The court, having reviewed the record and being otherwise sufficiently advised, will deny the motion.

On September 11, 2002, the court granted the plaintiff's second motion for summary judgment, finding that the plaintiff is entitled to \$70,218.00, plus pre-judgment interest, as a result of the defendant's breach of contract. The plaintiff seeks to amend that order, claiming that it is entitled to a reduction of the original contract price for the telephone system work which the prime contractor, Farris & Farris, eliminated from the general contract.

Motions under Rule 59(e) must either establish a manifest error of law or present newly discovered evidence. *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6<sup>th</sup> Cir. 1998). The plaintiff maintains that the court made an error in refusing to grant it a reduction for the telephone system work that was eliminated from the general contract because various provisions in the parties' contract would have allowed the plaintiff to reduce the defendant's compensation in the event that the requirements of the general contract changed. The plaintiff, however, did not reference

these provisions in its summary judgment motion. Thus, the court did not err in finding that the plaintiff had not established an entitlement to the telephone system reduction as a matter of law, see Fed. R. Civ. P. 56(c), and the plaintiff has not shown that the court committed a manifest error in this regard. See *Sault Ste. Marie Tribe of Chippewa Indians*, 146 F.3d at 374 (“Rule 59(e) motions are aimed at reconsideration, not initial consideration.”). Nor has the plaintiff presented any newly discovered evidence in support of its motion. Furthermore, the notice of bankruptcy filed by the defendant on October 2, 2002, may have deprived this court of jurisdiction over the plaintiff’s motion. See 11 U.S.C. §362(a); *Petruso v. Ford Motor Credit Co.*, 233 F.3d 417, 423 (6<sup>th</sup> Cir. 2000)(notice of bankruptcy normally imposes an automatic stay on legal actions taken against the debtor’s estate). Although some authorities have allowed a court to decide motions for reconsideration subsequent to the filing of a bankruptcy notice, see *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 305-306; *Picco v. Global Marine Drilling Co.*, 900 F.2d 846, 850 (5<sup>th</sup> Cir. 1990), none of them have allowed such motions to increase the indebtedness of the debtor’s estate -- the relief sought by the instant plaintiff. See *Picco*, 900 F.2d at 850 (5<sup>th</sup> Cir. 1990)(district court can only enter orders not inconsistent with the terms of the bankruptcy stay); *Petruso v. Ford Motor Credit Co.*, 233 F.3d at 423 (6<sup>th</sup> Cir. 2000)(purpose of the bankruptcy stay is to prevent further assessments on a pre-petition claim).<sup>1</sup> Accordingly,

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<sup>1</sup> The imposition of the automatic stay does not extinguish or discharge the plaintiff’s claim. *Pennsylvania Dep’t of Public Welfare v. Davenport*, 495 U.S. 552, 560 (1990). Rather, it requires only that the claim be brought in bankruptcy court. *Hillis Motors, Inc. v Hawaii Automobile Dealers’ Ass’n*, 997 F.2d 581, 586 (9<sup>th</sup> Cir. 1993). This order shall not be construed as a ruling on the merits of the plaintiff’s claim; instead, it is simply a recognition that the plaintiff has not shown that the court erred in finding that its motion for summary judgment failed to establish an entitlement to a \$7,964.10 reduction in the original contract price.

**IT IS ORDERED** that the plaintiff's motion to alter or amend (No. 56) is **DENIED**.

**IT IS FURTHER ORDERED** that the trial scheduled on October 21, 2002 is  
**CANCELED**.

This the \_\_\_\_\_ day of October, 2002.

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JENNIFER B. COFFMAN, JUDGE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY