UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ENRON CORP., et al.,	:	Case No. 01-16034 (AJG)
Debtors.	:	(Confirmed Case)
ENRON CORP.,	:	
Plaintiff,	:	
v.	:	Lead. Adv. Pro. No. 03-92909 (AJG)
CAROL WHALEN, EXECUTRIX OF THE ESTATE OF JOHN C. BAXTER,	:	Adv. Pro. No. 04-02462 (AJG)
Defendants.	:	

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER (I) GRANTING IN PART THE MOTION OF ENRON CORP. FOR SUMMARY JUDGMENT AND (II) DENYING IN FULL THE MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGMENT, OF CAROL WHALEN, AS INDEPENDENT EXECUTRIX OF THE ESTATE OF JOHN C. BAXTER

Upon review of Enron Corp.'s ("Enron") January 4, 2007, Motion for Reconsideration ("Motion"), filed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and Rule 9024 of the Federal Rules of Bankruptcy Procedure, of the Court's Order Granting in Part the Motion of Enron Corp. for Summary Judgment and Denying In Full the Motion for Summary Judgment, or in the alternative Partial Summary Judgment, of Carol Whalen, as Independent Executrix of the Estate of John C. Baxter ("Order"), dated November 2, 2006, the Court concludes that the Motion should be denied.

"The standard for granting . . . a motion [for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). Moreover, "a motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided." *Id.* "Nor may the moving party use such a motion to 'advance new facts, issues or arguments not previously presented to the court.'" *C & D Restoration, Inc. v. Laborers Local 79*, No. 02 Civ. 9448 (CSH), 2004 WL 1234035, at *2 (S.D.N.Y. 2004) (quoting *Bank Leumi Trust Co. of New York v. Istim, Inc.*, 902 F. Supp. 46, 48 (S.D.N.Y.1995)). Such "limitations are designed to ensure finality and prevent the [motion for reconsideration] from becoming a vehicle by which a losing party may examine a decision 'and then plug the gaps of the lost motion with additional matters.'" *Id.* (quoting *Carolco Pictures, Inc. v. Sirota*, 700 F. Supp. 169, 170 (S.D.N.Y. 1988)).

Enron has failed to raise any issues of fact or law that the Court previously overlooked and that would prompt the Court to alter its previous conclusions as embodied in the Order. Enron argues that the defendant, Carol Whalen ("Whalen"), failed to introduce sufficient evidence regarding her asserted affirmative defenses to Enron's Complaint to create a genuine issue of material fact and thereby survive summary judgment; Enron also argues that Whalen's proffered Rule 56(f) affidavit fails to provide a basis upon which to conclude that such evidence will be forthcoming. However, the issue of Whalen's asserted affirmative defenses was not fully raised and argued before the Court in prior proceedings, as evidenced by the record. Enron's Motion for Summary Judgment itself did not at any point discuss or even mention the twenty-four affirmative defenses Whalen asserted in her Answer. *Lead Adv. Pro.*, Docket No. 231. Nor

did the parties discuss those affirmative defenses at the June 1, 2006, hearing held on the parties' respective motions for summary judgment. *Lead Adv. Pro.*, Docket No. 256. In fact, Enron only first raised the arguments asserted here in its reply to Whalen's response, arguing only, like here, that Whalen's Rule 56(f) affidavit did not meet the statutory standards. *Lead Adv. Pro.*, Docket No. 247, 2-4. Thus, at no point did Enron introduce evidence sufficient to satisfy its burden of persuasion and shift the burden of production to Whalen. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Moreover, and not unrelated, it is clear from the record that the Court has insufficient information at this time to consider the validity of the asserted affirmative defenses. If Enron wishes to test the foundation of those defenses, a new motion for summary judgment or partial summary judgment would be the proper venue.

Therefore, for the reasons set forth herein, it is hereby:

ORDERED, that the Motion is denied.

Dated: January 16, 2007
New York, New York

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE