

FSM SUPREME COURT TRIAL DIVISION

PERDUS I. EHSA AND TIMAKIO I. EHSA,)	CIVIL ACTION NO. 2013-030
)	
Plaintiffs,)	
)	
vs.)	
)	
FSM DEVELOPMENT BANK, JOSES GALLEN,)	
HON. READY JOHNNY, POHNPEI STATE,)	
and POHNPEI STATE DEPARTMENT OF)	
LAND AND NATURAL RESOURCES, and)	
POHNPEI STATE COURT OF LAND TENURE,)	
)	
Defendants.)	
)	

ORDER DENYING RECONSIDERATION OF RULE 11 SANCTIONS

Martin G. Yinug
Chief Justice

Decided: June 12, 2014

APPEARANCES:

For the Plaintiffs: Benjamin M. Abrams, Esq.
International Guam Law Offices, P.C.
P.O. Box 141
Hagatna, Guam 96932

For the Defendant: Nora E. Sigrah, Esq.
(FSM Dev. Bank) P.O. Box M
Kolonias, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Motions; Judgments – Alter or Amend Judgment

A timely filed motion to reconsider a final order is considered an FSM Civil Rule 59(e) motion to alter or amend a judgment. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

Judgments – Alter or Amend Judgment

The court may alter or amend a final order under Rule 59(e) on any of the following four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in controlling law. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

Civil Procedure – Motions

Motions for reconsideration must be narrowly construed and strictly applied in order to

discourage litigants from making repetitive arguments on the same issues that have been thoroughly considered by the court. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423, 424 (Pon. 2014).

Civil Procedure – Motions; Judgments – Alter or Amend Judgment

A Rule 59(e) motion may not be used to relitigate old matters, and arguments that could have been raised before may not be raised for the first time in a motion for reconsideration. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423 (Pon. 2014).

Civil Procedure – Motions; Judgments – Alter or Amend Judgment

Since the plaintiffs' argument that the delay in the imposition of sanctions is evidence of the reasonableness of their complaint is an extension of their argument of a meritorious complaint, it will be considered on a motion for reconsideration, but when the plaintiffs' argument that the delay in imposing sanctions prejudiced them is clearly a new argument that could and should have been raised in their original opposition, this latter timeliness argument is a new issue that the court must decline to consider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

Civil Procedure – Motions; Civil Procedure – Sanctions

Mere disagreement with the court's application of the standard for imposing Rule 11 Sanctions does not support a motion to reconsider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

Civil Procedure – Sanctions

A motion to reconsider the imposition of sanctions on counsel will be denied when the movants have not demonstrated that reconsideration is necessary in order to correct a manifest error of law or fact on which the judgment is based; when their timeliness argument should have been raised earlier and so will not be considered on a motion for reconsideration; when their alternative argument was thoroughly discussed and rejected in an earlier order; and when they do not cite any authority in support of their contention that the court should modify its sanctions order in light of the harm to counsel's professional reputation. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This matter comes before the Court on Plaintiffs' motion for reconsideration of this Court's April 29, 2014 order imposing sanctions on Plaintiffs' attorney Benjamin Abrams for violation of FSM Civil Rule 11. Plaintiffs filed their motion for reconsideration on May 12, 2014, and Defendant FSMDB filed its opposition on May 22, 2014. Plaintiffs then filed a reply to FSMDB's opposition on June 2, 2014. For the following reasons Plaintiffs' motion for reconsideration is denied.

I. STANDARD OF REVIEW UNDER FSM CIVIL RULE 59

A timely filed motion to reconsider a final order is considered an FSM Civil Rule 59(e) motion to alter or amend a judgment. See Alonso v. Pridgen, 15 FSM Intrm. 597, 600 (App. 2008); Rivera v. Melendez, 291 F.R.D. 21 (D.P.R. 2013). The Court may alter or amend a final order under Rule 59(e) on any of the following four grounds: (1) to correct a manifest error of law or fact upon which the judgment is based; (2) the Court is presented with newly discovered or previously unavailable evidence; (3) to prevent a manifest injustice; or (4) there is an intervening change in controlling law. Chuuk v. Secretary of Finance, 9 FSM intrm. 99, 100 (Pon. 1999) (citing 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2810.1, at 124-27 (2d ed. 1995)).

Motions for reconsideration must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on the same issues that have been thoroughly considered by the court. Range Road Music, Inc. v. Music Sales Corp., 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000). A Rule 59(e) motion may not be used to relitigate old matters, see Palmer v. Champion Mortgage, 465 F.3d 24 (1st Cir. 2006), and arguments that could have been raised before may not be raised for the first time in a motion for reconsideration, Vallejo v. Santini-Padilla, 607 F.3d 1, 7 n.4 (1st Cir. 2010); Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877 (9th Cir. 2000).

II. ANALYSIS

A. Court Will Not Consider Plaintiffs' New Timeliness Argument

Plaintiffs argue that the Court's April 29, 2014 order imposing sanctions was untimely because that order was issued over a month after the case had been decided on February 10, 2014, and well after the time for appeal had run on March 24, 2014. Plaintiffs cite persuasive U.S. authority for the proposition that motions for rule 11 sanctions should be served promptly after an inappropriate paper is filed. See Pls. Mot. To Reconsider at 2 (May 12, 2014). In this case the offending paper was the First Amended Complaint filed on October 8, 2013. In response to that Complaint, FSMDB filed a motion to dismiss on October 17, 2013, but waited to file its motion for sanctions until February 3, 2014.

Plaintiffs argue that FSMDB's delay in filing a motion for sanctions is significant for two reasons. First, because the delay suggests that neither FSMDB nor this Court considered the First Amended Complaint sanctionable at the time it was filed. See CTC Imports & Exports v. Nigerian Petroleum Corp., 951 F.2d 573, 578 (3d Cir. 1991) (the reasonableness of an attorney's filings should be tested in light of the circumstances at the time the pleading was submitted). This argument, that the complaint was reasonable at the time it was filed, is addressed *infra*.

Second, Plaintiffs contend that the delay in the imposition of sanctions prejudiced them, presumably by encouraging them to prosecute this case rigorously which resulted in FSMDB incurring additional attorney's fees which Plaintiffs' attorney Benjamin Abrams must now pay. Plaintiffs further argue that the lack of a safe harbor provision in FSM Civil Rule 11 is a factor that FSM courts should consider as militating in favor of a strict application of the rule that motions for Rule 11 sanctions should be filed at the earliest practicable date. See In re Kunstler, 914 F.2d 505, 513 (4th Cir. 1990) (imposing sanctions 6 weeks after a case was voluntarily dismissed with prejudice, and noting that a violation of Rule 11 is complete when the offending paper is filed).

In response to Plaintiffs' claim that they were prejudiced by the delay in the imposition of sanctions, Defendant FSMDB argues in its May 22, 2014 Opposition that the timeliness argument has been waived by Defendants, because it could have been presented in their February 10, 2014 opposition to FSMDB's motion for sanctions. Indeed, as discussed (*supra*), arguments that could have been raised before may not be raised for the first time in a motion for reconsideration.

Plaintiffs, in their June 2, 2014 memorandum in reply to FSMDB's opposition, urge the Court to consider the timeliness argument as "ancillary to, and in extension of, Plaintiffs' core contention of a meritorious complaint as expressed in their 10 February 2014 Opposition to Sanctions." Pls.' Mem. at 2 (June, 2 2014). In support of this contention Plaintiff's cite language from their February 10, 2014 Opposition to Sanctions in which they argue that "with all due respect, Defendant's Motion . . . is itself reactionary, vexatious, devoid of merit and impedes resolution of questions with national significance of first impression by this honorable Court." *Id.* at 2. Plaintiffs contend that the timeliness argument is not a new argument, but rather is intended to further their overarching contention that FSMDBs'

motion for sanctions is without merit.

Having considered Plaintiffs' argument presented above, it is clear that the Court must distinguish between Plaintiffs' two distinct timeliness arguments. Plaintiffs' argument that the delay in the imposition of sanctions is evidence of the reasonableness of their complaint is indeed an extension of their argument of a meritorious complaint. However, Plaintiffs' argument that the delay in imposing sanctions prejudiced them is clearly a new argument that could and should have been raised in their February 10, 2014 Opposition. As this latter timeliness argument represents a new issue that could have been raised by Plaintiffs in their February 10, 2014 Opposition, the Court must decline to consider the issue upon a motion for reconsideration.

B. *Court will not Consider Repetitive Argument that Complaint was an Unprecedented but Reasonable Cause of Action*

Plaintiffs urge the Court to reconsider the imposition of sanctions, arguing that the question of this Court's jurisdiction was one of first impression, and counsel for Plaintiffs could therefore plausibly believe that this Court could entertain Plaintiffs claim. Pls.' Mot. for Reconsideration, at 9 (May 12, 2014). In support of their contention that their claims were reasonable, Plaintiffs point to the delay on the part of FSMDB and the Court respectively in requesting and imposing sanctions. Plaintiffs characterize the Court's order imposing sanctions as "an untenable situation where a competent trial attorney and an experienced judge had different, but plausible views of the law, with the unjust result that well after the case was decided, sanctions were imposed by the judge upon the attorney, relegating Plaintiffs' complaint to bad faith, a delay strategy and a bogus cause of action." *Id.* at 9-10.

As explained *supra*, motions for reconsideration must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on the same issues that have been thoroughly considered by the court. In this instance the Court thoroughly addressed Plaintiffs' core argument of a meritorious complaint in the April 29 Memorandum and Order Imposing Rule 11 Sanctions. The Court concluded that relief for the causes of action in Plaintiffs' First Amended Complaint is "plainly foreclosed by the Appellate Division's decision in Berman v. FSM Supreme Court (I), 7 FSM Intrm. 8 (App. 1995)." Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371 (Pon. 2014). The Court further concluded that Plaintiffs failed to advance any argument for modification of the law and instead argued for a change in the law as if it were existing law, and failed to disclose contrary controlling precedent. *Id.* at 372.

Mere disagreement with this Court's application of the standard for imposing Rule 11 Sanctions does not support a motion to reconsider. See Hutchinson v. Stanton, 994 F.2d 1076 (4th Cir. 1993). The Court has previously considered and rejected Plaintiffs' argument that the First Amended Complaint included unprecedented but reasonable causes of action. Therefore, the Court must decline to revisit the issue upon a motion for reconsideration.

III. CONCLUSION

Plaintiffs have not demonstrated that reconsideration of this Court's April 29, 2014 order imposing sanctions on Plaintiffs' attorney Benjamin Abrams is necessary in order to correct a manifest error of law or fact upon which the judgment is based. Plaintiffs' timeliness argument should have been raised earlier, and so will not be considered upon motion for reconsideration. Plaintiffs' alternative argument, that the offending complaint in this case included unprecedented but reasonable causes of action, had been thoroughly discussed and rejected in the April 29, 2014 order. Lastly, Plaintiffs do not cite any authority in support of their contention that the Court should modify its sanctions order in light of the harm to Benjamin Abram's professional reputation, see Pls.' Mot. for Reconsideration at

11, Ex. D (May 12, 2014).

NOW THEREFORE IT IS HEREBY ORDERED that Plaintiffs' May 12, 2014 motion for reconsideration of this Court's order imposing sanctions is hereby DENIED.

Plaintiffs shall have 10 days from the service of this Order upon them to respond to FSMDB's statement of costs and fees filed on May 6, 2014, and FSMDB's supplemental statement of fees filed on May 22, 2014.

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FSM SUPREME COURT APPELLATE DIVISION

FSM DEVELOPMENT BANK,)	APPEAL CASE NO. K6-2013
)	Civil Action No. 2012-2004
Appellant,)	
)	
IN THE MATTER OF THE ESTATE OF)	
MAKATO EDMOND,)	
)	
Deceased.)	
)	
RANDY EDMOND,)	
)	
Appellee.)	
)	

OPINION

Argued: February 14, 2014

Decided: June 30, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court

Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

Hon. Benjamin F. Rodriguez, Specially Assigned Justice, FSM Supreme Court*

*Chief Justice, Pohnpei Supreme Court

APPEARANCE:

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