

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

STEVEN J. MALPERE, DAVID STAPLES)
and MARJA STAPLES)
)
Plaintiffs,) Civil No. 2003-132
)
)
v.) Action for Damages,
) Breach of Fiduciary
) Responsibility, Etc.
RUYTER BAY LAND PARTNERS, LLC,)
RUYTER BAY LAND INVESTORS, LLC)
MIKAEL VAN LOON, STEPHEN)
STRANAHAN, CHARLES SALISBURY,)
GRANT HATHAWAY, and FRANK MURRAY,)
)
Defendants.)
)
-----)
RUYTER BAY LAND PARTNERS, LLC)
and RUYTER BAY LAND)
INVESTORS, LLC,)
)
Counterclaimants,)
)
v.) Action for Damages and
) Declaratory Judgment
)
STEVEN J. MALPERE, DAVID STAPLES,)
and MARJA STAPLES)
)
Counterclaim defendants.)
)
-----)

ATTORNEYS:

Steven J. Malpere,
St. Thomas, USVI
Plaintiff pro se,

David Staples and Marja Staples
St. Thomas, USVI
Plaintiffs pro se,

Daryl Dodson, Esq.

St. Thomas, USVI
For the defendants.

MEMORANDUM

Gomez, J.

There are three motions currently pending, which this memorandum addresses. Plaintiffs David H. Staples and Marja Staples (the "Staples"), pro se, move this court to vacate its December 23, 2004, partial summary judgment ruling.¹ The counterclaimants, Ruyter Bay Land Partners, LLC and Ruyter Bay Land Investors, LLC (the "counterclaimants") move to dismiss without prejudice the remaining count of their counterclaim against plaintiffs. The defendants Ruyter Bay Land Investors, LLC, Ruyter Bay Land Partners, LLC, Mikael van Loon, Stephen Stranahan, Charles Salisbury, and Grant Hathaway (the "defendants") also move to file supplementary information with the Court. For the reasons stated more fully herein, the motion to reconsider will be denied; the motion to dismiss the remaining counterclaim count will be granted; and, the motion to file supplemental information will be denied as moot.

¹ The Staples move the "court [to] revisit and vacate this ruling in order to prevent manifest injustice and resolve the issues as a matter of law in favor of plaintiffs...." (Staples' Mot. to Vacate at 13.)

I. Reconsideration Standard

Motions for reconsideration are governed by Local Rule of Civil Procedure 7.4, which provides:

A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge. Such motion shall be filed within ten (10) days after the entry of the order or decision unless the time is extended by the court. . . . A motion to reconsider shall be based on: 1. intervening change in controlling law; 2. availability of new evidence, or; 3. the need to correct clear error or prevent manifest injustice.

LRCi 7.4. The purpose of a motion for reconsideration "is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration "is not a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not." *Bostic v. AT&T of the Virgin Islands*, 312 F. Supp. 2d 731, 733 (D.V.I. 2004). As the *Bostic* court noted, ". . . Local Rule 7.4 affirms the common understanding that reconsideration is an 'extraordinary' remedy not to be sought reflexively or used as a substitute for appeal." *Id.*

II. The Staples' Motion for Reconsideration

Among the many issues raised by the Staples in their motion

is their status as *pro se* litigants.² They insist that this Court must give them wide latitude when assessing their motion for reconsideration because they are *pro se*. (Staples' Mot. to Vacate at 4-5.) While it is true that *pro se* litigants must be given wider latitude than those who are represented by counsel, it is also true that the Court need not stretch the bounds of its consideration beyond the reasonable. As the United States Supreme Court has noted: "[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil v. United States*, 508 U.S. 106, 113 (1993). Thus, notwithstanding some latitude, like any other litigant the Staples must satisfy the requirements of LRCi 7.4 in order to prevail.

The Staples have failed to meet their burden for reconsideration. The general tenor of the Staples' claim for

² Defendants contend the Staples' motion for reconsideration was not timely filed. The order the Staples wish the Court to reconsider was dated December 22, 2004, and docketed on December 23, 2004. According to LRCi 7.4, the Staples then had ten days, discounting holidays and weekends, to file for reconsideration, bringing the deadline to January 12, 2005. The Staples' motion was filed on January 14. The Court, however, is mindful of the holding in *Bostic*: "Only in this context--when a party seeks reconsideration of an order or other decision not amounting to a final judgment--is it within the district court's discretion to extend the 10-day time limit as provided by Local Rule 7.4." 312 F. Supp. at 734. Pursuant to Fed. R. Civ. P. 54(b), the December 22, 2004 order was a decision dismissing fewer than all the claims involved in the instant action and thus not a final judgment. Fed. R. Civ. P. 54(b). The Court thus exercises its discretion to accept and address the Staples' motion.

relief is that the Court bears the burden of ensuring that they present a legal, cogent and persuasive argument. For example, the Staples argue that the Court had a responsibility to direct them to amend their complaint to rectify any shortcomings with respect to standing so that "the actual legal issues might be litigated." (Staples' Mot. to Vacate at 4 & 8.) Significantly, that argument, as is true of the others presented by the Staples, fails to identify any intervening change in the law, new evidence, or clear error, any one of which would warrant reconsideration.

Accordingly, the Staples' motion for reconsideration of the Court's December 23, 2004, order is legally insufficient and will be denied.

III. Counterclaimants' Motion to Dismiss

The counterclaimants seek to dismiss the remaining count in their counterclaim against plaintiffs. Count II of their counterclaim asserts slander of title and creating a cloud on title.

The decision whether to grant a motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2) lies within the sound discretion of the court. *Minnesota Mining and Mfg. Co. v. Barr Laboratories, Inc.*, 289 F.3d 775, 779 (Fed. Cir. 2002); *Ockert v. Union Barge Line Corp.*, 190 F.2d 303, 304

(3d Cir. 1951). Furthermore, Federal Rule of Civil Procedure 41(c) makes clear that the provisions of Rule 41 apply to counterclaims: "The provisions of this rule apply to the dismissal of any counter-claim, cross-claim, or third-party claim."

In considering whether to allow a voluntary dismissal, the court must assess whether such dismissal will occasion prejudice to the non-moving party. See *Minnesota Mining*, 289 F.3d at 779 (stating that prejudice to non-moving party is a consideration for the court); *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 316, n.1 (5th Cir. 2002) ("Rule 41(a)(2). . . is designed to protect non-movants from prejudice. . ."). The Staples contend they will be prejudiced by this dismissal. In so doing, they reiterate many of the arguments they made in their motion to reconsider. Importantly, they have failed to present any argument that even suggests they would be prejudiced where, as here, they no longer have the burden of defending a claim.

Accordingly, the counterclaimants' motion to dismiss will be granted.

Finally, because the Court has denied the Staples' motion for reconsideration, the defendants' motion to file supplemental information pertaining to that motion is denied as moot.

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Entered this 9th day of June, 2005.

For the Court:

_____/s/_____
Curtis V. Gomez
District Judge

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Steven J. Malpere,
St. Thomas, USVI
Plaintiff pro se,

David Staples and Marja Staples
St. Thomas, USVI
Plaintiffs pro se,

Daryl Dodson, Esq.
St. Thomas, USVI
For the defendants.

ORDER

For the reasons stated in the memorandum of even date, it is hereby

ORDERED that the Staples' motion to reconsider the Court's order of December 23, 2004, is **DENIED**; and, it is further

ORDERED that the counterclaimants' motion to dismiss Count II of their counterclaim is **GRANTED**; and, it is further

ORDERED that Count II of the counterclaim is **DISMISSED**; and, it is further

ORDERED that the defendants' motion for leave to file a supplement is **DENIED**.

Entered this 9th day of June, 2005.

For the Court:

_____/s/_____
Curtis V. Gomez
District Judge

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: ____/s/_____
Deputy Clerk

Copies to:

Hon. G.W. Barnard
Monica Howard, Esq.
Steven J. Malpere
David H. Staples
Marja Staples

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J. Daryl Dodson, Esq.
Mrs. Jackson
Mrs. Trotman
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