

LEXSEE 140 F. SUPP. 2D 1098

STACY BARTHOLIC, et al., Plaintiff(s), v. SCRIPTO-TOKAI CORPORATION, et al., Defendant(s).

Civil Action No. 98-N-681

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

140 F. Supp. 2d 1098; 2000 U.S. Dist. LEXIS 18634

December 14, 2000, Decided

December 14, 2000, Filed

SUBSEQUENT HISTORY: [**1] Reported at: *140 F. Supp. 2d 1098 at 1123.*

DISPOSITION: "Defendant Scripto-Tokai Corporation's Unopposed Motion for Reconsideration/Clarification of the Order and Memorandum of Decision Dated January 10, 2000 DENIED.

COUNSEL: For STACY (I) BARTHOLIC, STACY BARTHOLIC, plaintiffs: William J. Hansen, McDermott and Hansen, Denver, CO U.S.A.

For SCRIPTO-TOKAI CORPORATION, defendant: Robert B. Hunter, James Ernest Hooper, Wheeler, Trigg & Kennedy, PC, Denver, CO USA.

JUDGES: EDWARD W. NOTTINGHAM, United States District Judge.

OPINIONBY: EDWARD W. NOTTINGHAM

OPINION: [*1123]

ORDER ON MOTION FOR RECONSIDERATION

This matter is once again before the court on Defendant Scripto-Tokai Corporation's meritless and futile, but dogged, attempt to eat its cake and have it, too -- by choosing to litigate this case until it received a decision which was not in all respects satisfactory to it, settling the case on the assumption that it could ask this court to vacate the decision, and now asking the court to revise parts of the decision which it evidently regards as especially intolerable. The formal procedural vehicle by which it sees to accomplish this is "Defendant Scripto-Tokai Corporation's Unopposed Motion for Reconsideration/Clarification of the Order and Memorandum of Decision [**2] Dated January 10, 2000." The motion is without foundation in procedural or substantive law and ironically reflects an exalted view of

this district court's decisions which not even the court itself entertains.

As the title of defendant's motion suggests, I filed with the clerk of court a long Order and Memorandum of Decision in this products liability case on January 10, 2000. That decision outlined the factual and legal reasons for my ruling partly granting and partly denying defendant's motion for summary judgment. I did not seek more extensive publication of that ruling (1) because the decision interpreted a number of substantive provisions of Colorado law as to which the published decisions of the state appellate courts are properly authoritative and (2) because I think the decision of a single district judge, binding on nobody but the parties and their privies and subject ultimately to further appellate scrutiny, should be published only on the rare occasion where there is public interest in the case or where publication would serve some purpose beyond adding to the books one more cacophonous opinion concerning the law. Because defendant's subsequent actions have called into [**3] question the reasoning of the January 10 decision, however, and because the motion now before the court cannot be fully understood without reference to that decision, I will now change my earlier predilection and publish the decision.

Several months after I filed the January 10 decision, the parties began to discuss settlement under the auspices of a magistrate judge. On August 30, the magistrate judge, reciting the parties' notification to him that the case had been settled, ordered them to file their settlement papers by October 30. The parties did not do so. Instead, defendant filed a motion to vacate the January 10 decision, acknowledging that the parties had reached a settlement on August 18, but claiming that the agreement allowed defendant to file the motion to vacate. The motion failed to mention the United States Supreme Court's controlling decision, *U.S. Bancorp Mortgage Company v. Bonner Mall Partnership*, 513 U.S. 18, 115 S. Ct. 386, 130 L. Ed. 2d 233 (1994).

In an second unpublished Order and Memorandum

of Decision filed October 11, I denied the motion to vacate, applying *Bonner Mall* and finding no exceptional circumstances which would justify vacatur. [**4] The parties apparently continued to squabble about settlement, as was evidenced by plaintiffs' October 30 motion to enforce the settlement agreement. It appeared that the parties had again resolved the case when, on November 17, plaintiffs filed a [*1124] request to withdraw their motion to enforce the settlement. On defendant's motion, the court extended until December 11 the deadline for submitting a stipulation or motion dismissing the case in light of the settlement. Once again, that deadline has been ignored, and defendant has instead filed the instant motion. Although defendant purports to submit the motion "without opposition," its papers clarify that plaintiffs "will not agree or stipulate to this motion, but, as a term of settlement, will not oppose it." In other words, I infer, plaintiffs just want their settlement and do not really care if defendant wishes to continue to flop about like a fish out of water.

The procedural prism for considering this motion, though unmentioned in defendant's submission, is well-established. Although the Federal Rules of Civil Procedure do not specifically recognize a motion for reconsideration, the court treats a motion for reconsideration filed [**5] more than ten days after the entry of judgment as one seeking relief from the judgment under rule 60(b) of the Federal Rules of Civil Procedure. *Hatfield v. Board of County Comm'rs for Converse County*, 52 F.3d 858, 861 (10th Cir. 1995); *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). Rule 60(b)(6) provides a catch-all provision which allows a court to reconsider a prior order for "any other reason justifying relief from the operation of the judgment." *See Fed. R. Civ. P. 60(b)(6)*. Rule 60(b)(6) has been referred to as a "grand reservoir of equitable power to do justice in a particular case." *Pelican Prod. Corp. v. Marino*, 893 F.2d 1143, 1147 (10th Cir. 1990) (citations omitted). A court, however, will only award relief under rule 60(b)(6) in extraordinary cases. *Id.* (citing *Ackermann v. United States*, 340 U.S. 193, 202, 71 S. Ct. 209, 213, 95 L. Ed. 207 [1950]). Thus, a motion to reconsider is not a second opportunity for the losing party to make its strongest case, to rehash arguments, or to dress up arguments that previously failed. *See Voelkel v. General Motors Corp.*, 846 F. Supp. 1482, 1483 (D. Kan. 1994), [**6] *aff'd*, 43 F.3d 1484 (10th Cir. 1994).

Most importantly, a motion to reconsider is not a motion "to reargue those issues already considered when a party does not like the way the original motion was resolved." *In re Houbigant, Inc.*, 914 F. Supp. 997, 1001 (S.D.N.Y. 1996).

Here, the motion for reconsideration goes beyond the pale encircling most such motions. Defendant does not even quarrel with the resolution of its motion for summary judgment, aim to change the outcome, or otherwise ask the court to rule on live issues. Instead, it argues about language in the decision which "could be interpreted" as having an untoward specified effect, which alters or amends defendant's duty under Colorado law, or which could be read as deciding issues which should be resolved by a jury -- all in a case which, by defendant's admission, has settled. If the case has settled, the January 10 decision is moot. Settlement has eliminated defendant's right to appeal and obviated any ill effect which an error might have caused the parties in this case. Beyond the parties, the upshot of the decision is speculative. It binds nobody. The *stare decisis* effect of such a district [**7] court decision has been characterized by Judge Posner as "modest -- negligible, really" *Harris v. Board of Governors of the Federal Reserve System*, 938 F.2d 720, 723 (7th Cir. 1991). If the decision is as ambiguous or wrong as defendant insists, other courts and litigants will undoubtedly afford it appropriate treatment. There is a time when every case must end, and that time has passed here. It is therefore

ORDERED as follows:

1. The referenced motion (# 140) is DENIED. [*1125]
2. Within five days of the date of this order, the parties shall file a stipulation or motion for dismissal reflecting the acknowledged settlement of this case. Failure to do so may result in any appropriate sanction permitted by law.

Dated this 14 day of December, 2000.

BY THE COURT:

EDWARD W. NOTTINGHAM

United States District Judge