

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CHARLESTON SC PROPERTY HOLDINGS,
LLC, and HANAHAN SC PROPERTY
HOLDINGS, LLC,

Plaintiffs,

vs.

RITTENBERG OP LLC, HANAHAN OP LLC,
GOLDNER CAPITAL MANAGEMENT, LLC,
SC TWO OP HOLDINGS LLC, and SAMUEL
GOLDNER,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A#: 2023-CP-10-01512

**ORDER DENYING DEFENDANTS'
RULE 59(e) MOTION FOR
RECONSIDERATION OF DENIAL OF
REQUEST FOR STAY AND OFFER
OF BOND**

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SC Court of Appeals

This matter came before the Court on the Defendants' Rule 59(e) Motion for Reconsideration of Denial of Request for Stay and Offer of Bond, filed on May 5, 2023 ("May 5 Motion for Reconsideration"). For the reasons set forth below, the May 5 Motion for Reconsideration is DENIED.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F. 3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the Court's ruling will not support Rule 59(e) relief.¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law to prevent manifest injustice." Hutchinson v.

¹ Rule 59, SCRCP, is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

Staton, 994 F. 2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C. Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E 2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E. 2d 436, 437 (Ct. App 1995). Nor does “[a] party’s mere disagreement with the court’s ruling... warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F. Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Trust Ins. Co., 415 S.C. 115, 135, 781 S.E. 2d 126, 137 (Ct. App. 2015).

PROCEDURAL HISTORY²

1. This is a breach of lease case involving two skilled nursing facilities. By Order Appointing Receiver filed on April 14, 2023 (“April 14 Order”), this Court granted the Plaintiffs’ Motion for Appointment of Receiver and appointed Michael F. Flanagan (“Receiver”) Receiver over the Defendant Lessees, the Facilities, the Personal Property, and the Operations as defined in the April 14 Order.
2. The Defendants filed a Rule 59(e) Motion for Reconsideration, Request for Stay Pursuant to Rule 62(a), and Offer of Bond on the same day, April 14, 2023 (the “April 14 Motion”).

² The Court takes judicial notice of relevant filings in this case both in the Circuit Court and the Court of Appeals. Unless otherwise defined herein, defined terms in this Order have the same meaning as in the Order Appointing Receiver filed on April 14, 2023.

3. This Court entered a Form 4 Order/Judgment on April 27, 2023 (“April 27 Order”) denying Defendants’ April 14 Motion.
4. The Defendants then filed a separate Rule 59(e) Motion for Reconsideration of Denial of Request for Stay and Offer of Bond on May 5, 2023. The Defendants did not comply with Rule 59(g), which required the Defendants to provide a copy of the May 5 Motion for Reconsideration to the undersigned within 10 days after the filing of the Motion. As described further below, the Defendants did not contact the undersigned or provide a copy of the May 5 Motion for Reconsideration until November 20, 2023, which was five and a half months after the filing of the Motion.
5. In the meantime, by his Order Approving Receiver’s Entry Into Operations Transfer Agreement and Lease Termination Agreement entered on August 23, 2023 (“August 23 Order”), Judge Roger M. Young, Sr. authorized the Receiver to terminate the Defendant Lessees’ leases of the two nursing home Facilities which are the subject of the Receivership, and to transfer operations of the Facilities to New Operators.
6. On August 30, 2023, the Defendants filed a Rule 59(e) Motion for Reconsideration of Order Granting Receiver’s Motion to enter into OTA and LTA or in the Alternative for Stay Pursuant to Rule 62(a).
7. On September 6, 2023, the Receiver filed a Report of Consummation of Operations Transfer Agreements and Lease Termination Agreement. In the Report, the Receiver confirmed, among other things, the termination of the Defendant Lessees’ leases and the transfer of operations of the Facilities to the New Operators effective on September 1, 2023.
8. On September 8, 2023, Judge Young entered his Order Denying Defendants’ Motion to Reconsider or in the Alternative Stay (“September 8 Order”).

9. On September 13, 2023, the Defendants served a Notice of Appeal of the undersigned's April 14 Order and April 27 Order, as well as Judge Young's August 23 Order and September 8 Order.
10. On November 17, 2023, the Plaintiffs (as Respondents in the appeal) filed a Motion to Dismiss Part of Appeal with the Court of Appeals, which requested dismissal of the appeal as to the undersigned's April 14 Order and April 27 Order.
11. By email on November 20, 2023, the Defendants' counsel provided a copy of the May 5 Motion for Reconsideration to the undersigned for the first time, and requested a ruling on the Motion.
12. After considering further emails from counsel for the Plaintiffs and the Defendants, the undersigned notified counsel by email on December 5, 2023 that, in light of the Court of Appeals' exclusive jurisdiction over the appeal, it was not the time for this Court to address the May 5 Motion for Reconsideration.
13. By Order filed on January 23, 2024 ("January 23 Order"), the Court of Appeals dismissed the appeal as to the April 14 Order and the April 27 Order.
14. By email on February 20, 2024, the Defendants' counsel notified the undersigned of the Court of Appeals' dismissal of the appeal as to the April 14 Order and the April 27 Order, and requested a ruling on the May 5 Motion for Reconsideration.
15. By email on February 23, 2024, the Plaintiffs' counsel provided the undersigned with the Court of Appeals' Partial Remittitur filed with the Circuit Court on February 15, 2024, and stated reasons why the May 5 Motion for Reconsideration should be denied as moot due to intervening circumstances.

16. On March 6, 2024, this Court informed the parties of its ruling that the Court agreed with the Plaintiffs' arguments and positions, and was therefore denying the Defendants' May 5 Motion for Reconsideration as moot.
17. By Order filed on March 18, 2024 ("March 18 Order") the Court of Appeals dismissed the remaining appeal as to Judge Young's August 23 Order and September 8 Order.

CONCLUSIONS OF LAW

In the May 5 Motion for Reconsideration, the Defendants requested reconsideration of this Court's denial of their request in the April 14 Motion for a Rule 62(a) stay of the April 14 Order "until appeal is taken and a stay upon appeal can be requested in accordance with the Rules of Civil Procedure and the Appellate Court Rules." In light of the Court of Appeals' January 23 Order, the April 14 Order is the law of the case. There can be no further challenge to the April 14 Order, and the Defendants' request for reconsideration of the denial of their previous request for a Rule 62(a) stay is moot.

In the May 5 Motion for Reconsideration, the Defendants also requested reconsideration of this Court's denial of Defendants' offer of bond. Pursuant to Judge Young's August 23 Order and September 8 Order, the Receiver terminated the Defendants' leases of the two nursing home Facilities which are the subject of the Receivership, and transferred operations of the Facilities to New Operators who have been operating the nursing homes since September 1, 2023. Judge Young's Orders further authorized the Receiver to liquidate the remaining assets of the Receivership Estate and pay any remaining debts incurred during the course of the Receivership. In the February 23, 2024 email, Plaintiffs' counsel informed the undersigned that the Receiver has largely done so and that, but for the pendency of the remaining appeal of Judge Young's Orders in which the Receiver is a Respondent, the Receivership is close to conclusion. Subsequently, by

its March 18, 2024 Order, the Court of Appeals dismissed the remaining appeal of Judge Young's Orders. Under the circumstances, the Defendants' request for reconsideration of the denial of their offer of bond is moot.

After considering the issues raised in Defendants' Motion and the record in this case, this Court hereby **DENIES** Defendants' May 5 Motion for Reconsideration.

AND IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Charleston Common Pleas

Case Caption: Charleston Sc Property Holdings Llc , plaintiff, et al VS Rittenberg
Op Llc , defendant, et al
Case Number: 2023CP1001512
Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759