

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Gabriel Barnhill and GSB Enterprises,)
 LLC,)
)
 Plaintiffs,)
)
 vs.)
)
 J. Floyd Swilley, J. Floyd Swilley)
 Investment Advisors, Laurel K. Swilley,)
 SMG Partners, LLC, SMS Services, LP,)
 William C. Piner, WCP Limited, LLC,)
 809 Holdings, LP, QC Financing, LLC,)
 Heath Causey, and Sage Financial)
 Group, LLC,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO. 2014-CP-26-08367
 (formerly 2013-CP-26-02816)

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 SC Court of Appeals

ORDER DENYING DEFENDANTS
 SWILLEY, CAUSEY AND
 809 HOLDINGS' MOTIONS TO SET
 ASIDE ORDER OF MARCH 21, 2016

Gabriel Barnhill and GSB Enterprises,)
 LLC,)
)
 Plaintiffs,)
)
 vs.)
)
 J. Floyd Swilley, J. Floyd Swilley)
 SMG Partners, LLC, SMS Services, LP,)
 William C. Piner, WCP Limited, LLC,)
 Alicia A. Piner, 809 Holdings, LP,)
 Heath Causey, Sage Financial Group,)
 LLC, Sage Advisory Group, L.P.,)
 Sage Private Equity Group,)
 Secured Asset Factoring Exchange, Inc.,)
 SAFE, Inc, Digics, LLC, 9-1-1, Plumbing,)
 LLC, and Sage Funding, L.P.,)
 Christopher Pitcock,)
)
 Defendants.)
)

CASE NO. 2014-CP-26-3362

2016 MAY 25 PM 2:15
 CLERK OF COURT

This matter has come before me pursuant to Defendants' Laurel Swilley's Notice of and Motion to Set Aside Order of March 21, 2016, J. Floyd Swilley's Notice of and Motion to Set Aside Order of March 21, 2016, Heath Causey's Notice of Motion and Motion to Set Aside

Summary Judgment and 809 Holdings, LP's Motion to Reconsider and Amended Notice of Motion To Reconsider. After reviewing the record and the materials submitted by the parties, I am denying all Motions in their entirety.

II. LEGAL STANDARDS

Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP") provides a mechanism for parties to move the court to alter or amend a judgment within ten days following receipt of written notice of the entry of the order. Pursuant to Rule 59(g) a party filing a written motion under Rule 59 shall provide a copy of the motion to the judge within ten (10) days of the filing of the Motion. The purpose of a motion to alter or amend is "to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 722, 778 (2004).

A motion for reconsideration is not intended to give the moving party a "second bite of the apple." Under South Carolina law, a motion for reconsideration is governed by Rule 59(e) of the South Carolina Rules of Civil Procedure. Federal case law is also instructive as the comments to Rule 59, SCRCP state that "Rule 59 is substantially the Federal Rule." A motion for reconsideration under Rule 59(e) "should not be granted, absent highly unusual circumstances, unless the ... court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *See 389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999); *McCall v. Williams*, 59 F. Supp.2d 556, 558 (D.S.C. 1999). Motions for reconsideration are not vehicles for providing litigants with the opportunity to re-litigate previously decided issues. *See National Ecological Foundation vs. Alexander*, 496 F.3d 466, 477 (6th Cir. 2007). The motion may in the discretion of the court be determined on

briefs filed by the parties without oral argument. Rule 59(f), SCRCP.

ANALYSIS

1. J. Floyd Swilley's and Laurel Swilley's Motions are denied.

Laurel Swilley and Floyd Swilley (collectively referred to as "Swilley") have filed identical Motions. They err, however, in their recitation of the facts. Contrary to their assertions, the Motions that were the subject of the February 16, 2016 hearing were served on their prior counsel, John Leiter, on December 15, 2015 and December 16, 2015. Additionally, Swilley improperly asserts that Judge Seals dated his Order on January 25, 2016. The date of Judge Seal's Order is clearly January 14, 2016. The thirty days began on January 14, 2016 and not when the Order was filed. Their argument that the thirty days begins upon the filing of the Order is contrary to the plain language in the Order. Thus, any stay expired on February 13, 2016.

At the hearing, counsel for 809 Holdings represented to the Court that he was in communication with Floyd Swilley about the hearing. "I know that Mr. Swilley and Mr. Piner are representatives of that corporation. And they are the gentlemen that we have been in touch with per 809. They were notified of this hearing, they knew everything that's going on and we are just - - we're trying to move - 809 at this point is trying to claim bankruptcy. Of course we said that months ago . . ." Trans. p. 15, lines 9-17.

Nine separate mailings of the Notice of Hearing were mailed on February 3, 2016 to the Swilley address of 629 Hemlock Avenue, Myrtle Beach, South Carolina 29577, one for each Swilley and one for each of their seven company defendants. Swilley knew of the hearing but chose to not attend. Thus, the hearing was no surprise to them.

Neither J. Floyd Swilley or Laurel Swilley assert through affidavit or otherwise that they did not know about the February 16, 2016 hearing. Instead, Swilley asserts they thought they

were under the "veil of protection", i.e., they thought they were following the order for new counsel but had the date wrong. Laurel Swilley and J. Floyd Swilley chose not to attend the hearing.

The argument by Swilley that there was an agreement to not proceed with the depositions due to Leiter's Motion To Be Relieved As Counsel is also unavailing. The Motion to Compel was filed after the filing of Leiter's Motion To Be Relieved, clearly evidencing there was no such understanding. Furthermore, Swilley never objected in writing to the Motion to Compel in the sixty days after the Motion was filed. Additionally, Swilley did not raise any such argument at the hearing. The Motion of Laurel Swilley and the Motion of J. Floyd Swilley are denied in their entirety.

2. Defendant Heath Causey's Notice of Motion and Motion to Set Aside Summary Judgment filed April 6, 2016 is denied.

Heath Causey's Motion is denied in its entirety. Causey has only moved to set aside the Order on the Summary Judgment Motion. In addition, Mr. Causey points to no error in the factual record or error in law. Mr. Causey was not present at the hearing, even though he was duly notified of the hearing through the Notice of Hearing that was mailed to him on February 3, 2016. Again, like Swilley, Mr. Causey has not filed an affidavit testifying that he did not know about the hearing. Causey's Motion is denied.

3. Defendant 809 Holdings, LP's Motion to Reconsider filed April 8, 2016 and Amended Motion to Reconsider are denied.

809 Holding's Motion states two grounds for reconsideration: (1) that the pleadings of 809 Holdings should not have been stricken, and (2) William Piner's Affidavit should not have

been stricken. 809 Holdings, LP's Amended Motion for Reconsideration is untimely as it was filed and served on April 25, 2016, beyond the time requirements of Rule 59(e), SCRCF.

At the hearing the Court asked counsel for 809 Holdings what counsel did once he received the Motion to Compel. 809 Holdings' counsel advised the Court that Mr. Swilley and Mr. Piner were notified of the hearing, Mr. Swilley is the representative of 809 Holdings, and that counsel's ability to argue for his client is as good as their cooperation with him. No dates were ever proposed because 809 Holdings was "trying to claim bankruptcy." Trans. p. 15, ln. 12-15. Counsel for 809 Holdings acknowledged to the Court the obvious: that he was constrained by his client's failure to cooperate with him. Trans., p. 14, lines 13-22.

809 Holdings erroneously argues on page 2 of its Memorandum, and Exhibit A thereto, that Plaintiffs' Motion for Entry of Default and Striking the Pleadings of Company Defendants for failure to obtain counsel dated February 23, 2016 should not be the basis of the Court's Order. That February 23, 2016 Motion was not the basis for the Court's Order. The December 15, 2015 Motion to Compel was the basis for striking 809 Holdings pleadings, and it specifically requested the relief granted.

Next, 809 Holdings attempts to introduce additional items in its Amended Motion for Reconsideration, including the Exhibits B and C. As stated above, 809 Holdings cannot get a second bite at the apple under Rule 59 when the items could have been presented and argued at the hearing. Even if the Court was to consider the Amended Motion and those items, they demonstrate that 809 Holdings did nothing in the 60 days after the December 15, 2015 Motion to try to eliminate the need for the motion hearing as to 809 Holdings.

No dates were ever provided by 809 Holdings, not even in the two months after the Motion was filed or in response to a simple request a week before the hearing. 809 Holdings'

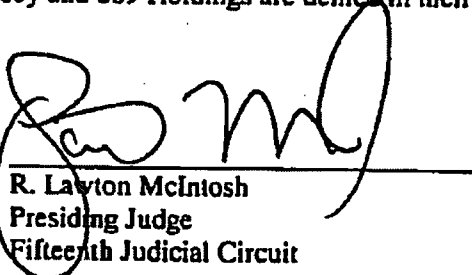
counsel had an uncooperative client. 809 Holdings representatives were asked to provide deposition dates, but 809 Holdings never provided any dates to its counsel. 809 Holdings' argument that it thought there was an agreement to not move forward with the depositions is not supported by the record. At no time prior to the hearing did 809 Holdings write to Plaintiffs' counsel stating an objection to the Motion or the hearing based on any asserted agreement. 809 Holdings' repeated failure to cooperate in discovery and delay resulted in the Court's decision.


Next, 809 Holdings asserts the Affidavit of William Piner should not have been stricken. The Affidavit did not comply with Rule 56 and did not present any material issue of fact that would allow liability on the part of either Plaintiff.

Finally, 809 Holdings cites no error for the granting of summary judgment or judgment on the pleadings. No evidence was proffered on each element of its counterclaims. The Court properly held no duty was owed by Plaintiffs. 809 Holdings Motion and Amended Motion are denied in their entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED that all Motions for reconsideration, relief from or to set aside the Order of March 21, 2016 filed by Defendants Laurel Swilley, J. Floyd Swilley, Heath Causey and 809 Holdings are denied in their entirety.

AND IT IS SO ORDERED.


R. Layton McIntosh
Presiding Judge
Fifteenth Judicial Circuit


Anderson, South Carolina
This 17 day of May, 2015

Copy of Order/
filed 5-25-16 mailed to all
parties not in default on 5-25-16
Initials BM