STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
ELLA LIM AND KWONG CHEUNG, Plaintiffs, v. AMGUARD INSURANCE COMPANY, CONSULTATIVE INSURANCE GROUP, INC., CHERYLE WALLER AND ROB REA, Defendants.	)	Civil Action No. 2016-CP-40-06305 **ORDER DENYING MOTION TO RECONSIDER**

This matter came before the Court on Plaintiffs' Motion for Reconsideration of the Court's Order filed April 11, 2019, granting Defendants Consultative Insurance Group, Inc., Cheryle Waller, and Rob Rea's (hereinafter collectively referred to as "Consultative") Motion for Summary Judgment (hereinafter the "Order"). For the reasons stated below, Plaintiffs' Motion for Reconsideration is DENIED.

In their Motion, Plaintiffs argue, "pursuant to Rules 52 and 50 of the South Carolina Rules of Civil Procedure" that the Court should reconsider the Order because it failed to consider multiple genuine issues of material fact presented by Plaintiffs.

As an initial matter, Plaintiffs appear to be moving under the wrong rules. Rule 50 governs Motions for a Directed Verdict and/or a Judgment Notwithstanding a Verdict, including appeals thereof, and is clearly inapplicable to the Order, which granted a Rule 56 pre-trial Motion for Summary Judgment. Rule 52 dictates the findings of fact and conclusions of law that the court must make when it tries a case without a jury or with an advisory jury, and is equally inapplicable here. In fact, Rule 52(a) specifically states that it is not applicable to motions under

Rule 56. In any event, a more appropriate vehicle for the Motion would have been Rule 59(e). Courts have identified three circumstances in which a Rule 59(e) motion may be granted: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at [the hearing]; or (3) to correct a clear error of law or prevent manifest injustice." Slachta v. Reliance Std. Life Ins. Co., 444 F. Supp. 2d 587, 592 (D.S.C. 2006) (quoting United States ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002)).

Plaintiffs argue that the Order failed to consider the following: (1) Plaintiffs' argument that Consultative owed them a duty as customers seeking insurance coverage; (2) Plaintiff's argument that they did not have to present expert testimony on the duty owed by insurance agents to customers; and (3) Plaintiff's argument that they had an insurable interest in the Property and were damaged as they were the sole members of Cheung's Chinatown, LLC.

However, the Order expressly states that the Court considered Plaintiffs' Memorandum of Law and the arguments made at the hearing where Plaintiffs presented to the Court the very evidence they now claim the Court did not consider. See Order at p.1 and 13. Since the Court did consider the evidence and discussed these issues in its Order, the Motion is denied. Further, Plaintiffs have not satisfied their burden of proving the existence of any of the three circumstances under which a motion for reconsideration could be granted. Accordingly, the Motion is denied. Regardless, the Court will briefly address each of the three pieces of evidence Plaintiffs claim the Court failed to consider.

I. THE ORDER PROPERLY CONSIDERED ALL EVIDENCE REGARDING WHETHER A DUTY WAS OWED TO PLAINTIFFS.

Plaintiffs argue that there is a genuine issue of material fact as to whether Consultative owed them a duty as customers seeking insurance to place them in the correct insurance policy. This argument was made in Plaintiffs' Memorandum in Opposition to the Motion for Summary

Judgment and was considered by the Court and denied. Plaintiffs claim to have owned the property located at 826 Bush River Road in Columbia, South Carolina (the "Property") where Sushi Time, LLC ("Sushi Time") operated its business, and that they should have been named as additional insureds under the policy for which Sushi Time applied. As decided by the Court, Plaintiffs would not have been entitled to anything under the policy even if they had been named additional insureds.

The undisputed evidence showed that although Lim initially approached Consultative about obtaining insurance for the Property and Sushi Time's business, she authorized Jerry Britt ("Britt") to finalize the application for the insurance.[1] In the application, Britt represented that Sushi Time would be a sushi restaurant that would serve alcohol and would derive more than 60% of its revenue from food sales. Lim and Cheung admitted they did not contest any of the information that was in the application for insurance. It is undisputed that Consultative obtained an insurance policy from Amguard Insurance Company ("Amguard") for a sushi restaurant to be operated at the Property as requested in the application. See Order, p. 8-9.

The Order found that at the time Britt applied for insurance for a sushi restaurant, Sushi Time had been operating for almost four months as Pandora, which was a bar, lounge or strip club. See Order, p. 8-9. Lim admitted that she allowed the authorized general manager and agent of Sushi Time, Kenneth Goodwin ("Goodwin"), to operate the business as he wanted. Rachel Bolton, Lim's business partner who operated the business with Goodwin, admitted that they always intended Pandora to be more of a place to drink alcohol than a place to eat food and that they made more revenue from alcohol than they did food. Even after Consultative became

[1] Furthermore, no evidence was presented to show that Frank Cheung was a member of Sushi Time, LLC, and he admitted that he did not have any involvement with seeking insurance coverage.

aware that Sushi Time may have been operating as a bar, lounge or strip club, it offered to obtain that type of coverage for Plaintiffs, but Plaintiffs, again through their agent Goodwin, declined such coverage. See Order, p. 10.

When the business burned and a claim was submitted to Amguard, the claim was denied and the policy rescinded because the business was not being operated as a sushi restaurant, but as a bar, lounge, or strip club. The Court correctly found that the true nature of Sushi Time's business had been misrepresented and that the voidance of the policy was based on those misrepresentations, not Consultative's actions. See Order, p. 9-10. Therefore, even if Plaintiffs had been named as additional insureds under the policy, they would not have recovered under the policy because of the false representations made regarding the true nature of the business of Sushi Time. See Order, p. 12. Plaintiffs have failed to establish that Consultative breached any duty owed to them or that it proximately caused them any harm.

II. THE ORDER PROPERLY CONSIDERED EVIDENCE OF WHETHER PLAINTIFFS FAILED TO PRESENT EXPERT TESTIMONY ON ISSUES THAT REQUIRED SUCH TESTIMONY.

Plaintiffs argue that the South Carolina statute which requires expert affidavits to be presented in order to file suit against certain professionals, S. C. Code Ann. §15-36-100, does not include insurance agents, and therefore, no expert testimony is required for them to proceed with their lawsuit against Consultative. That statute is irrelevant to the issues before the Court. The issue of expert testimony arose from Plaintiffs' arguments that Consultative owed them a duty to go beyond relying on representations in the application regarding the nature of Sushi Time's business and to inspect the business operations after the original policy had been issued to make sure the right coverage had been placed for their business. Plaintiffs did not offer any testimony from anyone to establish such a duty exists. Defendant Waller testified that commercial lines

agents have the right to rely on the representations made by their customers and do not owe their customers a duty to inspect the business operations to make sure it complies with the representations in the application after the policy has been issued. Therefore, the Order properly found that Plaintiffs failed to present expert testimony to establish that Consultative owed them an additional duty to inspect their business. See Order. P. 11 – 12.

Moreover, even if Plaintiffs were not required to submit any such expert testimony, Plaintiffs cannot establish that Consultative failed to offer Plaintiffs the proper coverage. Again, as stated above, The Order found that Consultative offered to obtain coverage for a bar, lounge or strip club for Plaintiffs after Defendant Waller read news articles that indicated Sushi Time may have been operating such a business. Plaintiffs declined such offer of coverage. Therefore, irrespective of whether expert testimony was presented by Plaintiffs, their Motion for Reconsideration should be denied.

III. THE ORDER PROPERLY CONSIDERED EVIDENCE OF PLAINTIFFS' LACK OF DAMAGES.

Plaintiffs admit that they were not the owners of the Property - - Cheung's Chinatown, LLC was. Even though Plaintiffs are the sole members of Cheung's Chinatown, LLC, the LLC and the Plaintiffs are separate and distinct legal entities. The Order considered these arguments and properly found that Plaintiffs individually did not suffer any damages. See Order, p. 12. Therefore, Plaintiffs' Motion for Reconsideration should be denied.

In sum, Plaintiffs have not presented evidence of any of the three circumstances under which the Court should grant the Motion: (1) a change in controlling law; (2) new evidence that was not available at the hearing; or (3) a clear error of law or manifest injustice. Instead, Plaintiffs argue that the Order failed to consider certain arguments that Plaintiffs made before the Court. But the Order specifically states that that the Court considered all arguments made in the

briefs and at the hearing. In fact, the Order specifically discusses many of the issues Plaintiffs claim it does not. Therefore, Plaintiffs' Motion for Reconsideration is DENIED.

IT IS HEREBY ORDERED!

L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

Sept. 25, 2019