

LEGAL STANDARD

“Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly” Rule 52(b), SCRCP. However, “Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).” Rule 52(a), SCRCP.

Motions to alter or amend a judgment must be served not later than 10 days after receipt of written notice of the entry of the order. Rule 59(e), SCRCP. The purpose of a Rule 59(e) motion is to request the trial judge reconsider matters properly encompassed in a decision on the merits. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A party may not raise an issue for the first time on a motion for reconsideration. MailSource, LLC v. M.A. Bailey & Assocs., Inc., 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

DISCUSSION

Defendant McFarland appears to raise a total of fourteen (14) arguments in his Motion for Reconsideration. Many of these arguments simply ask the Court to reconsider its earlier ruling on the bases identified by Defendant McFarland in his briefings or arguments. The Court has

considered all of Defendant McFarland's prior submissions and declines to reconsider any portion of its prior ruling.

Defendant McFarland identifies two arguments upon which he believes the Court did not rule. First, Defendant McFarland asks the Court to specifically rule on his argument that Plaintiff Hannemann was judicially estopped from bringing this action under the Association's By-Laws. Mot. Reconsideration ¶ 2, pp. 4, Aug. 24, 2020. In its Order, the Court determined that judicial estoppel does not apply. *See* Order at 15–17, Aug. 13, 2020. After fully considering the argument raised by Defendant McFarland regarding judicial estoppel relating to the Association's By-Laws, the Court rejects this argument and declines to reconsider its August 13th ruling on judicial estoppel.

Second, Defendant McFarland asks the Court to specifically rule on “the entirety of Defendant's argument” regarding Defendant McFarland's position that he and his wife are “declarants” or “developers”. Mot. Reconsideration ¶ 12, pp. 18. This request references additional argument contained in Defendant McFarland's July 14, 2020 supplemental submission. As discussed in the Court's August 13, 2020 Order, the Court has determined that this submission was untimely and, even if it were timely, not relevant. The Court declines Defendant McFarland's invitation to reconsider this determination. Even assuming *arguendo* that such post-hearing argument were timely and relevant, the Court finds Defendant McFarland's additional arguments regarding his purported status as a “declarant” or “developer” to be unpersuasive and declines to reconsider its August 13, 2020 Order.

The Court has fully considered the arguments contained in Defendant's Motion for Reconsideration, as well as the arguments raised in the parties' original briefing and during the June 16, 2020 summary judgment hearing. Upon consideration of all the materials and arguments

before the Court, the Court denies Defendant's Motion for Reconsideration. Further, to the extent that Defendant raises new arguments in his Motion for Reconsideration, such arguments are improper under Rule 59(e) and the Court declines to consider the same.

CONCLUSION

Upon consideration of all the materials and arguments before the Court, the Court denies Defendant's Motion for Reconsideration.

IT IS SO ORDERED!

ELECTRONIC SIGNATURE PAGE TO FOLLOW.



Dorchester Common Pleas

Case Caption: David Hannemann , plaintiff, et al VS William Mcfarland

Case Number: 2016CP1801812

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078