

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION

MICHAEL J. QUILLING, Receiver for ABC	§	
VIATICALS, INC., and Related Entities	§	
	§	
Plaintiff,	§	
	§	
v.	§	No. 3:07-CV-1153-P
	§	
ERWIN & JOHNSON, LLP, and	§	
CHRISTOPHER R. ERWIN,	§	
	§	
Defendants.	§	

ORDER

Now before the Court is Defendant Christopher R. Erwin’s (“Defendant” or “Erwin”) Motion for Reconsideration of February 20, 2008 Order, filed March 10, 2008. Plaintiff Micheal J. Quilling (“Plaintiff” or “Receiver”) filed his Response on March 31, 2008. Defendant then filed its Reply on April 15, 2008. After reviewing Defendant’s Motion, the evidence, and the applicable law, the Court DENIES Defendant’s Motion for Reconsideration.

I. Background and Procedural History

Defendant filed his Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction on September 24, 2007. This Court issued an Order on February 20, 2008 denying Defendant’s Motion. Specifically, the Court found that Plaintiff had offered evidence, that if believed, would show that Defendant received or is in possession or custody of property belonging to the receivership, and thus, there is sufficient evidence in the record to constitute a prima facie case of personal jurisdiction. (Doc. No. 20.)

Defendant now moves the Court to reconsider this holding based on its arguments that: (1) Plaintiff has not made any factual allegations or presented evidence showing that Erwin received receivership estate property; and (2) at no time did Erwin & Johnson, LLP (“E&J”) or Erwin act as ABC Viatical, Inc.’s (“ABC”) legal counsel. (Pl.’s Mot. at 4.) Plaintiff counters that Defendant submits nothing new for the Court to reconsider. The Court will address Defendant’s arguments in turn.

II. Legal Standard

A court “has the inherent power to modify, vacate, or set aside interlocutory orders when the interests of justice require and will often accept such motions in the interest of substantial justice.” *Group Dealer Serv., Inc. v. Southwestern Bell Mobile Sys.*, 2001 WL 1910565, *3 (W.D. Tex. Sept. 19, 2001) (citing Fed. R. Civ. P. 54(b) and *Baustian v. Louisiana*, 929 F. Supp. 980, 981 (E.D. La. 1996) (noting that courts often accept motions for reconsideration of judgments “as being in the interest of substantial justice”). Motions for reconsideration have a narrow purpose and are only appropriate to allow a party to correct manifest errors of law or fact or to present newly discovered evidence. *Texas Instruments, Inc. v. Hyundai Elecs. Indus. Co.*, 50 F. Supp. 2d 619, 621 (E.D. Tex. 1999) (citations omitted). Reconsideration has been permitted in cases where new evidence was discovered or where there was a change in the law. *See Acme Printing Ink Co. v. Menard, Inc.*, 891 F. Supp. 1289, 1295 (E.D. Wis. 1995) (granting reconsideration where case had remained pending before court for several years, and in the interim, new evidence was discovered and case law changed); *Summer Del Caribe, Inc.*, 821 F. Supp. at 574, 578 (granting reconsideration where the court's ruling on an issue was inconsistent

with decisions of other courts addressing same issue as well as with Congressional intent); *Gridley v. Cleveland Pneumatic Co.*, 127 F.R.D. 102, 103-104 (M.D. Pa. 1989) (granting reconsideration on basis of newly discovered evidence). A ruling should only be reconsidered where the moving party presents substantial reasons for requesting reconsideration. *Baustian*, 929 F. Supp. at 981; *Louisiana v. Sprint Communications Co.*, 899 F. Supp. 282, 284 (M.D. La. 1995).

III. Discussion

Defendant Erwin challenges this Court's ruling that personal jurisdiction over Erwin exists in this case because Plaintiff has offered evidence, that if believed, would show that Defendant received or is in possession or custody of property belonging to the receivership. In its initial ruling, the Court viewed the payment of the retained fee of \$500,000 from ABC to E & J as a retainer fee for legal services and the \$150,000 withdrawal as funds that could have gone to Erwin. The Court then noted that Erwin does not state that he never received fees from E & J for services rendered to ABC from funds paid to E & J by ABC for legal services. The Court then concluded that Erwin received funds from E & J that were paid to E & J by ABC for legal services rendered by Defendant Erwin.

The Court acknowledges that it erroneously characterized Defendants' relationship with ABC as attorney-client.¹ It is now clear to the Court that the relationship between Defendants and ABC was that of escrow agent/trustee and grantor. Still though, this fact does not change the outcome of the Court's previous order. The previous order relied on the relationship between

¹For a more thorough discussion, see the Court's Order on Defendants' Motion for Reconsideration of February 25, 2008 Order.


ABC and Defendants to show that Plaintiff's allegations that Erwin received proceeds of ABC payments to E & J for services rendered, was not a mere conclusory allegation. That conclusion does not change in light of the fact that the relationship between Defendants and ABC was that of escrow agent/trustee and grantor, rather than attorney-client. Additionally, Erwin has only submitted an affidavit stating that he is not in possession, nor has he received, any receivership property. (Rule 12(b)(2) Mot., Ex. A.) The Court does not find that enough to rebut Plaintiff's showing of a prima facie case for personal jurisdiction. The Court is aware that Plaintiff, as the party seeking to establish jurisdiction, bears the burden of presenting a prima facie case of personal jurisdiction. *Caldwell v. Palmetto State Sav. Bank*, 811 F.2d 916, 919 (5th Cir. 1987). The Court, in its previous order, determined that Plaintiff had met this burden. In addition, the Court notes that Erwin was one of two partners at E & J and was the partner that signed the agreements between ABC and E & J. The Court finds the evidence, in conjunction with the evidence the Court considered in its previous order, as sufficient to establish a *prima facie* that Erwin has received receivership property. Thus, the Court's ruling on Defendant's Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction remains the same.

IV. Conclusion

For the reasons stated herein, the Court hereby DENIES Defendant's Motion for Reconsideration of February 20, 2008 Order.

IT IS SO ORDERED.

Signed this 23rd day of June 2008.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE