

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

MICHAEL J. QUILLING, ET AL.,	§	
	§	
Plaintiff,	§	
v.	§	3:07-CV-1153-P
	§	
ERWIN & JOHNSON, LLP, ET AL.,	§	
	§	
Defendants and	§	
Third-Party Plaintiffs,	§	
	§	
MILLS, POCZAK & COMPANY,	§	
	§	
Defendants.	§	

**ORDER**

Now before the Court is Plaintiff's Motion to Reconsider the Order Granting Leave to Bring in Third-Party Defendants filed on October 28, 2009. (Docket No. 108.) Defendants, Erwin & Johnson ("E&J") and Christopher R. Erwin's ("Erwin") (collectively "Defendants"), filed a response on November 11, 2009. Plaintiff filed a Reply on November 19, 2009. After reviewing the briefing and applicable law, for the reasons stated below the Court DENIES Plaintiff's Motion for Reconsideration.

**I. Discussion**

Defendants filed a Motion for Leave to Bring in Third-Party Defendants (hereinafter "Defendants Motion for Leave") on May 16, 2009. On October 16, 2009 the Court issued an Order granting Defendants leave to bring in Third-Party Defendants DMH Stallard and Christopher Stenning (collectively "Third-Party Defendants"). (Docket No. 101, hereinafter "the Order.") The Order fully sets out the relevant facts and procedural history of this case.

Additionally, the Order provided a detailed discussion of the applicable law and relevant factors that resulted in the Court's decision to grant Defendants leave to implead Third-Party Defendants.

Plaintiff now argues that the Order should be reconsidered pursuant to Rule 60(a), or alternatively Rule 60(b). The Court can easily dispense with Plaintiff's claim for reconsideration pursuant to Rule 60(a). A court may entertain a motion for reconsideration pursuant to Rule 60(a) only "if the record makes apparent that the court intended one thing but by mere clerical mistake or oversight did another." *Archer v. Lynaugh*, 821 F.2d 1094, 1096 (5th Cir. 1987). Plaintiff does not argue that the record made clear that the Court intended to deny Defendants Motion for Leave, but through a clerical mistake actually granted it.

The scope of Rule 60(b) is broader than that of 60(a). Under Rule 60(b), a court may reconsider an order that is based on "mistake . . . misrepresentations . . . or any other reason that justifies relief." Fed. R. Civ. P. 60(b). Plaintiff argues that the Court should reconsider the Order because it was based on Defendants' misrepresentations and contains material misstatements by the Court.

First, the Court can easily dispense with Plaintiff's argument that the Order was based on Defendants' misrepresentations. Defendants argue that Third-Party Defendants are liable to them for the alleged underfunding of the E&J escrow accounts. Conversely, Plaintiff claims that the actions of Third-Party Defendants had no affect on the underfunding of the E&J escrow accounts for which Plaintiff claims Defendants are liable. Obviously the parties dispute the possible liability of Third-Party Defendants. At this point there has been no evidence provided which would allow the Court to easily settle this dispute. Fortunately, our justice system provides a

forum with numerous procedures for settling disputes of this nature. But Plaintiff's Motion to Reconsider is not one of them.

Second, the Court addresses Plaintiff's assertion that the Order contains material misstatements of fact. First, Plaintiff quotes a portion of the Order that states, "the validity of the Albatross Bond is now in question" (Pl.'s Mot. to Reconsider 6.) Plaintiff argues that this statement indicates that the Court erroneously relied on a belief that the validity of the Albatross Bond was a point of dispute between the parties. A possible dispute between the parties concerning the validity of the Albatross Bond however, played no role in the Court's decision. This can easily be seen from the absence of any discussion in the Court's legal analysis about the validity of the Albatross Bond being disputed. The statement quoted by Plaintiff was contained within the factual background of the case and was made for the mere purpose of indicating that the Albatross Bond is allegedly not valid.

Plaintiff claims that other statements in the Order are factually erroneous are also without merit. Plaintiff only relies on one statement contained within the Court's legal analysis. The other statements Plaintiff relies on are from the factual background of the case.<sup>1</sup> The Court is baffled by Plaintiff's assertion that the statements in the factual background were misstatements of material fact. The quoted statements are merely statements of the Defendants' claims against Third-Party Defendants and Defendants arguments' for why they should be brought into the case. After reviewing Defendants' Motion for the Leave, the attached exhibit, and Defendants Reply it is clear that Defendants are making the claims contained in the statements quoted by Plaintiff. Therefore, any part of the Order that merely states Defendants' reasons for believing Third-Party

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<sup>1</sup> These statements can be found on Page 3 of the Order or in Plaintiff's Motion on Page 4, 6 and 7.

Defendants may be liable to them for all, or part of the Plaintiff's claims against Defendants can in no way be considered erroneous factual statements by the Court.

As stated above, Plaintiff only quotes one statement from the Court's legal analysis to support its claim that the Order contains material misstatements of fact. The underlined part of the following passage is the portion Plaintiff quoted.

Defendants argue – and the Court agrees – that as long as Plaintiff is seeking damages for the alleged under-funding of the E&J escrow accounts that Defendants claims against DMH Stallard and Stenning are directly related to Plaintiff's claims against Defendants. (Id.) The claims are directly related because Plaintiff claims that Defendants under-funded the E&J escrow accounts, and Defendants claim that if the E&J escrow accounts were under-funded it was due to the actions of Third-Party Defendants. Accordingly, the Court is satisfied that Defendants claims against Third-Party Defendants arise from the same core of facts as Plaintiff's claims.

This statement was based on two indisputable factors: First, Plaintiff is seeking damages from Defendants for E&J's underfunding of the escrow accounts. And Second, Defendants claim that Third-Party Defendants are liable to E&J for all or part of the alleged underfunding of the same escrow accounts. Whether Plaintiff agrees with the legitimacy of Defendants' claim is irrelevant to the truth of the quoted statement and is irrelevant to the determination of the issue before the Court. At this stage of the proceedings, Defendants have made sufficient allegations to permit bringing the third party into the case. As can be seen from the two indisputable factors above, Defendants claim that Third-Party Defendants are liable to them for the exact same underfunding for which Plaintiff claims Defendants are liable. The claims are therefore directly related, and the Court's statement cannot be considered a material misstatement of fact.

Because Plaintiff's assertions that the Order contains material misstatements of fact are without merit Plaintiff has failed to show that reconsideration is proper under Rule 60(b).

**II. Conclusion**

For the foregoing reasons, the Court DENIES Plaintiff's Motion for Reconsideration.

**IT IS SO ORDERED.**

Signed this 15<sup>th</sup> day of December, 2009.

  
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JORGE A. SOLIS  
UNITED STATES DISTRICT JUDGE