

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARROL DOMAN and JAMES DUBE,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA,	:	NO. 99-CV-6543
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

September 27, 2000

Presently before the Court is Plaintiffs' Motion for a New Trial and for the Court to Open Judgment Pursuant to Rule 59 and the Defendant's Response thereto. For the reasons stated below, Plaintiffs' Motion is Denied.

I. BACKGROUND

This Court denied Plaintiffs' Motion for Summary Judgment and granted Defendant's Cross-Motion for Summary Judgment in a Memorandum and Order dated August 29, 2000. Judgment was entered in favor of all Defendants and against Plaintiffs. Now, Plaintiffs file this motion.

II. DISCUSSION

Although the Plaintiffs do not clearly articulate what they are asking the Court to do, or under which section of Rule 59 they expect this Court to act, this Court interprets

Plaintiffs' Motion as one for reconsideration under Rule 59(e) or 60(b)(2) on the ground that there is newly discovered evidence.¹ Whether the motion is brought under Rule 59(e) or Rule 60(b)(2), the same standard applies for establishing this ground for relief. Compass Tech., Inc. v. Tseng Lab., Inc., 71 F.3d 1125, 1130 (3d Cir. 1995); see also Wright, Miller and Kane, Federal Practice and Procedure: Civil 2d § 2808, at 86 (2d ed. 1995). That standard necessitates new evidence be 1) material and not merely cumulative, 2) of the type that could not have been discovered before trial through the exercise of reasonable diligence and 3) of the type that would have changed the final judgment. Compass Tech., 71 F.3d at 1130.

Here, Plaintiffs fail to meet even one of these three necessary prongs of the standard. First, the Court does not believe the evidence accompanying the instant motion would have had any effect on the summary judgment decision. Second, the evidence accompanying the motion is not new evidence as contemplated by the Third Circuit because it was available at the time of summary judgment. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) (filing an affidavit containing evidence that was available prior to summary judgment is not enough for the Court to reconsider a summary judgment). Finally, the evidence offered by Plaintiffs is cumulative because the facts raised by the evidence were argued on summary judgment. The Court, therefore, will not reconsider this case.

1. Plaintiffs do not raise Rule 60(b), but the Court recognizes that the relief Plaintiffs seek can be granted pursuant to 60(b) as well as Rule 59(e). Under a Rule 60(b) analysis, judgments may be altered or amended if the party seeking reconsideration shows one of the following grounds: 1) an intervening change in controlling law; 2) new evidence that was not available to the party at the time of summary judgment; or, 3) the need to correct a clear error of law or fact or to prevent manifest injustice. See Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999), citing North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995). Here, Plaintiffs do not argue a change in controlling law, a clear error in law or fact, or that a manifest injustice must be prevented, but Plaintiffs do accompany the instant motion with several affidavits, a Pennsylvania Supreme Court notice, a Divorce Decree, and a Court Order for a divorce. These facts lead the Court to analyze this apparent 60(b) motion under the "new evidence" rubric.

III. CONCLUSION

For the reasons stated above, this Court enters the following order: Plaintiffs' Motion for a New Trial and for the Court to Open Judgment Pursuant to Rule 59 is Denied.

An appropriate order follows.

