

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

HORIZON UNLIMITED, INC. : CIVIL ACTION
 :
 v. :
 :
 RICHARD SILVA & SNA, INC. : NO. 97-7430

MEMORANDUM and ORDER

Norma L. Shapiro, S.J.

January 16, 2001

Plaintiff Horizon Unlimited, Inc. ("Horizon"),¹ alleging, inter alia, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1 et seq.,² filed an action against defendants Richard Silva ("Silva") and SNA, Inc. ("SNA").³ Presently before the court is a motion for reconsideration⁴ of the court's decision granting defendants' motion for contempt and sanctions against plaintiff's counsel,

¹ John Hare was originally a plaintiff as well, but his motion for voluntary dismissal was granted by Order of March 11, 1999.

² Plaintiffs' other claims for negligence/ negligent misrepresentation, fraud and deceit, and breach of warranty were dismissed by Memorandum and Order dated February 26, 1998; plaintiffs' motion for reconsideration was denied by Memorandum and Order dated March 27, 1999.

³ By order of August 31, 1999, the action was dismissed with prejudice; limited attorney's fees and costs were later awarded to defendants.

⁴Pedata timely filed his motion for reconsideration and then later submitted two more motions, each substituting the one previously filed. The first two motions [Docket #149, 152] will be denied as moot.

Martin Pedata following an evidentiary hearing.⁵ The motion for reconsideration will be denied.

BACKGROUND

Plaintiff Horizon, through its president, Paul Array ("Array"), purchased a Seawind airplane kit manufactured by SNA, of which Silva is president. Plaintiff alleged its Seawind airplane did not "perform according to specifications and building times" stated in the promotional materials. Following a protracted and contentious discovery period, all plaintiff's claims other than its claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, et seq. ("UTPCPL"), were dismissed by the court. The UTPCPL claim was voluntarily dismissed by plaintiff after it became apparent it was baseless. The court permitted dismissal only with prejudice.

During discovery, plaintiff requested flight test data defendants sought to withhold as confidential. This information was ultimately produced subject to a September 16, 1998 Confidentiality and Protective Order ("CPO") limiting all discovery materials marked "confidential" to use by certain

⁵Horizon Unltd., Inc. v. Richard Silva & SNA, Inc., No. Civ. A. 97-7430, 2000 WL 730340 (E.D. Pa. June 7, 2000). In the same Memorandum and Order, the court granted defendants' motion for contempt and sanctions against Paul Array ("Array"), the president of plaintiff Horizon, and Tracey Oandasan, Horizon's local counsel.

people, including the attorneys in this action but not the parties themselves, unless otherwise approved by the court. On October 9, 1998, the court issued an order permitting plaintiff's expert, Richard Adler ("Adler"), to review the confidential flight test data subject to his agreement to be bound by the CPO.

Adler, having agreed to comply with the terms of the CPO, was given a copy of the flight test data to prepare an expert report. On November 16, 1998, plaintiff's local counsel, Tracey Oandasan ("Oandasan"), filed plaintiff's pretrial memorandum, with Adler's report, in the clerk's office. This was done at the instruction of plaintiff's lead counsel, Martin Pedata ("Pedata"), who had been admitted pro hac vice. "Appendix A" of the expert report, the flight test data itself, was not filed at all, but the pretrial memorandum and expert report were not filed under seal; plaintiff did not mark the report "Confidential."

On November 28, 1999, Array wrote Oandasan to request a copy of the flight test data, Adler's expert report, and other documents. Array erroneously believed the data was no longer confidential as a result of a Memorandum and Order issued by a different judge in another action involving the same parties. After consulting with Pedata, Oandasan informed Array on December 2, 1999, that the flight test data remained confidential, but she enclosed a copy of Adler's report (without "Appendix A," the flight test data) as well as a copy of the CPO.

In December, 1999, defendants discovered images from Adler's report and commentary about the report on Array's web site. Defendants argued that filing Adler's report of record and transmitting the report to Array permitted Array to post the report on his web site, in violation of the CPO. The flight test data was not filed or otherwise disseminated in its original form, but defendants argued that the body of the report referred to the data in sufficient detail that its dissemination violated the CPO.

Finding that Array, Pedata and Oandasan violated the CPO, this court granted defendants' motion for contempt and sanctions. The court held that Pedata violated the CPO by allowing the expert report to have been filed not under seal and given to his client, who then posted it on his website. Pedata asks that the court reconsider its decision, because: (1) he reasonably believed any confidential flight test data in the expert report had already been released by defendants' counsel (via a filed deposition transcript of Paul Furnee, a flight test pilot for Horizon); (2) he reasonably believed defendants' counsel did not interpret the filing of the expert report to have violated the CPO; (3) filing the report as part of a final pretrial memorandum did not violate the CPO; and (4) defendants sat idle for fourteen months before claiming any violation of the CPO.

DISCUSSION

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); American & Foreign Ins. Co. v. Royal Ins. Co. of America, Inc., No. Civ. A. 97-3349, 1998 WL 966008, at *2 (E.D. Pa. Dec. 22, 1998)(Shapiro, J.), aff'd, 210 F.3d 357 (3d Cir. 2000)(same); Horizon, 1998 WL 150999, at *2 (same). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." Continental Casualty Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995); American & Foreign Ins. Co., 1998 WL 966008, at *2(same); Horizon, 1998 WL 150999, at *2 (same).

Courts will reconsider an issue only when: (1)there has been an intervening change in the controlling law; (2)new evidence has become available; or (3)there is a need to correct a clear error or prevent manifest injustice. NL Indus., Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995); American & Foreign Ins. Co., 1998 WL 966008, at *2(same); Horizon, 1998 WL 150999, at *2 (same). "A motion for reconsideration is . . . not properly grounded on a request that a court rethink a decision it has already made." Tobin v. General Elec. Co., No. 95-4003, 1998 WL 31875, at *2 (E.D. Pa. Jan. 27, 1998); American & Foreign Ins. Co., 1998 WL 966008, at *2(same); Horizon, 1998 WL 150999, at *2 (same). None of Pedata's asserted grounds for reconsideration

are viable.

There has been no intervening change in the controlling law. There is not any clear error in need of correction or manifest injustice in need of prevention. The only remaining ground for reconsideration is newly available evidence. The exhibits Pedata attached to his motion for reconsideration do not constitute new evidence available after the issuance of this court's Order granting the contempt motion and imposing sanctions.

In support of his motion for reconsideration, Pedata appended: (1) the CPO, filed on September 16, 1998; (2) the June 7, 2000 Order granting the contempt motion; and (3) the April 8, 1998 deposition transcript of Paul Furnee, defendants' flight test pilot. This court has already considered the Paul Furnee deposition transcript and held it did not contain confidential information. See Order, at ¶6 [Docket # 48]. So the transcript is not new evidence and Pedata's argument that filing this deposition transcript released confidential information, legitimizing filing the expert report unsealed, is frivolous. The CPO is not new evidence either. "Where evidence is not newly discovered, a party may not submit that evidence in support of a motion for reconsideration." Harsco Corp., 779 F.2d at 909.

CONCLUSION

There being no intervening change in controlling law or newly available evidence, in the absence of a need to correct a

clear error or prevent manifest injustice, Pedata is merely "request[ing] the court to 'rethink' a decision it has already made." Horizon, 1998 WL 150999, at *2 (internal quotation omitted). Pedata's motion for reconsideration will be denied.

An appropriate Order follows.

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

HORIZON UNLIMITED, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
RICHARD SILVA & SNA, INC.	:	NO. 97-7430

ORDER

AND NOW, this 16th day of January, 2001, upon consideration of the Motion by Martin A. Pedata, Esq. for Reconsideration of the Court's Memorandum and Order Dated June 7, 2000, and the response thereto, it is **ORDERED** that:

1. Martin Pedata's Motion for Reconsideration [Docket #154] is **DENIED**.

2. Martin Pedata's prior motions for reconsideration [Docket #149, 152] are **DENIED AS MOOT**.

S.J.