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

YUSUF ABBDULAZIZ, et al.,	:	CIVIL ACTION
v.	:	
CITY OF PHILADELPHIA, et al.	:	NO. 00-5672

MEMORANDUM AND ORDER

HUTTON, J. November 29, 2001

Presently before the Court are Plaintiffs' Motion to Amend and Withdraw Summary Judgment (Docket No. 22), the Memorandum of Defendant the Trustees of the University of Pennsylvania in Opposition to Plaintiffs' Motion to Amend and Withdraw Summary Judgment (Docket No. 23), and Defendant Albert M. Kilgman, M.D.'s Response and Affirmative Defenses in Opposition to Plaintiffs' Motion to Amend and Withdraw Summary Judgment (Docket No. 24). For the reasons outlined below, Plaintiffs' motion is **DENIED**.

I. BACKGROUND

Between January 1961 and December 1974, Plaintiffs were incarcerated at Holmesburg Correctional Facility in Philadelphia, Pennsylvania. According to the Plaintiffs' allegations, they consented to the testing and signed waivers based upon fraudulent misrepresentations by the Defendants. As a result of their participation, the Plaintiffs allegedly sustained physical and psychological injuries, and were paid a minimal amount while Defendants reaped large profits.

On November 7, 2000, this action was removed from the Court of Common Pleas of Philadelphia County to this Court. The City of Philadelphia filed a Motion for Judgment on the Pleadings on April 16, 2001. The University of Pennsylvania then filed a Motion for Summary Judgment on September 5, 2001. Both the City of Philadelphia and Dr. Kligman then filed motions with this Court to incorporate by reference the University of Pennsylvania's Motion and Memorandum of Law in Support of Summary Judgment. Plaintiffs failed to respond to any of the above motions. On October 18, 2001, the Court granted Defendants' motion for summary judgment. See Abbdulaziz v. City of Phila., Civ. A. No. 00-5672, 2001 WL 1257441 (E.D. Pa. Oct 18, 2001). Plaintiffs have now filed a Motion to amend the Order granting Defendants summary judgment, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

II. LEGAL STANDARD

To obtain relief under Federal Rule of Civil Procedure 59(e), Plaintiff must establish one of three threshold requirements: (1) there is an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to correct the Court's clear error of law or prevent manifest injustice. See Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999); see also, Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). "A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of." Moyer v.

Italwork, Civ. A. No. 95-2264, 1997 WL 312178 (E.D. Pa. June 3, 1997) (internal quotations omitted). In other words, such a motion is "not properly grounded on a request that a court rethink a decision it has already made." Tobin v. Gen. Elec. Co., Civ. A. No. 95-4003, 1998 WL 31875, *2 (E.D. Pa. Jan. 27, 1998). "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).

III. DISCUSSION

Plaintiffs now ask this Court to reconsider the Order granting Defendants summary judgment on October 18, 2001. Their sole argument is that the Court improperly ruled on the motion before the close of discovery. According to Plaintiffs, "entry of Judgment was made prior to the completion of discovery and all relevant matters that might weigh on such a decision were not available to the Court at [the] time of its[] decision." Pls.' Mot. to Amend and Withdraw Summ. J. at ¶ 2. Plaintiffs' motion, however, far from satisfies the standard for a motion for reconsideration.

Plaintiffs assert that "Defendants have documents in their possession that would be subject to Discovery that would tend to show that Plaintiffs were unaware of their rights against Defendants until just recently." Id. at ¶ 3. Yet Plaintiffs have

not provided this Court with an affidavit, described the alleged documents, or shown beyond vague allegations that this information would in any way affect summary judgment. Furthermore, although Plaintiffs rest their motion entirely on the existence of alleged documents in the Defendants' possession, Defendants contend that Plaintiffs failed to initiate discovery as of the date of the summary judgment order. See Def. Albert M. Kligman, M.D.'s Resp. in Opp. to Pls.'s Mot. to Amend and Withdraw Summ. J. at ¶ 2.

It is clear that summary judgment may be entered after there has been "adequate" time for discovery. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1983). The mere fact of uncompleted discovery does not act as a bar to summary judgment. See, e.g., Dowling v. City of Phila., 855 F.2d 136, 140 (3d Cir. 1988). At the time summary judgment was entered in the instant matter, discovery was drawing to a close. The deadline for the completion of discovery was November 5, 2001, less than three weeks away.

Moreover, after Defendants filed their motions for summary judgment, Plaintiffs had the option to petition this Court to forestall consideration of the summary judgment motion in order to facilitate discovery. See Fed. R. Civ. P. 56(f); see also Lorenzo v. Griffith, 12 F.3d 23, 27 n.5 (3d Cir. 1993). Not only did Plaintiffs neglect to petition this Court to refrain from considering the summary judgment motion, Plaintiffs chose to ignore the summary judgment motion entirely, as Plaintiffs had ignored

Defendant City of Philadelphia's Motion for Judgment on the Pleadings before that. In fact, despite having several motions pending against them, Plaintiffs went ten months without filing any correspondence with this Court prior to filing the instant motion to amend on November 1, 2001.

As the Court noted in its October 18, 2001 Memorandum and Order granting summary judgment, any party opposing the motion must serve a brief in opposition with the court within fourteen (14) days after service of the motion and supporting brief." E.D. Pa. R. Civ. P. 7.1(c); see also Abbdulaziz, 2001 WL 1257441, at *3 n.2. "Not only did the Plaintiffs in the instant case fail to respond within the required fourteen days, they neglected to respond entirely." Abbdulaziz, 2001 WL 1257441, at *3 n.2. Nor do Plaintiffs now attempt to offer any explanation in their instant motion for their utter failure to contest several dispositive motions.

In granting Defendants' motion for summary judgment, the Court discerned from Plaintiffs' complaint and the vast public record regarding the medical testing at Holmesburg that, as a matter of law, Plaintiffs should have discovered the "who and what" of their alleged injuries long before October 17, 1998, two years prior to filing their Complaint in this action. See Abbdulaziz, 2001 WL 1257441, at *7-8 ("The only reasonable conclusion from the competent evidence of record, construed most favorably to the

Plaintiffs, is that the time it took the Plaintiffs to file suit in this case was unreasonable.”). Accordingly, the Court found that the statute of limitations precluded all of Plaintiffs’ claims. Because Plaintiffs failed to demonstrate that a genuine issue of material fact exists, despite having had adequate time for discovery, the Court awarded summary judgment in Defendants’ favor. Plaintiffs’ instant Motion to amend the Order granting Defendants summary judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure has failed to provide the Court with any legitimate basis to conclude otherwise. Accordingly, Plaintiffs’ motion is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 29th day of November, 2001, upon consideration of Plaintiffs' Motion to Amend and Withdraw Summary Judgment (Docket No. 22), the Memorandum of Defendant the Trustees of the University of Pennsylvania in Opposition to Plaintiffs' Motion to Amend and Withdraw Summary Judgment (Docket No. 23), and Defendant Albert M. Kilgman, M.D.'s Response and Affirmative Defenses in Opposition to Plaintiffs' Motion to Amend and Withdraw Summary Judgment (Docket No. 24), IT IS HEREBY ORDERED that the Plaintiffs' Motion is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.