

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

AMELIA FONTAINE and	:	CIVIL ACTION
ISAIAH FONTAINE	:	
	:	
v.	:	NO. 99-CV-1756
	:	
CENTRAL SQUARE CONDOMINIUMS, INC.	:	
WILDWOODS REALTY	:	
ANTHONY AMALFITANO	:	
LORRAINE AMALFITANO	:	
JOHN SPERRATORE, JR. and	:	
ROSE MARIE SPERRATORE	:	

MEMORANDUM & ORDER

Presently before the Court is the Petition for Reconsideration of Defendants, Central Square Condominiums, Inc. and John Sperratore, Jr. (Doc. No. 36) seeking review of this Court's Order denying Defendants' Motion for Summary Judgment (Doc. No. 35). For the following reasons Defendants' Petition will be denied.

I. BACKGROUND

The plaintiffs, Amelia and Isaiah Fontaine filed a complaint seeking redress against all of the defendants under the Fair Housing Act (42 U.S.C. §3601, et seq.) (the FHA), 42 U.S.C. §§1981 and 1982, New Jersey's Law Against Discrimination (N.J.S.A. §10:5-1, et seq.) (NJLAD). Plaintiffs' allege that the defendants discriminated against them by engaging in a course of conduct designed to keep plaintiffs from buying a condominium unit because of their race. Plaintiffs claim that prior to their completing the purchase of Central Square Condominium Unit #1 from Anthony and Lorraine Amalfitano, the defendants purposefully and deliberately

raised the condominium fees at the complex in order to prevent the plaintiffs from consummating the purchase of Unit #1. The Moving Defendants filed a Motion for Summary Judgment (Doc. 24) which was denied.¹ The Moving Defendants seek review of our Order and argue that because there is no evidence against either of them we incorrectly found that they could be held liable for violating §§1981 and 1982, the FHA or the NJLAD. In the alternative, Moving Defendants argue that the condominium association is made up of individual members and cannot be held liable as a whole as it would be unfair to members who “may have opposed the actions of the majority” which gave rise to this litigation. (Doc. No. 36, p. 3).

II. LEGAL STANDARD

“The purpose of a motion for reconsideration is to ‘correct manifest errors of law or fact or to present newly discovered evidence.’” *Marriott Senior Living Quarters, Inc. v. Springfield, Twp.*, Civ. A. No. 97-3660, 2000 WL 1781937 (E.D. Pa. Nov. 20, 2000) (quoting *Slagan v. John Whitman & Assoc., Inc.*, 1997 WL 611587, at *1 (E.D. Pa. Sept. 26, 1997) (internal citations omitted). A motion for reconsideration should be granted only upon (1) the availability of new evidence; (2) an intervening change in the law; or (3) the need to correct a clear error of law or prevent a manifest injustice. *Marriott Senior Living Quarters, Inc.*, 2007 WL 1781937, at *1. “Dissatisfaction with the Court’s ruling is not a proper basis for reconsideration.” *Id.* (citing *Burger King Corp. v. New England Hood and Duct Cleaning Co.*, 2000 WL 133756 at *2 (E.D.Pa. Feb. 4, 2000) (citing *Glenolden Energy Co. v. Borough of Glenolden*, 836 F.Supp. 1109, 1122 (E.D.Pa. 1993) (motion for reconsideration not properly grounded on request to

¹Defendants, Anthony and Lorraine Amalfitano filed a separate Motion for Summary Judgment which is pending (Doc. No. 37). Defendant, Wildwoods Realty, filed an unopposed Motion for Summary Judgment (Doc. 26) which was granted. (Doc. 35).

rethink a decision the court has already made)). A motion for reconsideration may not be used as a vehicle to assert new arguments that could have been but were not previously presented to the court. *Assisted Living Group, Inc. v. Upper Dublin Twp.*, Civ. A. No. 97-3427, 1997 WL 762801 (E.D. Pa. Dec. 8, 1997). “Due to the strong interest in the finality of judgment, courts should grant these motions sparingly.” *Slagan* 1997 WL 611587, at *1 (citation omitted). In considering a motion for reconsideration we must determine whether (1) a clear error of law or manifest injustice was committed; (2) there has been an intervening change in controlling law; or (3) new evidence has become available. *Harsco Corp. V. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985).

III. DISCUSSION

A motion for reconsideration asking the court to review the same evidence or to consider a previously omitted argument must be denied. In this Petition moving Defendants simply repeat the same “lack of evidence” argument set forth in their Motion for Summary Judgment. They also raise for the first time arguments concerning the individual liability of John Sperratore and the condominium association.² Our Memorandum denying the motion for summary judgement concluded that Plaintiffs had established a *prima facie* case of discrimination based on the increased condominium fee. We also found that defendants provided nondiscriminatory reasons for the fee increase. Ultimately, we determined that the allegations and evidence before us are sufficient to support an inference that the defendants’ explanations for the fee increase are a mere

²Since a motion for reconsideration may not advance arguments previously available but omitted, we need not consider defendants’ new arguments. *Assisted Living Group, Inc. v. Upper Dublin Twp.*, Civ. A. No. 97-3427, 1997 WL 762801 (E.D.Pa. Dec. 8, 1997) (Vanartsdale, J.). However, we will, as did the Court in *Assisted Living Group*, exercise our discretion to address defendants’ motion on its merits.

pretext for the defendants' efforts to block the plaintiffs' purchase because of their race.

A. Lack of Evidence

Our Memorandum noted the numerous inconsistencies in defendants' testimony regarding the financial records of the association, the meaning of a statement made and a letter written one of the defendants, and the timing and reason for the condominium fee increase.

When there are inconsistencies to be considered, issues of credibility arise. As we stated in the Memorandum, "[s]ummary judgment is clearly inappropriate [in this case], the outcome of which will certainly 'turn on credibility determinations and . . . on state of mind.'" *Fontaine v. Central Square Condominiums, Inc.*, No. Civ. A. 99-CV-1756, 2001 WL 34355639, at *6 (E.D. Pa. Dec. 28, 2001) (citing *Coolspring Stone Supply, Inc. v. American States Life Ins. Co.*, 10 F.3d 144, 148 (3d Cir. 1993)). Based on the foregoing, Defendants' "lack of evidence" argument is without merit. This argument was already considered and rejected by this court. Moreover, the inferences that may be drawn from the evidence present genuine issues of material fact and preclude an entry of summary judgment as to the Moving Defendants.

B. Liability Argument

Moving Defendants assert that the condominium association is nothing more than the sum of its members and cannot be held liable as a whole without a determination as to the liability of each individual member, and that our previously issued Memorandum notes a lack of evidence of discriminatory intent as to the Amalfitano defendants, thus no other individual member of the condominium association can be held liable as it would be unfair. Initially, we note that the condominium association is more than the sum of its members. As Defendants assert, it is a New Jersey Corporation. (Defendants' Answer to Plaintiffs' Complaint with

Affirmative Defenses at ¶ 2.) (Doc. No. 2). Under New Jersey law, the general powers of a corporation include the power “to sue and be sued.” *See* N.J.S.A. §14A:3-1. In addition, even if the condominium association were not incorporated, “the association shall be an entity which shall act through its officers and may enter into contracts, bring suit and be sued.” *See* N.J.S.A. §46:8B-15(a). “No unit owner, except as an officer of the association, shall have any authority to act for or bind the association.” *See* N.J.S.A. §46:8B-16(a).

In this case Rose Marie Sperratore, was treasurer of the condominium association when the plaintiffs sought to buy Unit #1. Mrs. Sperratore, acting on behalf of the condominium association, notified the plaintiffs’ title company, that the monthly fees would be increased. (Doc. No. at Ex. C.). The condominium association is responsible for its conduct and regardless of the intent of its members is an appropriate party to this litigation. Moving Defendants claim that individual members of the association can be held liable for the acts of the association and that the transient nature of the association membership leads to an unfair result. Defendants are incorrect. A unit owner shall have no personal liability for any damages caused by the association.” *See* N.J.S.A. §46:8B-16(c).

IV. CONCLUSION

The Defendants’ Motion for Reconsideration raises arguments that were previously considered and rejected by this Court. It also raises arguments previously omitted by moving defendants. The motion fails to identify an intervening change in laws, presents no new evidence and identifies no error of law or manifest injustice with respect. Accordingly, the Defendants’ Motion for Reconsideration must be denied. An appropriate Order follows.

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ORDER

AND NOW, this 19 th day of April, 2007, upon consideration of the
Petition for Reconsideration of Defendants, Central Square Condominium, Inc. and John
Sperratore, Jr., (Doc. No. 36), it is ORDERED that Defendants' Petition is DENIED.

IT IS SO ORDERED.

BY THE COURT:



R. Barclay Surrick, Judge