

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

MARK STEIN : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, et al. : NO. 13-CV-4644

MEMORANDUM

Ditter, J.

April 7, 2014

Plaintiff, Mark Stein, has filed a motion for relief from Chief Judge Petrese B. Tucker's November 4, 2013 order granting the dismissal of all claims against Captain Brian Korn. For the reasons that follow, the motion will be denied.

1. Procedural History

Stein owns and operates Club Aura, a restaurant and bar located in the Northern Liberties section of Philadelphia. In order to provide certain types of entertainment, Stein was required to obtain a special assembly license. Although other licenses for the operation of the club were approved, his application for a special assembly license was denied by the City because of numerous complaints by neighbors, and the objections of local civic associations and the local police district. Stein contends the complaints were unfounded and racially motivated, but the City's decision was upheld by the Philadelphia Board of License and Inspection Review after a public hearing, and on appeal to the Court of Common Pleas of Philadelphia.

In Count Three of his complaint, Stein asserts that 6th District Police Captain Korn violated his Equal Protection rights by “selectively enforcing local state and local laws against the club.” *Compl.* ¶ 76. In Count Eighteen, he raises a state claim of “tortious interference with business” against Korn. *Id.* ¶ 233.

In his motion to dismiss, Korn argued that Stein’s Equal Protection claim was deficient because he failed to allege any specific instances where entities similarly situated were treated differently and because, as a state official, he is entitled to qualified immunity. Korn contended the state tort claim should be dismissed because Stein failed to identify any prospective contractual relationship with which Korn had interfered. After considering the motion and Stein’s response, Chief Judge Tucker granted the motion to dismiss and terminated Korn as a party. Three months later, and after this case was transferred to my docket, Stein asks that this order be vacated.

2. Standard of Review

Stein seeks relief under Federal Rule of Civil Procedure 60(b). Rule 60(b) provides for relief from a final judgment, order or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

See Fed. R. Civ. P. 60(b).

3. Discussion

Stein states that he has filed this motion to submit newly discovered evidence that would justify relief. *Plt. 's Mem.*, at 8. Unfortunately, he fails to do so. Although, Stein provides some additional facts, none qualify as newly-discovered and he has not explained why the additional information was not included in his complaint or prior response. Even if the evidence was newly-discovered, it would not be sufficient to require the relief sought. The crux of his argument remains the same: Korn was wrong to “blindly accept” the complaints of the neighbors; he conducted too many inspections; and he testified in court against the club. *Plt. 's Mem.* at 7-12. Chief Judge Tucker found these claims were insufficient to state a cause of action against Korn.

4. Conclusion

Stein has failed to set forth newly-discovered evidence that would require me to vacate Chief Judge Tucker’s order granting the dismissal of all claims against Captain Korn. It is clear Stein disagrees with Chief Judge Tucker’s decision, but he has not offered sufficient cause to vacate it. I must therefore deny his motion.

An appropriate order follows.

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

MARK STEIN : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, et al. : NO. 13-CV-4644

ORDER

AND NOW, this 7th day of April, 2014, IT IS HEREBY ORDERED that
the plaintiff's motion for reconsideration/relief (Dkt. # 49) is DENIED.

BY THE COURT:

/s/ J. William Ditter, Jr.
J. WILLIAM DITTER, JR., J.