

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

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

MEMORANDUM and ORDER

Norma L. Shapiro, J.

March 27, 1998

Plaintiffs Horizon Unlimited, Inc. ("Horizon") and John Hare ("Hare") seek reconsideration of the court's February 26, 1998 Memorandum and Order granting in part and denying in part the motion to dismiss filed by defendants Richard Silva ("Silva") and SNA, Inc. ("SNA"). For the reasons stated below, plaintiffs' motion will be denied.

BACKGROUND

Plaintiffs purchased a Seawind airplane kit manufactured by SNA, of which Silva is president. After completing construction of the Seawind kit, plaintiffs allege the airplane did not perform as represented in SNA's promotional brochures. Plaintiffs' Complaint does not state how their airplane is deficient or what brochure specifications they are challenging; plaintiffs only allege the airplane did not "perform according to the specifications and building times" printed in the promotional materials.

Plaintiffs' Complaint alleged violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"),

Pa. Stat. Ann. tit. 73, § 201-1, et seq., negligent misrepresentation, fraud and deceit, and breach of warranty.

The court dismissed plaintiffs' breach of warranty claim because the purchase agreement, attached to plaintiffs' Complaint, contained an integration clause clearly supplanting any oral or written representations made by defendants prior to the date of the contract.

The court dismissed plaintiffs' negligent misrepresentation and fraud and deceit claims because they alleged facts arising out of the parties' contractual relationship. Under Pennsylvania law, a party cannot convert what is essentially a breach of contract claim into a tort claim. Because plaintiffs were attempting to do exactly that, the court dismissed those claims.

The court denied the motion to dismiss plaintiffs' claim under the UTPCPL. It was unclear whether the exculpatory clause in the contract was intended to bar actions based on a separate statutory remedy for illegal activity inducing the formation of the contract as opposed to an action for damages incurred after the making of the contract. Because the matter was raised on a motion to dismiss, the court declined to dismiss the UTPCPL claim.

Plaintiffs moved for reconsideration of the dismissal of their breach of warranty, negligent misrepresentation and fraud and deceit claims. Defendants replied that plaintiffs' motion

was untimely, or, in the alternative, was unsupported.

## DISCUSSION

### **I. Timeliness**

"Motions for reconsideration or reargument shall be served and filed within ten (10) days after the entry of judgment, order, or decree concerned." Local Rule Civ. P. 7.1(g). The Memorandum and Order dismissing three of plaintiffs' claims was entered on February 26, 1998. Plaintiffs filed their motion for reconsideration on March 6, 1998, only six business days later.<sup>1</sup> Plaintiffs' motion was filed in a timely manner.

Defendants argue they were not served in a timely manner because they did not receive a copy of plaintiffs' motion in the mail within ten days after entry of the court's Memorandum and Order. "Service by mail is complete upon mailing." Fed. R. Civ. P. 5(b). "When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation." Fed. R. Civ. P. 6(a). Plaintiffs' certificate of service states their motion was mailed to defense counsel on March 7, 1998; the ten-day period expired on March 12, 1998. Because service was effective upon mailing,

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<sup>1</sup> Defendants argue their copy of plaintiffs' motion for reconsideration "drafted by foreign counsel" is dated March 7, 1998. Whether or not that is true, the docket shows the motion was filed of record on March 6, 1998.

plaintiffs timely served their motion on defendants.<sup>2</sup> See Adams v. Trustees of the New Jersey Brewery Pension Trust Fund, 29 F.3d 863, 870 (3d Cir. 1994); Prousi v. Cruisers Div. of KCS Int'l, Inc., No. 95-6652, 1997 WL 793000, at \*2 (E.D. Pa. Dec. 8, 1997).

## II. Reconsideration

"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), cert. denied, 476 U.S. 1171 (1986). "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).

Courts will reconsider an issue only "when there has been an intervening change in the controlling law, when new evidence has become available, or when there is a need to correct a clear error or prevent manifest injustice." NL Industries, Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n. 8 (3d Cir. 1995); Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). "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 \*1

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<sup>2</sup> In fact, defense counsel admit they received plaintiffs' motion on March 11, 1998; even if service was only effective upon receipt, defendants received the motion within the ten days.

(E.D. Pa. Jan. 27, 1998).

Plaintiffs argue the court improperly dismissed their claim for breach of warranty. Plaintiffs' Complaint alleges defendants made misrepresentations which induced them to purchase an aircraft kit. Plaintiffs argue those misrepresentations are sufficient to escape the limitations of the contract's integration clause.

The court already addressed this same argument in its Memorandum and Order. An allegation that defendants made misrepresentations that convinced plaintiffs to purchase an airplane is not sufficient to avoid the terms of the integration clause. Plaintiffs' motion to reconsider the dismissal of this claim is nothing more than a request for the court to "rethink" a decision already made. See Tobin, 1998 WL 31875, at \*1.

Plaintiffs also argue the court should not have dismissed their negligent misrepresentation claim because "defendants made representations to the general public they knew or should [have] known were incorrect." Pltffs.' Brief at 2. The court addressed this argument in the February 26, 198 Memorandum and Order; plaintiffs have not raised any new arguments that show a "manifest injustice" worthy of reconsideration. See NL Industries, 65 F.3d at 324 n. 8. Plaintiffs' motion for reconsideration will be denied.

### **III. Request to Amend Complaint**

Plaintiffs include the following at the end of their motion for reconsideration: "In the event that the Court denies the motion for reconsideration, the plaintiffs respectively [sic] request that the Court grant them ten (10) days to amend their complaint." Pltffs.' Brief at 3. Plaintiffs offer no explanation or basis for the request to amend their Complaint; they do not explain what amendments they propose to make. The request will be denied without prejudice; plaintiffs may file a motion to amend with a proposed Amended Complaint attached to help the court determine if it states a cause of action.

An appropriate Order follows.

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ORDER

AND NOW, this 27th day of March, 1998, upon consideration of plaintiffs' motion for reconsideration, defendants' response thereto, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. Plaintiffs' motion for reconsideration is **DENIED**.
2. Plaintiffs' request to amend their Complaint is **DENIED WITHOUT PREJUDICE** to filing a motion to amend the Complaint. If plaintiffs file said motion, a proposed Amended Complaint to their motion shall be attached.

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Norma L. Shapiro, J.