

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

HARRY J. POULOS,	:	
WILLIAM WHITE,	:	CIVIL ACTION
Plaintiffs	:	
	:	
v.	:	NO. 05-1634
	:	
STRATTON J. NICOLAIDES,	:	
ELIZABETH BAXAVANIS,	:	
DOMINION GROUP Ltd./	:	
GWYNEDD Ltd.,	:	
NUMEREX CORP.,	:	
Defendants	:	

MEMORANDUM

STENGEL, J.

November 1, 2005

Plaintiffs bring this motion to reconsider filed on August 15, 2005, after Judge Newcomer's August 4th, 2005, Order dismissed the case pursuant to defendants' Fed. R. Civ. Pro. 12(b)(1) motion. Based upon the reasoning set forth below, I will deny the plaintiffs' motion.

I. BACKGROUND

This is a breach of contract and unjust enrichment case in which the plaintiffs seek money damages for unpaid fees earned in connection with multiple capital-raising ventures. The essence of the complaint is that defendants Nicolaides and Baxavanis (both Florida residents and representatives for Dominion Group Ltd. and Numerex corporation) allegedly promised plaintiffs Poulos and White a certain percentage of revenues earned through their collective business dealings. Those percentages have not been paid.

Plaintiffs' original complaint attempted to invoke this court's subject matter jurisdiction based upon diversity. After a motion by the defendants and a hearing on the issue the plaintiffs concede that, like themselves, three of the defendants, Dominion Group Ltd., Gwynedd Resources Ltd., and Numerex Corporation are Pennsylvania citizens. Judge Newcomer then held that Dominion Group was an indispensable party pursuant to Fed. R. Civ. P. 19(a), (b) and dismissed the case for lack of jurisdiction.

II. STANDARD of REVIEW

“The purpose of a motion for reconsideration is to correct a manifest error of law or to present evidence that is newly discovered.” Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); Hartford Fire Ins. Co. v. Huls Am., Inc., 921 F.Supp 278, 279 (E.D. Pa. 1995). A motion to reconsider is proper when it seeks to correct an error of law or to prevent manifest injustice. General Instrument Corp. v. Nu-Tek Elecs., 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), *aff'd.*, 197 F.3d 83 (3d. Cir. 1999).

III. DISCUSSION

The plaintiffs contend the court erred in concluding that they will not be prejudiced by dismissing this case for lack of subject matter jurisdiction (Newcomer Order p. 4, 2nd to last sentence). According to plaintiffs, the statute of limitations has run on their claims and they would not be able to re-file their case in state court.¹

¹The plaintiffs would have had to file by May 1, 2005 in order to avoid any statute of limitations problems.

In his August 4th Order, Judge Newcomer found that the remaining defendants would be seriously prejudiced if this case were to proceed without Dominion. Similarly the court also found it would be difficult or impossible to grant the plaintiffs' requested relief without Dominion being a party to the suit. This Court has no reason to disrupt those conclusions. Furthermore Judge Newcomer's opinion, far from making a manifest error in law, properly applies Third Circuit precedent established in Kopper Co. v. Aetna Casualty & Surety Co., 158 F.3d 170 (3d Cir. 1998).

Judge Newcomer's decision to dismiss plaintiffs' case was based upon his factual determination that Dominion is an indispensable party. Judge Newcomer held a hearing on this issue on July 14, 2005, and had the benefit of several rounds of briefing. I will deny the plaintiffs' motion for reconsideration.

IV CONCLUSION

Judge Newcomer applied a four factor test outlined in Fed. R. Civ. Pro. 19(b). Plaintiffs contend that they will not have a remedy if this case is dismissed because their state contract claims may be barred by the statute of limitations. The evidence of prejudice due to the statute of limitations could and should have been presented before Judge Newcomer. Furthermore, regardless of whether plaintiffs will be prejudiced, Dominion is an indispensable party. There is no reason to disturb Judge Newcomer's findings on this point. The plaintiffs' motion for reconsideration is denied. An appropriate order follows.

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GWYNEDD Ltd.,	:	
NUMEREX CORP.,	:	
Defendants	:	

ORDER

STENGEL, J.

AND NOW, this day of November, 2005, upon consideration of plaintiffs' motion to reconsider (Docket # 11), it is hereby **ORDERED** that the Motion is **DENIED**. The Clerk of the Court shall mark this case as closed for all purposes.

BY THE COURT:

LAWRENCE F. STENGEL, J.