

opinions in the two related cases.¹ On June 10, 1998, Plaintiff FHC moved for leave to file a supplemental response and evidence to Defendants' motion for summary judgment in light of new Third Circuit authority on the issue of standing. Oral argument on the motion to file a supplemental response and the motion for summary judgment took place on June 16, 1998. On August 18, 1998, after careful consideration of the issues presented by both parties, this Court granted Plaintiff's motion for leave to file a supplemental response to Defendant's motion for summary judgment and denied Defendant's motion for summary judgment.

Presently before the Court is Defendants' timely motion for reconsideration of this Court's order denying summary judgment against Plaintiff, and Plaintiff's response thereto. For the following reasons, Defendant's motion will be denied.

II. STANDARD OF MOTION FOR RECONSIDERATION

Local Rule of Civil Procedure 7.1(g) establishes procedural guidelines for filing a motion for reconsideration.² "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, 106 S. Ct. 2895 (1986). Generally, 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

¹ The two cases, involving the same plaintiff as the instant case, are FHC v. Montgomery Newspapers, 141 F.3d 71 (3d Cir. 1998) and FHC v. Main Line Times, 141 F.3d 439 (3d Cir. 1998).

² Rule 7.1(g) provides:
Motions for reconsideration or reargument shall be served and filed within ten (10) days after the entry of the judgment, order, or decree concerned. Local R.Civ. P. 7.1(g).

Industries, Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n. 8 (3d Cir. 1995).

III. DISCUSSION

In support of their motion for reconsideration, Defendants argue that the district courts in FHC v. Montgomery Newspapers and FHC v. Main Line Times, *supra*, established, and the Third Circuit affirmed, that the Fair Housing Council of Suburban Philadelphia “regularly conducts the investigative activities that it claims as diversions.” (Mem. in Supp. of Defs.’ Mot. for Recons. at 2, ¶ 2.) Therefore, Defendants claim that this Court erroneously found that a genuine issue of material fact exists as to whether FHC sustained injury resulting from alleged discriminatory advertisements published in their newspapers because the doctrine of issue preclusion bars relitigation of that issue. (Mem. in Supp. of Defs.’ Mot. for Recons. at 2, ¶ 3.)

Traditionally, courts have required the presence of four factors before issue preclusion, [also known as collateral estoppel],³ may be applied: “(1) the previous determination was necessary to the decision; (2) the identical issue was previously adjudicated; (3) the issue was actually decided in a decision that was final, valid, and on the merits; and (4) the party being precluded from relitigating the issue was adequately represented in the previous action.” Hawksbill Sea Turtle v. Fed. Em. Management Agency, 126 F.3d 461, 475 (3d Cir. 1997). When any one of these factors goes unsatisfied, the application of collateral estoppel is inappropriate. *Id.* Moreover, “[e]ven if all four requirements of collateral estoppel are met, changes in controlling facts

³ Throughout this memorandum the phrases “collateral estoppel” and “issue preclusion” are used interchangeably to describe the rule providing preclusive effect to a fact, question, or right determined in a prior case.

essential to a judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues.” Raytech Corp. v. White, 54 F.3d 187, 190 (3d Cir. 1995)(quoting Montana v. U.S., 440 U.S. 147, 157, 99 S.Ct. 970, 976 (1979)). Accordingly, changes in controlling facts essential to the judgments in FHC v. Montgomery Newspapers, 141 F.3d 71 (3d Cir. 1998) and FHC v. Main Line Times, 141 F.3d 439 (3d Cir. 1998) render collateral estoppel inapplicable in the instant matter.

As this Court stated in its memorandum-order dated August 18, 1998, at minimum, a plaintiff seeking to establish standing to sue under the Fair Housing Act must allege that he has suffered some “distinct and palpable injury” resulting from the defendant’s actions. Havens Realty Corp. v. Coleman, 455 U.S. 363, 372, 102 S. Ct. 1114, 1121 (1982). Applying the standard articulated in Havens, the Third Circuit recently held that a distinct and palpable injury, for Article III standing purposes, exists when there is a causal connection between the alleged injury and the particular illegal conduct. See FHC v. Montgomery Newspapers, 141 F.3d 71 (3d Cir. 1998); and FHC v. Main Line Times, 141 F.3d 439 (3d Cir. 1998).

Based on the facts presented in Montgomery Newspapers, the Court found that FHC’s investigation of newspapers was not motivated by the advertisements at issue in the suit or by a complaint about the advertisements. Id. at 78. Instead, the Court concluded that FHC conducted investigation of newspapers as a part of its normal activities. Id. Without reiterating its analysis in Montgomery Newspapers, the Third Circuit arrived at the same conclusion in FHC v. Main Line Times, 141 F.3d 439, 442 (3d Cir. 1998). Defendants now mistakenly conclude that the Third Circuit’s findings of

fact in Montgomery Newspapers and Main Line Times have a preclusive effect on this Court's determination that FHC's investigation of newspapers in response to Defendants' publication of allegedly discriminatory advertisements established a genuine issue of material fact.

Clearly, the facts presented before this Court markedly differ from those upon which the Third Circuit based its opinions in Montgomery Newspapers and Main Line Times. In Montgomery Newspapers the Third Circuit concluded that “[t]he record before us does not establish that the FHC altered its operations in any way as a result of the allegedly discriminatory advertisements or diverted any of its resources to a bona fide investigation.” FHC v. Montgomery Newspapers, 141 F.3d at 78(emphasis added). Thus, the Montgomery Newspapers opinion was predicated on the factual determination that FHC did not prove that their investigation of newspapers was causally connected to the defendant's allegedly discriminatory ads. Similarly, in Main Line Times, the Court found that FHC's proof was “virtually identical to that offered and found lacking in Montgomery Newspapers”. Thus, the court concluded that no genuine issue of material fact existed on the issue of standing.

Unlike Montgomery Newspapers and Main Line Times, the record in the instant matter includes the Supplemental Affidavit of James Berry, Executive Director of FHC. Mr. Berry's affidavit contains specific evidence supporting the FHC's contention that it altered its operations in response to the allegedly discriminatory advertisements published by Defendants. See FHC v. Mercury, Peerless Publications, Inc., No. 96-1382, 1998 WL 512937 (E.D.Pa. Aug. 18, 1998). Moreover, Mr. Berry's supplemental affidavit chronicles FHC's efforts to counteract the alleged harm caused by publication

of the advertisements at issue. Thus, the affidavit clearly articulates that FHC “diverted from normal activities and read each paper’s classified advertising section in response to discovery of these allegedly discriminatory advertisements.” (Supplemental Aff. of James Berry at 6, ¶ 4).

In both Main Line Times and Montgomery Newspapers the facts upon which the Court based its opinions did not establish that FHC’s investigation of newspapers was motivated by the alleged discriminatory advertisements appearing in Defendants’ newspapers. Consequently, the supplemental affidavit, submitted by FHC in the present case, provided this Court with a markedly different set of facts. As stated above, changed facts render collateral estoppel inapplicable in a subsequent action raising the same issues. See Hawksbill at 477. Therefore, the doctrine of issue preclusion does not bar this Court’s determination that sufficient facts were presented on summary judgment to create a genuine issue as to whether the injury asserted by FHC directly relates to the allegedly discriminatory advertisements published by Defendants.

Moreover, this Court denied Defendants’ summary judgment motion based on two injuries to the FHC: (1) non-routine investigation of newspapers resulting in the diversion of resources; and (2) diversion of resources to educational projects to counteract the allegedly discriminatory advertisements published by Defendants. Since FHC’s educational efforts alone create a genuine issue of material fact as to whether it suffered a distinct and palpable harm resulting from Defendants’ publication of the advertisements at issue, Defendants’ motion for reconsideration does not support a reversal of the August 18, 1998 summary judgment ruling.

V. CONCLUSION

For the reasons stated above, this Court concludes that reconsideration of the August 18, 1998 Order is not necessary to correct a manifest error of law. Accordingly, Defendants' Motion for Reconsideration will be denied. An appropriate Order follows.