UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

FEDERAL ELECTION COMMISSION, Plaintiff, v. SAM KAZRAN a/k/a Sam Khazrawan, et al., Defendants.	Civ. No. 3:10-1155-J-RBD-JRK OPPOSITION

PLAINTIFF FEDERAL ELECTION COMMISSION'S OPPOSITION TO DEFENDANT SAM KAZRAN'S MOTION FOR RECONSIDERATION

Plaintiff Federal Election Commission respectfully submits this opposition to Defendant Sam Kazran's motion for reconsideration (Dkt. No. 28) of the Court's Order denying Kazran's motion for joinder as untimely (Dkt. No. 22).

On May 2, 2011, the Commission and Kazran signed and filed a joint Case Management Report that proposed a deadline of June 1 for any motions to add parties to this case. (Dkt. No. 11 at 1.) The Court's subsequent Case Management and Scheduling Order adopted that June 1 deadline. (Dkt. No. 13 at 1.) Forty-eight days after the deadline, Kazran filed a motion to join United States Representative Vern Buchanan as a party to this action. (Dkt. No. 16.) The Commission opposed Kazran's motion because it was untimely under the Scheduling Order and because it lacked any legal basis under Rules 19 and 20 of the Federal Rules of Civil Procedure. (Dkt. No. 21.) The Court denied Kazran's motion as untimely. (Dkt. No. 22.)

Kazran now moves the Court to reconsider its denial. "[R]econsideration of a prior order is an extraordinary remedy which must be used sparingly." *Cutaia v. Florida*, Civ. No. 6:11-973-Orl-28DAB, 2011 WL 3203721, at *1 (M.D. Fla. July 27, 2011) (citing *Am. Ass'n of People*

with Disabilities v. Hood, 278 F. Supp. 2d 1337, 1339 (M.D. Fla. 2003)). "A motion for reconsideration does not provide an opportunity to simply reargue — or argue for the first time — an issue the Court has once determined." *Carter v. Premier Rest. Mgmt.*, Civ. No. 2:06-212-FTM-99DNF, 2006 WL 2620302, at *1 (M.D. Fla. Sept. 12, 2006). "'[T]he only reason which should commend reconsideration of [a] decision is a change in the factual or legal underpinnings upon which the decision was based.'" *Jackson v. Wesley*, Civ. No. 6:11-cv-686-Orl-28GJK, 2011 WL 2144696, at *1 (M.D. Fla. May 31, 2011) (quoting *Taylor Woodrow Const. Corp. v. Sarasota/Manatee Airport Auth.*, 814 F. Supp. 1072, 1072 (M.D. Fla. 1993)).

"This Court will not alter a prior decision absent a showing of 'clear and obvious error' where 'the interests of justice' demand correction." *Prudential Secs., Inc. v. Emerson*, 919 F. Supp. 415, 417 (M.D. Fla. 1996) (quoting *Am. Home Assur. Co. v. Glenn Estess & Assocs., Inc.*, 763 F.2d 1237, 1239 (11th Cir. 1985)). "'The burden is upon the movant to establish the extraordinary circumstances supporting reconsideration.'" *Skytruck Co. v. Sikorsky Aircraft Corp.*, Civ. No. 2:09-267-FtM-99SPC, 2011 WL 2413418, at *1 (M.D. Fla. June 14, 2011) (quoting *Mannings v. Sch. Bd. of Hillsborough County*, 149 F.R.D. 235, 235 (M.D. Fla. 1993)).

The primary basis for Kazran's motion for reconsideration appears to be an allegation that during scheduling negotiations counsel for the Commission misled him as to which motions would be subject to the June 1 deadline. (*See* Mot. for Recons. ¶ 14.) According to Kazran, he "was led to believe" that the deadline would apply only to motions made by the Commission (*see id*. ¶ 8), not to Kazran's own motion for joinder, which he asserts was "specifically discussed and excluded from the parties[']agreement" (*id*. ¶ 4). Indeed, Kazran appears to claim that the Commission agreed that he could present his motion to the Court for decision on the merits at any time. (*See id*. ¶ 9.)

Even if Kazran's unsworn factual assertions regarding the parties' negotiations were true — and, as discussed below, they are emphatically not true — they would be inconsequential because the Court's Scheduling Order explicitly established a deadline for "Motions to Add Parties" (Dkt. No. 13 at 1), thereby superseding any proposal or agreement by the parties. Accordingly, if Kazran believed that the Court had erred by subjecting his joinder motion to the June 1 deadline, he should have sought to amend the Scheduling Order when it was issued, rather than simply ignoring the Order for two months and then violating it. *See AC Direct, Inc. v. Kemp*, Civ. No. 6:06-122-Orl-19UAM, 2008 WL 746839, at *3 (M.D. Fla. Mar. 18, 2008) (denying motion for reconsideration where movant "gave no explanation as to why it failed to realize its oversight until almost three months after the [order] was entered") (internal quotation marks omitted).

In addition, even if Kazran's motion for joinder were now to be deemed timely, it would fail on the merits for the reasons set forth in the Commission's opposition to that motion. (Dkt. No. 21 at 4-9.) Because Kazran's motion could not have succeeded under the standards for joinder established by Rules 19 and 20 of the Federal Rules of Civil Procedure (*see id.*), the denial of the motion as untimely worked no "manifest injustice" that would justify reconsideration. *See Del. Valley Floral Group, Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1384 (Fed. Cir. 2010) (applying Eleventh Circuit law and affirming denial of motion to reconsider where movant "fail[ed] to show that manifest injustice requires reconsideration"); *cf. State Contracting & Eng'g Corp. v. Condotte Am., Inc.*, 2005 WL 5643877, at *2 (S.D. Fla. May 31, 2005) (declining to reconsider holding that objections to magistrate judge's report were untimely where court had also determined that objections failed on merits).

Finally, contrary to Kazran's representations, the facts surrounding Kazran and the Commission's negotiation of and agreement to the joint Case Management Report (Dkt. No. 18) are these: On March 17, 2011, upon serving Kazran with the Commission's complaint in this case, the Commission sent Kazran by UPS a copy of the Court's Order designating the case under Track Two in accordance with Local Rule 3.05 and requiring the parties to conduct a case management conference, including the attachments to that Order. (*See* Chlopak Declaration ¶ 3.) The Commission explained in a cover letter that the Order required the parties to conduct a case management conference no later than 60 days after service or appearance of any defendant, and requested that Kazran contact counsel "as soon as possible so that we may schedule the conference within the time proscribed by the Court's order, *i.e.* no later than April 18, 2011." (*Id.* ¶ 3 & Exh. 1.)

Litigation counsel for the Commission then contacted Kazran to schedule the case management conference and the parties agreed to conduct the conference by telephone on Monday, April 18, 2011, at 10:00 a.m. (*Id.* ¶¶ 4-5 & Exh. 2.) Counsel confirmed the parties' agreement concerning the date and time of the case management conference call in a follow-up email to Kazran. (*Id.* ¶ 6 & Exh. 3.)

On Monday, April 18, the parties conducted their telephonic case management conference, using the Case Management Report form provided by the Court as a point of reference for the items to be addressed. (*Id.* ¶ 7.) The Commission proposed June 1, 2011 as the deadline for "Motions to Add Parties or to Amend Pleadings," the third "Deadline or Event" listed in the Case Management Report form. (*Id.*) Kazran initially hesitated to agree to June 1, stating that he "is involved in other litigation and is busy preparing for a trial." (*Id.*) Counsel explained that a June 1 deadline would still allow Kazran over six weeks from the current date to

complete any joinder motion he intended to file, and even offered a deadline for adding parties or amending pleadings one week later, *i.e.* June 8. (*Id.*) Apparently concluding that six weeks would be sufficient, Kazran then agreed to the Commission's original proposed date of June 1. (*Id.*)

Although the parties agreed on nearly all of the items to be addressed in the Case Management Report during the April 18 conference call, they clarified their positions regarding the involvement of a jury in this case during a further call on April 20. (*Id.* ¶ 8 & Exh. 4.)

On April 25, one week before the Case Management Report was due to be filed, counsel sent Kazran an email attaching a draft of the completed Case Management Report form. (*Id.* ¶ 9 & Exh. 5.) In the April 25 email, counsel explained that the attached draft reflected the dates and other details to which Kazran and the Commission had agreed, invited Kazran to raise any questions, reminded Kazran that the parties were obligated to file the form by Monday, May 2, and requested that Kazran return a copy of the form with his signature for filing by that date. (*Id.*)

Kazran responded the same day and sent an email in which he stated, "I apologize my scanner is not cooperating today. I will have my signature page along with the case management order send [sic] tomorrow." (*Id.* ¶ 10 & Exh. 6.)

The Commission did not hear or receive anything from Kazran for the rest of the week. (*Id.* ¶ 10.)

On the morning of Monday, May 2 — the deadline for filing the Case Management Report with the Court — counsel attempted to reach Kazran by telephone to request that he sign and return the completed Case Management Report to the Commission for filing that day. (*Id.* ¶ 11.) Unable to reach Kazran by phone, counsel left Kazran a voicemail and followed up with

an email. (*Id.* ¶ 11 & Exh. 7.) Shortly after sending that email, counsel received an email from Kazran indicating that he would forward "the docs" shortly. (*Id.* ¶ 12 & Exh.8.) Soon thereafter, counsel received another email from Kazran attaching a copy of the completed Case Management Report, but lacking Kazran's signature on the report. (*Id.* ¶ 13 & Exh. 9.) Counsel immediately responded, sending Kazran another email noting the absence of his signature on the Case Management Report and requesting that he sign and resend it. (*Id.* ¶ 14 & Exh. 10.) Counsel then received an email from Kazran attaching a signed copy of the completed Case Management Report, which counsel filed with the Court shortly thereafter. (*Id.* ¶ 15 & Exh. 11; Dkt. No. 11.)

During the April 18 conference call and in numerous other communications before and after that call, Kazran and the Commission's litigation counsel discussed Kazran's desire to join Congressman Buchanan as a party in this case, and counsel repeatedly advised Kazran of the Commission's objection to such joinder. (Chlopak Decl. ¶ 16.) In light of (a) Kazran's expressed intention to join Buchanan, including during the April 18 conference call; (b) the fact that the Commission, as plaintiff, had named all parties it sought to sue in its complaint; and (c) the fact that as of April 18, Kazran still had not filed even an original responsive pleading, the discussion during the April 18 conference call of the June 1 deadline for amending pleadings or adding parties was focused *chiefly* on how that deadline would affect Kazran's intended joinder motion. (*Id.*) Indeed, Kazran's anticipated joinder motion was the only motion specifically discussed during the April 18 conference call. (*Id.*) But at no point — not before, during, or after that conference call — did Kazran or the Commission's counsel ever state or imply that his anticipated joinder motion would be excluded from the agreed-upon June 1 deadline for amending pleadings or adding parties, or propose an alternative deadline for that anticipated

motion. (*Id.* ¶¶ 17-18.) Nor did Kazran ever raise any other questions or concerns about the contents of the completed Case Management Report, despite having it to review for a full week before finally signing it and returning it to the Commission to be filed. (*Id.* ¶ 19.) And the Case Management Report itself belies Kazran's claim that the parties excluded the only event likely to be affected by the agreed June 1 deadline from that deadline. (Dkt. No. 18.)

Because Kazran's factual assertions are false — as demonstrated by a sworn declaration and contemporaneous documentary evidence — his motion for reconsideration does not even meet his threshold burden to demonstrate "'a change in the factual . . . underpinnings upon which the decision was based,'" *Jackson*, 2011 WL 2144696, at *1 (quoting *Taylor Woodrow Const. Corp.*, 814 F. Supp. at 1072), much less a "'clear and obvious error' where 'the interests of justice' demand correction." *Prudential Secs.*, 919 F. Supp. at 417 (quoting *Am. Home Assur.*, 763 F.2d at 1239); *see also Skytruck Co.*, 2011 WL 2413418, at *1 (holding that burden is on movant "to establish the extraordinary circumstances supporting reconsideration") (quoting *Mannings*, 149 F.R.D. at 235).

For the foregoing reasons, the Commission respectfully requests that the Court deny Defendant Sam Kazran's Motion for Reconsideration.

Respectfully submitted,

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September 6, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2011, I caused Plaintiff Federal Election Commission's Opposition to Defendant Sam Kazran's Motion for Reconsideration and the supporting Declaration of Erin Chlopak and exhibits thereto to be served on Defendant 11-2001 LLC's registered agent by first class mail, and on Defendant Sam Kazran by e-mail pursuant to Fed. R. Civ. P. 5(b)(2)(E), at the addresses listed below:

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