UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ELLEN SENISI,

        Plaintiff,

    -v-   No. 13CV3314-LTS-AJP

JOHN WILEY & SONS, INC.,

        Defendant.

--x

MEMORANDUM OPINION AND ORDER

On November 30, 2105, this Court issued a Memorandum Opinion and Order

("SJ Order") resolving the cross-motions of Plaintiff Ellen Senisi ("Senisi" or "Plaintiff") and

Defendant John Wiley & Sons, Inc. ("Wiley" or "Defendant") for summary judgment. (See

Docket Entry Nos. 168, 173, 209.) The SJ Order dismissed 143 of the 153 claims of copyright

infringement remaining in this case, relying principally on the invalidity of copyright registration

VA 1-429-916, which covered 140 of the claims at issue (the "subject claims"). (See SJ Order.)

On December 10, 2015, Senisi filed a letter with the Court seeking "clarification that the

dismissal of the claims covered by VA 1-429-916 [was] . . . without prejudice." (See Docket

Entry No. 210) (emphasis in original). Wiley opposed Plaintiff's request for clarification. (See

Docket Entry Nos. 211-213.) On January 7, 2016, the Court issued a Memorandum Order

denying Senisi's request that the dismissal of her claims based on registration VA 1-429-916 be

deemed without prejudice. (See Docket Entry No. 214 ("Jan. 7 Order").)

Senisi filed the instant motion on January 15, 2016, seeking reconsideration of the

Jan. 7 Order's holding that dismissal of the claims arising from registration VA 1-429-916 was

with prejudice or, in the alternative, entry of judgment on the ruling dismissing the 140 claims

pursuant to Federal Rule of Civil Procedure 54(b) so that Senisi might pursue an immediate

appeal. (See Docket Entry Nos. 215, 216 ("Senisi Memo").) Wiley opposes both requests. (See

Docket Entry No. 220 ("Wiley Memo").)

The Court has carefully considered the parties' submissions and, for the reasons

stated below, grants Senisi's motion for reconsideration, vacates the Jan. 7 Order and holds that

the 140 claims that had been asserted in connection with registration VA 1-429-916 are

dismissed without prejudice.

DISCUSSION[1]

"A motion for reconsideration is governed by Local Civil Rule 6.3. In deciding a

motion for reconsideration pursuant to Local Civil Rule 6.3 . . . [t]he moving party is required to

demonstrate that the Court overlooked the controlling decisions or factual matters that were put

before the Court in the underlying motion." See Weber v. Multimedia Entertainment, Inc., No.

97CV682-JGK, 2000 WL 724003, at *1 (S.D.N.Y. June 5, 2000); see also Shrader v. CSX

Transportation, Inc., 70 F.3d 255, 257 (2d Cir. 1995) ("reconsideration will generally be denied

unless the moving party can point to controlling decisions or data that the court overlooked –

matters, in other words, that might reasonably be expected to alter the conclusion reached by the

court."). "A motion for reconsideration can [also] be granted if . . . there is a need to correct a

clear error or prevent manifest injustice." Stone v. 866 3rd Next Generation Hotel, LLC, No.

99CV4780-LTS-KNF, 2002 WL 655591, at *1 (S.D.N.Y. Apr. 19, 2002) (quoting Virgin

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[1]   In light of the extensive prior motion practice in this case, the Court presumes the
        parties' familiarity with the underlying facts.

Atlantic Airways v. National Mediation Bd., 956 F.2d 1245, 1255 (2d Cir.1992)); see also

Munafo v. Metropolitan Transp. Authority, 381 F.3d 99, 105 (2d Cir. 2004) ("we agree with our

sister circuits that district courts may alter or amend judgment to correct a clear error of law or

prevent manifest injustice") (internal quotation marks and citations omitted). Ultimately, the

decision as to whether or not to grant a motion for reconsideration is entrusted to the district

court's sound discretion. See, e.g., Devlin v. Transportation Communications Intern. Union, 175

F.3d 121, 132 (2d Cir. 1999); see also In re MarketXT Holdings Corp., 455 F. App'x 41, 43 (2d

Cir. 2012) (summary order) (holding that "[t]he court's denial of Appellants' motion to

reconsider was not an abuse of discretion.").

Wiley's Procedural Arguments

As an initial matter, Wiley argues that Senisi's motion for reconsideration fails on

procedural grounds as untimely and as an impermissible successive motion for reconsideration.

(See Wiley Memo at pp. 7-8.) As Wiley notes, Local Civil Rule 6.3 requires a party to file a

motion for reconsideration "within fourteen (14) days after the entry of the Court's

determination of the original motion." See S.D.N.Y. Local Civil Rule 6.3. Wiley argues that

Senisi's motion is, in effect, a motion for reconsideration of the Court's SJ Order, which was

filed on November 30, 2015, thus rendering her January 15, 2016, filing of the instant motion for

reconsideration untimely. While a portion of Senisi's argument does challenge the Court's

dismissal of her infringement claims based on the validity of registration VA 1-429-916, her

briefing on the instant motion focuses principally on the Court's January 7, 2016, conclusion that

the dismissal of the claims arising from registration VA 1-429-916 was with prejudice. (See

generally Senisi Memo.) The motion for reconsideration was filed eight days after entry of the

Jan. 7 Order, and thus is clearly timely with respect to that Order. Therefore, Senisi's reconsideration motion is not procedurally foreclosed on timeliness grounds as to the issue of the nature of the dismissal.

Nor does this motion represent an impermissible successive motion for reconsideration. Wiley cites several cases in support of the proposition that "[t]he law is clear that Plaintiff may not file successive motions for reconsideration." (Wiley Memo at p. 8.) Courts in this district have stated, for instance, that "[a] litigant is entitled to a single motion for reconsideration." Guang Ju Lin v. United States, Nos. S3 09CR746-SHS, 13CV7498-SHS, 2015 WL 747115, at *2 (S.D.NY. Feb. 18, 2015); see also Montanile v. National Broadcasting Co., 216 F. Supp. 2d 341, 342 (S.D.N.Y. 2002) ("A Court must narrowly construe and strictly apply Local Rule 6.3, so as to avoid duplicative rulings on previously considered issues, and to prevent the rule from being used as a substitute for appealing a final judgment."). Although Senisi seeks the same relief here that she was denied in the Court's Jan. 7 Order – that is, leave to file an amended complaint – her initial letter to the Court, styled as a request for "clarification" of the import of the Court's SJ Order, cannot fairly be characterized as a motion seeking reconsideration of any part of that Order. It was not until the Jan. 7 Order that the Court explicitly set out its reasoning for dismissing Senisi's claims with prejudice, and it was not until the filing of the instant motion that these legal issues were fully briefed. The Court's action on the instant motion, therefore, is not a "duplicative ruling" on a "previously considered issue." Thus, the Court rejects Wiley's argument that the instant motion is procedurally foreclosed as successive motion for reconsideration, and will consider the merits of Senisi's legal arguments.

Senisi's Merits Argument

While the principles that have persuaded the Court to reconsider the Jan. 7 Order were not presented fully in the earlier letter motion practice and therefore cannot be viewed as overlooked controlling authority, the more fleshed out argumentation on the instant reconsideration motion practice, and the steps Plaintiff took promptly after the SJ Order was rendered, warrant revisitation of the Court's earlier decision to preclude merits litigation of the dismissed claims. Senisi relies most heavily on the argument that, in copyright infringement cases, it is the "typical and proper practice . . . to dismiss claims without prejudice or to stay the proceedings in order to allow the copyright owner to correct any technical registration defects," and proffers persuasive authority. (See Senisi Memo at p. 13.) As Senisi indicates, in Family Dollar Stores, Inc. v. United Fabrics Intern., Inc., 896 F. Supp. 2d 223 (S.D.N.Y. 2012), Judge McMahon noted that the "normal" course of action to follow in a case such as this would be to dismiss any copyright infringement claims without prejudice to renewal after the party alleging infringement has secured a valid registration. See id. at 234. In an order issued in that case, Judge McMahon noted the "highly technical" nature of dismissal of claims on the basis of an invalid registration and, in dismissing the claim that was based on the invalid registration, specifically noted that the dismissal was without prejudice to litigation on the merits once a valid registration had been secured. (See Declaration of Kevin McCulloch in Support of Plaintiff's Motion for Reconsideration, Ex. 5, Docket Entry No. 217-7.)

In this connection, the Second Circuit has recognized that the Copyright Act imposes a requirement that, in order to institute an infringement action, a plaintiff must – as a statutory precondition – hold a valid copyright registration. See Psihoyos v. John Wiley & Sons, Inc., 748 F.3d 120, 125 (2d Cir. 2014); see also Accurate Grading Quality Assurance, Inc. v.

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