MONACO v. CITY OF CAMDEN et al Doc. 101

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEVEN J. MONACO, Plaintiff, v. CITY OF CAMDEN, et al., Defendants.	HON. JEROME B. SIMANDLE Civil Action No. 04-2406 **OPINION**

APPEARANCES:

William M. Tambussi, Esq.
Shawn C. Huber, Esq.
BROWN & CONNERY, LLP
360 Haddon Avenue
P.O. Box 539
Westmont, New Jersey 08108
Attorneys for Plaintiff Steven J. Monaco

Emmett E. Primas, Jr., Esq.
The Heard Building
20 East Centre Street
Woodbury, NJ 08096
Attorney for Defendants Sergeant Michael Hall and Officer Richard Verticelli

Mark M. Cieslewicz, Esq.
CITY OF CAMDEN OFFICE OF CITY ATTORNEY
City Hall, Suite 419
P.O. Box 95120
Camden, New Jersey 08101-5120
Attorney for Defendants City of Camden, City of Camden Police Department, Officer Lawrence Norman, Officer Miguel Rodriguez and Officer Luis Sanchez

SIMANDLE, District Judge:

This lawsuit arises out of Plaintiff's allegations that Defendants violated his constitutional rights by unlawfully arresting him and using excessive force upon him while he was

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attending a concert at the Tweeter Center in Camden, New Jersey. Presently before the Court is Plaintiff's motion [Docket Item 73] for reconsideration of the Court's July 23, 2007 Opinion and Order [Docket Items 67 and 68] affirming U.S. Magistrate Judge Ann Marie Donio's order denying Plaintiff's motion to file a second amended complaint. Plaintiff alternatively moves the Court to certify its July 2007 Opinion for interlocutory review. For the following reasons, the Court finds that its July 2007 Opinion contained no material legal or factual errors and that interlocutory review is not called for, and will therefore deny Plaintiff's motion.

I. BACKGROUND

On May 31, 2002, Plaintiff was in a parking lot near the Tweeter Center, a performance venue in Camden, New Jersey, preparing to attend a concert. (Am. Compl. ¶ 12.) At approximately 6:00 p.m., a fight erupted in the parking lot thirty feet away from the plaintiff, to which multiple Camden County policy officers responded, ordering everyone to vacate the parking lot. (Id. at ¶¶ 15-17.) Although Plaintiff was not involved in the fight, he claims that he was mistakenly identified by police officers as a participant, thrown to the ground, and beaten. (Id. at ¶¶ 16, 19-21.) Plaintiff alleges that he was then taken to the Camden Police Station, where he was searched, threatened, harassed, thrown against a wall,

interrogated, and detained in a cell. (Id. at ¶¶ 27-45.) Once Plaintiff was released from police custody, he went to the emergency room at Cooper Hospital, where he was treated for numerous injuries. (Id. at ¶¶ 50-51.)

Nearly two years after these events took place, on May 25, 2004, Plaintiff filed this lawsuit against the City of Camden, the City of Camden Police Department and various police officers (including John Does I-X allegedly employed by the City of Camden Police Department), claiming that these defendants violated his constitutional rights through the use of excessive force, unreasonable seizure and unlawful arrest. On March 9, 2005, nearly nine months after Plaintiff filed his complaint, the Court entered a Consent Order [Docket Item 15] permitting Plaintiff to file an Amended Complaint in which he named various individual police officer defendants, but retained his claims against individual John Doe Defendants I-X.[1]

On July 11, 2006, eyewitnesses to the event at the Tweeter Center were given the opportunity to view police photographs, and, according to Plaintiff, identified seven additional police officers who allegedly participated in the unlawful conduct on

[1] The individual defendants newly named in the Amended Complaint are Officer Lawrence Norman, Officer Miguel Rodriguez, Sergeant Michael Hall, Officer Richard Verticelli, Officer Luis A. Sanchez, Officer Juan Rodriguez, and Officer Shay Sampson.

May 31, 2002. (Pl.'s Br. 2.) On August 18, 2006, more than two years after Plaintiff filed suit and more than four years after the events underlying this litigation took place, Plaintiff filed a motion requesting leave to file a second amended complaint naming the newly identified officers as defendants [Docket Item 44].[2] As the Court explains in greater detail, infra, Magistrate Judge Donio denied Plaintiff's motion to amend, finding that under the two-year statute of limitations for section 1983 actions in New Jersey, Plaintiff's filing was untimely because he failed to satisfy the requirements under New Jersey law for his amendment to relate back to the date of his original pleading. Plaintiff appealed Magistrate Judge Donio's Order to this Court, and in its July 23, 2007 Opinion and Order [Docket Items 67 and 68] (the "July 2007 Opinion"), the Court affirmed Magistrate Judge Donio's Order. Plaintiff then filed the motion for reconsideration and/or for interlocutory appeal [Docket Item 73] presently before the Court, to which the Court now turns.

II. DISCUSSION

Plaintiff moves alternatively for reconsideration and for certification for interlocutory review. The Court addresses Plaintiff's motions in turn.

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[2] The seven officers Plaintiff seeks to name as defendants in his second amended complaint are Sergeant Domingo Rivera, Officer John R. Morris, Officer William Reese, Sergeant Gary Emenecker, Officer Jorge Medina, Officer William Frampton, and Officer Rolan Carter.

A. Motion for Reconsideration

1. Standard Governing Motion for Reconsideration

Local Civil Rule 7.1(i) of the United States District Court, District of New Jersey, governs Plaintiff's motion for reconsideration. Rule 7.1(i) requires the moving party to set forth the factual matters or controlling legal authorities it believes the Court overlooked when rendering its initial decision. L. Civ. R. 7.1(i). Whether to grant a motion for reconsideration is a matter within the Court's discretion, but it should only be granted where such facts or legal authority were indeed presented but overlooked. See DeLong v. Raymond Int'l Inc., 622 F.2d 1135, 1140 (3d Cir. 1980), overruled on other grounds by Croker v. Boeing Co., 662 F.2d 975 (3d Cir. 1981); Williams v. Sullivan, 818 F. Supp. 92, 93 (D.N.J. 1993). To prevail on a motion for reconsideration, the movant must show either

> (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court . . . [rendered the judgment in question]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.

Max's Seafood Café ex rel. Lou-Ann, Inc., v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

2. The July 2007 Opinion

In its July 2007 Opinion, the Court found that Magistrate Judge Donio's Order denying Plaintiff's motion to file a second

amended complaint was not clearly erroneous. July 2007 Opinion, dkt. item 67 at 9. The Court noted that Plaintiff's motion to amend his complaint was governed by Fed. R. Civ. P. 15(a), under which a court may deny a plaintiff leave to amend only "if a plaintiff's delay in seeking amendment is undue, motivated by bad faith, or prejudicial to the defendant" or "if the amendment would be futile (i.e., the amendment fails to state a cause of action)." Id. at 11 (quoting Adams v. Gould, Inc., 739 F.2d 858, 864 (3d Cir. 1984)). Magistrate Judge Donio's Order rested on the futility rationale, finding that because the "incident that g[ave] rise to this action occurred on May 31, 2002 and, consequently, the statute of limitations expired two years from that date," unless Plaintiff's amendment "relat[ed] back under FED. R. CIV. P. 15(c), the amendment Plaintiff s[ought was] untimely." March 30, 2007 Order, dkt. item 57 at 4.

As the Court recognized in its July 2007 Opinion, whether Plaintiff's proposed amendment related back to the date of his original filing for statute of limitations purposes is controlled by Fed. R. Civ. P. 15(c)(1),[3] which provides in relevant part that "[a]n amendment of a pleading relates back to the date of

[3] On December 1, 2007, an amendment to F. R. Civ. P. 15 took effect which reordered the subsections of the Rule but which worked no substantive change. Because the parties, Magistrate Judge Donio, and the Court used the pre-amendment ordering of the Rule throughout the litigation underlying the instant motion for reconsideration, the Court will continue to reference the pre-amendment ordering for the sake of clarity.

the original pleading when . . . relation back is permitted by the law that provides the statute of limitations applicable to the action."[4] The Court upheld Magistrate Judge Donio's ruling that neither of the New Jersey relation back rules applicable to Plaintiff's action permitted the relation back of the claims Plaintiff sought to add with his proposed second amended complaint under the circumstances presented here. Under the first such rule, New Jersey Court Rule 4:26-4, a plaintiff who does not know the names of the defendant may identify a fictitious defendant in his complaint and subsequently name new parties after the statute of limitations has expired.[5] In order for Rule 4:26-4 to apply, the Court recognized that four criteria must be satisfied:

> a plaintiff must (1) demonstrate that he did not know the true identity of the proposed defendants at the time the complaint was filed; (2) exercise due diligence to

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[4] As the Court noted, Plaintiff conceded that he did not seek to proceed under F. R. Civ. P. 15(c)(3).

[5] Specifically, the rule provides in relevant part:

> In any action . . . other than an action governed by R. 4:4-5 . . . if the defendant's true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it to be fictitious and adding an appropriate description sufficient for identification. Plaintiff shall on motion, prior to judgment, amend the complaint to state defendant's true name, such motion to be accompanied by an affidavit stating the manner in which that information was obtained.

N.J. Court Rule 4:26-4.

> ascertain the proposed defendant's true name before and after filing the complaint; (3) appropriately describe the defendant in the fictitious name designation; and (4) ensure that the proposed defendant would not be prejudiced by the delay.

July 2007 Opinion, dkt. item 67 at 13 (citing DeRienzo v. Harvard Indus., Inc., 357 F.3d 348, 353 (3d Cir. 2004)).

The Court upheld Magistrate Judge Donio's determination that Plaintiff failed to satisfy the second element because he did not exercise due diligence in seeking to ascertain the identities of the proposed new defendants before and after the filing of the Complaint:

> The Court finds that Magistrate Judge Donio did not abuse her discretion in holding that Plaintiff had failed to meet the requirements under Rule 4:26-4. To the contrary, Magistrate Judge Donio correctly points out that Plaintiff failed to demonstrate that he acted with the requisite due diligence in identifying the seven proposed defendants prior to the expiration of the statute of limitations as he is required to do. Plaintiff's arguments focus on his efforts to identify the seven proposed defendants only after May 31, 2004, the date of expiration. Absent from his motion papers before Magistrate Judge Donio (or relating to his appeal now before this Court) is an account of the efforts taken beforehand. Such an account is necessary to take advantage of New Jersey's fictitious name rule.

July 2007 Opinion, dkt. item 67 at 13-14.

The Court likewise upheld Magistrate Judge Donio's determination that Plaintiff's proposed amendment did not relate back under New Jersey Court Rule 4:9-3. The Court noted that relation back of claims is permitted under Rule 4:9-3 if the Plaintiff meets three requirements:

> (1) that the claim asserted in the amended complaint arises out of the conduct or occurrence alleged in the original complaint; (2) that the new defendant(s) received notice of the institution of the action before the statute of limitation expired; and (3) that the new defendant(s) knew (or should have known) that, but for the misidentification of the proper party, the action would have been brought against him or her.

Id. at 15 (citing Viviano v. CBS, Inc., 101 N.J. 538, 553 (1986)). Magistrate Judge Donio determined that Plaintiff failed to show that the new defendants had received actual or constructive notice of his action before the expiration of the statute of limitations, and rejected Plaintiff's argument that the coverage of Plaintiff's case in the news media was sufficient to put the new defendants on notice for Rule 4:9-3 purposes. The Court found that Magistrate Judge Donio did not err in holding that Plaintiff did not meet Rule 4:9-3's notice requirements. Id. at 17. Finding no error in Magistrate Judge Donio's ruling that Plaintiff had failed to establish grounds for relating his new claims back to the date of his original filing under F. R. Civ. P. 15(c), the Court affirmed the denial of Plaintiff's motion to amend.

3. Alleged Errors in the July 2007 Opinion

Plaintiff argues that reconsideration is warranted because the Court overlooked various factual matters and legal authority in its July 2007 Opinion. The Court disagrees and will deny the motion for reconsideration.

Plaintiff first identifies several alleged errors in the Court's decision to uphold Magistrate Judge Donio's determination that Plaintiff was ineligible for relation back under Rule 4:26-4 on account of his failure to demonstrate that he exercised due diligence to ascertain the proposed defendants' true identities before and after filing the Complaint. Plaintiff's first argument, which he claims the Court overlooked, is that he was diligent in trying to identify the new defendants prior to the expiration of the statute of limitations, but that he relied to his detriment on information supplied to him by the City of Camden in a separate Municipal Court action falsely stating that there were no police department reports about the events of May 31, 2002. (Pl.'s Br. 7-8.)

Contrary to Plaintiff's argument, the Court did not overlook this fact. Rather, it noted that although it was troubled by Plaintiff's allegation concerning the Municipal Court proceedings, those allegations simply did not explain Plaintiff's lack of diligence in failing to solicit the identities of the new defendants from his own eyewitnesses until over two years after the expiration of the statute of limitations on his claims. July 2007 Opinion, dkt. item 67 at 14. Under New Jersey law, "the meaning of due diligence will vary with the facts of each case." See DeRienzo, 357 F.3d at 354 (citation omitted). In this case, as the Court explained in the July 2007 Opinion, Plaintiff's own

eyewitnesses had information critical to identifying the potential defendants since May 31, 2002. The nondisclosure of the police reports in the Municipal Court action does not absolve Plaintiff of the duty to "investigate all potentially responsible parties in a timely manner to cross the threshold for due diligence." Id. (internal quotations and citations omitted).

To the extent that the Defendants' Municipal Court discovery response could have any conceivable bearing on Plaintiff's lack of diligence in gathering information from his own eyewitnesses, the Court notes that Defendants provided Plaintiff with the police reports in question in their December 23, 2004 F. R. Civ. P. 26 disclosures in this action. (Primas Cert. Ex. A.) Plaintiff nonetheless did not utilize his eyewitnesses' information until July 11, 2006, more than eighteen months after the reports were disclosed.[6] This fact underscores the Court's conclusion in the July 2007 Opinion that Plaintiff's lack of diligence in using his witnesses to identify the new defendants prior to the expiration of the statute of limitations had nothing to do with the availability of the police reports. Because the Court addressed and appropriately rejected this argument in the July 2007 Opinion, reconsideration is not called for. See Lentz

[6] Moreover, of the seven officers Plaintiff seeks to add in his proposed second amended complaint, only two – Officer William Reese and Sergeant William Frampton – are even referenced in the police reports and rosters disclosed by Defendants. (Primas Cert. Ex. A.)

v. Mason, 32 F. Supp. 2d 733, 751 (D.N.J. 1999) ("recapitulation of the cases and arguments considered by the court before rendering its original decision fails to carry the moving party's burden") (citation omitted).

Plaintiff next contends that the Court's Rule 4:26-4 analysis overlooked the fact that "it took a Court Order to compel [Defendants to permit the] review of the photographs by plaintiff's eyewitnesses." (Pl.'s Br. 8.) Although the Court did not specifically discuss the Order compelling discovery in its July 2007 Opinion, it did not overlook the significance of this fact. Instead, the Court explained that

> Magistrate Judge Donio correctly points out that Plaintiff failed to demonstrate that he acted with the requisite due diligence in identifying the seven proposed defendants prior to the expiration of the statute of limitations as he is required to do. Plaintiff's arguments focus on his efforts to identify the seven proposed defendants only after May 31, 2004, the date of expiration.

July 2007 Opinion, dkt. item 67 at 13-14; see also DeRienzo, 357 F.3d at 353 ("N.J.R. 4:26-4 is not available if a plaintiff should have known, by exercise of due diligence, defendant's identity prior to the expiration of the statute of limitations"). Plaintiff did not seek the order compelling discovery [Docket Item 44] until May 2006, nearly two years after the statute of limitations had expired. The discovery order proffered by Plaintiff is simply another example of his "efforts to identify the seven proposed defendants . . . after May 31, 2004." July

2007 Opinion, dkt. item 67 at 14. The Court did not overlook such efforts, but instead found them to be irrelevant to the issue of Plaintiff's diligence prior to the expiration of the statute of limitations. The discovery order cited by Plaintiff thus provides no basis for reconsideration.[7]

Plaintiff further contends that reconsideration is warranted because the Court overlooked two cases permitting relation back under Rule 4:26-4 – Love v. Rancocas Hosp., No. Civ. 01-5456, 2004 WL 3618261 (D.N.J. Apr. 14, 2004) and DeRienzo v. Harvard Indus., Inc., 357 F.3d 348, 353 (3d Cir. 2004). Love is not a "controlling decision[]" on the issue of relation back under the fictitious party pleading provisions of Rule 4:26-4, and, hence, is not a basis for reconsideration. L. Civ. R. 7.1(i). In Love, the court did not analyze relation back under Rule 4:26-4, but instead found that the statute of limitations for the plaintiff's medical malpractice claim was tolled by New Jersey's "discovery rule." 2004 WL 3618261, at *2 n.3, *4. In light of Plaintiff's express concession in his original appeal from the Magistrate Judge's decision that he is "not making . . . an argument" under

[7] Plaintiff also points out that the Court erred when it stated in the July 2007 Opinion that one of his eyewitnesses, Nicole Pangborne, looked at police photographs prior to Plaintiff's first amendment of the Complaint. (Pl.'s Br. 8.) This is not a "dispositive factual matter[]," Resorts International, Inc. v. Greate Bay Hotel and Casino, Inc., 830 F. Supp. 826, 831 (D.N.J. 1992), and the Court's misstatement of this fact is not grounds for reconsideration.

the "discovery rule," (Pl.'s Br. 15 n.1), his reliance on Love in his motion for reconsideration is misplaced.

With regard to DeRienzo, the Court did not overlook the case, but in fact cited it when setting out the standard for Rule 4:26-4 analysis. See July 2007 Opinion, dkt. item 67 at 13; see also Resorts International, Inc. v. Greate Bay Hotel and Casino, Inc., 830 F. Supp. 826, 831 (D.N.J. 1992) ("Only dispositive factual matters and controlling decisions of law which were presented to the court but not considered on the original motion may be the subject of a motion for reconsideration.") (emphasis added). In any case, DeRienzo is not at odds with the July 2007 Opinion. In DeRienzo, the court found that where the plaintiff "consistently took active steps to identify" the defendant, DeRienzo, 357 F.3d at 355, both before and after the expiration of the statute of limitations, id. at 353, he satisfied the diligence requirement of Rule 4:26-4. In contrast with DeRienzo, as noted in both the Magistrate Judge's opinion and this Court's July 2007 Opinion, "Plaintiff failed to demonstrate that he acted with the requisite due diligence in identifying the seven proposed defendants prior to the expiration of the statute of limitations." July 2007 Opinion, dkt. item 67 at 13. DeRienzo thus provides no basis for the Court to reconsider its decision.

Finally, Plaintiff urges the Court to reconsider its decision to affirm Magistrate Judge Donio's ruling that

Plaintiff's proposed amendment did not relate back under New Jersey Court Rule 4:9-3 because he failed to satisfy the rule's notice requirements.[8] As the Court noted, supra, to take advantage of Rule 4:9-3, a Plaintiff must prove, inter alia, that "the new defendant had sufficient notice of the institution of the action not to be prejudiced in maintaining his or her defense" and that "the new defendant knew or should have known that, but for the misidentification of the proper party, the

[8] The majority of Plaintiff's arguments for reconsideration of the Court's Rule 4:9-3 analysis constitute word-for-word repetitions of the arguments presented in the original appeal of Magistrate Judge Donio's Order. As the Court noted, supra, on a motion for reconsideration, "recapitulation of the cases and arguments considered by the court before rendering its original decision fails to carry the moving party's burden." Lentz, 32 F. Supp. 2d at 751 (citation omitted). The Court will not consider those Rule 4:9-3 arguments that merely rehash the same arguments already presented to the Court.

However, one such argument, which the Court did not expressly address in the July 2007 Opinion and which therefore warrants a brief word here, is Plaintiff's claim that the proposed defendants should have been on notice of this suit because "there was at least one other lawsuit pending related to this matter in this Court." (Pl.'s Br. 12) (citing Tobias v. City of Camden, Civil Action No. 03-1915 (RMB)). The Court does not agree with Plaintiff that the existence of another lawsuit brought by different plaintiffs over the events of May 31, 2002 undermines Magistrate Judge Donio's conclusion that Plaintiff failed to prove that "the new defendant[s] had notice of the action prior to the running of the statute of limitations." Love v. Rancocas Hosp., 270 F. Supp. 2d 576, 581 (D.N.J. 2003). This is because Rule 4:9-3 "expressly requires 'notice of the institution of the action,' not just of a claim." Otchy v. City of Elizabeth Bd. of Educ., 325 N.J. Super. 98, 107 (App. Div. 1999). At most, additional lawsuits over the May 31, 2002 fracas would alert the proposed defendants to the existence of a potential claim, not the actual institution of Plaintiff's action. Accordingly, reconsideration on these grounds is unwarranted.

action would have been brought against him or her." Viviano, 101 N.J. at 553. With regard to Rule 4:9-3, Plaintiff argues that

> [j]ust days after this incident, Captain Richardson of the Camden City Police Department was interviewed by the local media and stated that the matter would be investigated internally. Once again, plaintiff detrimentally relied upon something defendants told him. Plaintiff should not be penalized for the defendant Police Department's decision to wait until February 2005 to internally investigate this matter- when this defendant was aware of it just days after it occurred.

(Pl.'s Br. 9) (internal citation omitted). Plaintiff cites no authority for the implicit proposition in his argument that the Court can discount Rule 4:9-3's notice requirement for the equitable considerations he advances.[9] Finding no error in the Court's July 2007 Opinion affirming Magistrate Judge's determination that Plaintiff failed to satisfy Rule 4:9-3's notice requirement, the Court will deny Plaintiff's motion for reconsideration.

B. Motion for Interlocutory Review

Plaintiff argues that if the Court denies his motion to reconsider the July 2007 Opinion, it should certify that Opinion for interlocutory review. Under 28 U.S.C. § 1292(b), interlocutory review is appropriate if (1) the appeal involves a

[9] Even if the Court were to take such equitable considerations into account, it agrees with Defendants that the "proposed defendants . . . would be the ones to be penalized if the Court found them to be on constructive notice just because the City should have investigated the matter earlier." (Defs.' Opp'n Br. 2.)

controlling question of law; (2) there is a "substantial ground for difference of opinion" about that question of law; and (3) immediate appeal may materially advance the ultimate termination of the litigation.[10] Katz v. Carte Blanche Corp., 496 F.2d 747, 754 (3d Cir. 1974). "Interlocutory appeal under § 1292(b) is used sparingly," Kapossy v. McGraw-Hill, Inc., 942 F. Supp. 996, 1001 (D.N.J. 1996) (internal quotations and citations omitted), where "exceptional circumstances justify the departure from the general rule that appellate review is only available after a final order," Levine v. United Healthcare Corp., 285 F. Supp. 2d 552, 556 (D.N.J. 2003) (internal quotations and citations omitted). The decision to certify a question for interlocutory review is "is wholly within the discretion of the courts, even if the criteria are present." Bachowski v. Usery, 545 F.2d 363, 368 (3d Cir. 1976).

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[10] Section 1292(b) provides in relevant part:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order . . .

28 U.S.C. § 1292(b).

Plaintiff argues that all three criteria are met here. Whether Plaintiff is permitted to amend his complaint involves a "controlling question of law," he argues, because "[s]hould plaintiff not be permitted to add the additional defendants at this time, the matter will have to be tried to conclusion, appealed, and then, possibly, tried again." (Pl.'s Br. 13.) Plaintiff argues that there are grounds for differences over this question of law because "another judge may review plaintiff's motion, the actions by defendant City here, and the general liberality with which motions to amend are to be granted, and, accordingly, grant plaintiff's motion." (Id.) Finally, Plaintiff contends that certifying the question will advance the termination of this case because his case should be tried only once. (Id.)

The Court does not agree that the proposed appeal involves a controlling issue of law about which there are substantial grounds for differences of opinion, and will thus deny Plaintiff's motion for interlocutory review. As to whether the proposed appeal involves a controlling question of law, Plaintiff has not argued that the Court applied the wrong legal standard in either its Rule 4:26-4 or its Rule 4:9-3 analyses. Plaintiff has not brought to the Court's attention a single case in which a court found that a different legal standard controlled its

analysis under either rule.[11] Indeed, Plaintiff, Defendants, Magistrate Judge Donio, and this Court all employed the same criteria to determine whether relation back is permitted under either rule, and for the most part, all relied upon the same authorities. Plaintiff's dispute is not about the applicable legal standards in this case, but instead focuses on the Court's application of these standards to the facts of Plaintiff's case. Section 1292(b), however, "was not designed to secure appellate review of . . . the application of the acknowledged law to the facts of a particular case." Hulmes v. Honda Motor Co., Ltd., 936 F. Supp. 195, 210 (D.N.J. 1996). In short, there is not a "controlling question of law" appropriate for appellate review, making certification under section 1292(b) inappropriate. Katz, 496 F.2d at 754.

For largely the same reasons, the Court does not agree with Plaintiff that there is a "substantial ground for difference of opinion" about the question of law he seeks to certify for interlocutory review. Id. Again, Plaintiff has not identified "conflicting and contradictory opinions on the same issue" or other indicia to suggest that such a difference of opinion

[11] As the Court discussed, supra, Plaintiff makes an inapposite reference to Love v. Rancocas Hosp., No. Civ. 01-5456, 2004 WL 3618261 (D.N.J. Apr. 14, 2004). That the court in Love applied a different legal standard to a different legal issue does not, of course, raise any doubts about the legal standard that applies to either of the rules at issue in this case.

exists. Arista Records, Inc. v. Flea World, Inc., No. 03-2670, 2006 WL 2882990, at *3 (D.N.J. Oct. 10, 2006). Plaintiff's reference to "the general liberality with which motions to amend are to be granted," (Pl.'s Br. 13), does not suffice to indicate the existence of a substantial ground for difference of opinion, because there is no dispute that an exception to this general principle exists "if the amendment would be futile." Adams, 739 F.2d at 864.

Finally, in light of the absence of a material dispute over a controlling issue of law in the July 2007 Opinion, the Court does not find that immediate appeal will advance the ultimate termination of this litigation. Katz, 496 F.2d at 754. Certifying for appellate review an issue where the legal standard is clear would not advance the termination of this case, but would do just the opposite. Finding that Plaintiff has failed to show that there is a question of law suitable for interlocutory review in this case, the Court will deny Plaintiff's motion for certification under section 1292(b).

III. CONCLUSION

For the reasons discussed above, the Court will deny Plaintiff's motion for reconsideration and/or to certify the

issues addressed in its July 2007 Opinion for interlocutory appeal. The accompanying Order will be entered.

February 8, 2008
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
United States District Judge