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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Berkadia Real Estate Advisors LLC,

10 Plaintiff,

11 v.

12 Arthur R Wadlund, et al.,

13 Defendants.

14 Arthur R Wadlund, et al.,

15 Counterclaimants,

16 v.

17 Berkadia Real Estate Advisors LLC,

18 Counterdefendant.
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No. CV-22-00049-TUC-CKJ

ORDER

21 On July 11, 2024, Defendants/Counterclaimants (Defendants) filed a Motion for
22 Reconsideration of the Court's Order issued June 27, 2024, denying the Motion for
23 Summary Judgment filed by Plaintiff/Counterdefendant (Plaintiff), denying summary
24 judgment on the Counterclaim, and granting in part and denying in part the dispositive
25 motion filed by Defendants. The Motion for Reconsideration addresses the Court's Order
26 in part denying Defendants' Motion for Summary Judgment allowing Counts 2-4¹ to
27 proceed for nine properties: Equinox on Prince, Monier, Peaks at Redington, Canyon
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¹ Counts 9 and 10 also proceed to trial.

1 Heights, Aspen Ridge, Cinnamon Tree, Elevate, the Zone, and Highlands I and II.
2 Defendants ask the Court to reconsider six of these properties: Monier, Peaks at Redington,
3 Aspen Ridge, Cinnamon Tree, Elevate, and Highlands I and II. The Defendant seeks
4 reconsideration because these properties, except the Monier property, were not listed until
5 after January 2022, and the Monier property never sold.

6 The Court’s finding that material questions of fact exist as to Plaintiff’s claim that
7 Defendants’ “slow played” listings during their employment was based on evidence
8 showing that Defendants secured listings in January through March, and the Elevate listing
9 occurred in June, (Order (Doc. 265) at 30), “[together] with evidence that Defendants had
10 communications related to several of these properties during the time they were employed
11 by Plaintiff after they decided to leave and go to IPA., *id.* The simple fact that a property
12 was not listed in January was not determinative and is insufficient to support
13 reconsideration. For all the reasons stated in Plaintiff’s Response to the Motion for
14 Reconsideration, it is denied.

15 Motions to reconsider are appropriate only in rare circumstances, such as where the
16 Court is: “(1) presented with newly discovered evidence, (2) committed clear error or the
17 initial decision was manifestly unjust, or (3) if there is an intervening change in controlling
18 law.” *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th
19 Cir.1993). Such problems rarely arise and a motion to reconsider should be equally rare.
20 *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D.Va.1983),
21 *Sullivan v. Faras-RLS Group, Ltd.*, 795 F. Supp. 305, 308-09 (D. Ariz. 1992). A motion
22 for reconsideration should not be used to ask a court “to rethink what the court had already
23 thought through, rightly or wrongly.” *Above the Belt, Inc.*, 99 F.R.D. at 100. “The Court
24 will ordinarily deny a motion for reconsideration of an Order absent a showing of manifest
25 error or a showing of new facts or legal authority that could not have been brought to its
26 attention earlier with reasonable diligence.” LRCiv 7.2(g)(1).

1 The Court was not confused about the listing dates. The Court considered the dates
2 of the signed listing agreements and found as to those listings, Plaintiff supported its
3 assertion Defendants “slow played” communications with their respective owners by
4 presenting evidence Defendants knew about them at Berkadia, began working on them
5 with IPA brokers before leaving Berkadia, and listed them within those dates after joining
6 IPA.

7 As reflected in Plaintiff’s Response to the Motion for Reconsideration, there is
8 evidence Defendants had discussions with the owners of Highlands I and II in December
9 before leaving Berkadia to join IPA. *See* (Response (Doc. 270) at 5) (describing email by
10 A. Wadlund to Northland, then-owner of the apartment complex Highlands I and II,
11 suggesting that they ‘change [their] 12/23 call to the 2nd week of January; Northland
12 insisting on earlier meeting and Wadlund refusing).

13 Plaintiff will be allowed to proceed on its claims with regard to Monier. Defendants’
14 argument that they did not sell Monier at IPA fails to distinguish between Plaintiff’s ability
15 to prove its claims versus proving damages. *See* (Order (Doc. 265) at 29-30.) The
16 communications related to Monier by Defendants with Hamid Panahi at IPA while they
17 still worked for Plaintiff are relevant to Counts Two and Four for alleged breaches of the
18 exclusivity and noncompete provisions of the ICAs. This evidence is also relevant to
19 Counts Three, Nine and Ten, alleging Defendants sent confidential and trade secret
20 information to IPA, including the BOV for Monier. (Response (Doc. 270) at 6.) On the
21 other hand, if Monier was not sold, Plaintiff has no evidence of such proceeds to offer as
22 proof of damages. Whether Plaintiff offers some other proof of loss related to Monier
23 remains to be seen at trial.

24 Defendants do not identify a material change in the law following the Court’s Order.
25 They do not point to any facts that were not available to them at the time of their Motion
26 for Summary Judgment or that occurred after the Court’s Order. Defendants do not show
27 any material facts the Court failed to consider. They merely disagree with the Court’s
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1 application of the law to those facts. This is not the exceptional case warranting
2 reconsideration.

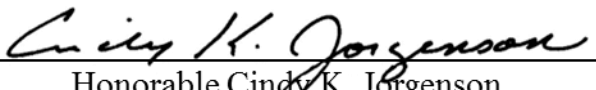
3 **Accordingly,**

4 **IT IS ORDERED** that the Motion for Reconsideration (Doc. 266) is DENIED.

5 **IT IS FURTHER ORDERED** that the Clerk of the Court shall unseal the Court's
6 Order (Doc. 265).

7 **IT IS FURTHER ORDERED** setting this matter for a Pretrial Conference on
8 Monday, October 7, 2024, at 10:00 a.m. The parties should be prepared to discuss the
9 proposed Joint Pretrial Order and to set a trial date.

10 Dated this 29th day of August, 2024.

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12 
13 Honorable Cindy K. Jorgenson
14 United States District Judge
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