

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

JAMES R. THOMAS and LINDA S.
THOMAS,

Plaintiffs,

vs.

Case No. 3:14-cv-172-J-32PDB

CITY OF PALM COAST, et al.,

Defendants.

ORDER

This case is before the Court on plaintiffs' Motion for Reconsideration of Order of Dismissal of Counts VIII and XI (Doc. 75), to which defendants have filed a response in opposition (Doc. 80); and plaintiffs' Motion to Amend Complaint to Include Facts Ascertained in Discovery (Doc. 76), to which defendants have filed a response in (partial) opposition (Doc. 81).

"The three primary grounds that justify reconsideration are: (1) an intervening change in the controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." Delaware Valley Floral Group, Inc. v. Shaw Rose Nets, LLC, 597 F.3d 1374, 1383 (11th Cir. 2010) (quotation and citation omitted). Plaintiffs presumably contend that the Court has committed clear error as they have not identified any other basis for reconsideration and their argument is, in essence, that the Court's legal conclusions that these two counts should be dismissed are simply wrong. "However, a motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made." Id. at 1384

(quotation and citation omitted). Thus, the Court declines to reconsider its Order of Dismissal of Counts VIII and XI.¹

As for plaintiffs' motion seeking to add facts to their complaint, they may do so as to the claims the Court is permitting to go forward, but no new allegations may serve as a basis to renew the claims the Court has dismissed with prejudice under the Court's November 23, 2015 Order (Doc. 74).

Accordingly, it is hereby

ORDERED:

1. Plaintiffs' Motion for Reconsideration of Order of Dismissal of Counts VIII and XI (Doc. 75) is **denied**.

2. Plaintiffs' Motion to Amend Complaint to Include Facts Ascertained in Discovery (Doc. 76) is **granted** to the extent stated above and is otherwise **denied**.

3. Plaintiffs shall file and serve their Second Amended Complaint in accordance with the Court's November 23, 2015 Order (Doc. 74) no later than **March 1, 2016**. Defendants shall file and serve their response no later than **March 21, 2016**. The Court will set a scheduling order for the rest of the case thereafter.

¹Nonetheless, the Court has reexamined the legal bases for its conclusions that Counts VIII and XI are due to be dismissed with prejudice and stands by its analyses. See Order, Doc. 74.

DONE AND ORDERED at Jacksonville, Florida this 5th day of February, 2016.


TIMOTHY J. CORRIGAN
United States District Judge

s.
Copies:

pro se plaintiffs
counsel of record