

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

DAVID J. WIDI, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	2:12-cv-00188-JAW
	)	
PAUL MCNEIL, et al.,	)	
	)	
Defendants.	)	

**ORDER ON RECENTLY DISCOVERED DOCUMENTS**

In performing quality assurance, the Clerk’s Office recently brought to the Court’s attention that a clerk came upon two paper documents that the Clerk’s Office inadvertently failed to docket when received.

The Clerk’s Office marked and stamped first document entitled “Widi’s Reply to TD Bank’s Opposition of the Motion to Reconsider Summary Judgment” as received and filed on November 7, 2013. To set the background for this motion, on September 25, 2013, the Court issued an order granting TD Bank, N.A.’s motion for summary judgment. *Order Granting Mot. for Summ. J. by Def. T.D. Bank; Denying Mot. to Strike; Denying Disc.; and Dismissing Without Prejudice Mot. for Serv. of Process* (ECF No. 171) (*TD Order*). On October 7, 2013, Mr. Widi filed a motion for reconsideration of that order. *Mot. for Recons. of Summ J. for TD Bank* (ECF No. 174). On October 24, 2013, TD Bank responded to the motion for reconsideration. *Def. TD Bank, N.A.’s Opp’n to Pl.’s Mot. for Recons. of Summ. J. for TD Bank* (ECF No. 185).

Next, the Clerk's Office marked and stamped a second document, entitled "Supplemental Motion for Reconsideration" as received and filed on November 20, 2013. The background for this motion begins with the Court's granting Defendant Paul McNeil's motion to dismiss on September 24, 2013. *Order Denying Pl.'s Mot. to Stay; Denying Pl.'s Mot. to Strike; and Granting Def. McNeil's Mot. to Dismiss* (ECF No. 170) (*McNeil Order*). On October 15, 2013, Mr. Widi filed a motion for reconsideration. *Mot. for Recons. and Cert. for Appeal* (ECF No. 180). On October 21, 2013, Agent McNeil filed a response. *McNeil's Resp. to Pl.'s Mot. for Recons.* (ECF No. 183). On October 31, 2013, Mr. Widi filed a reply. *Widi's Reply to McNeil's Resp. to Mot. for Recons.* (ECF No. 188).

On February 18, 2014, the Court denied Mr. Widi's motions for reconsideration. *Order Denying Pl.'s Mots. for Recons. of Orders Granting Mot. to Dismiss to Paul McNeil and Mot. for Summ. J. to TD Bank* (ECF No. 213). Before issuing the decision, the Court did not review either Mr. Widi's reply to the TD order or his supplemental motion to the McNeil order because neither had not been docketed. To remedy this mistake, the Court ORDERS the Clerk's Office to docket each document.

The documents differ in that Mr. Widi had a right to reply to TD Bank's response, but he did not have a right to supplement his reply to Agent McNeil's response. *See D. ME. LOC. R. 7.* To have the Court review his supplementary document, Mr. Widi should have filed a motion for leave to file the supplementary response. Here, after extensive briefing, the Court had issued a thirty-six page order

granting Agent McNeil's motion to dismiss. *McNeil Order* at 1-36. Furthermore, the motion for reconsideration had been fully briefed. To grant Mr. Widi's motion to supplement his motion for reconsideration would have necessitated an order allowing TD Bank to respond to his supplementary filing.

Moreover, Mr. Widi attempted in his motion to supplement to refer to facts in police reports that he had recently obtained. Under Federal Rule of Civil Procedure 12(b)(6), a district court "may consider only facts and documents that are part of or incorporated into the complaint." *United Auto., Aero., Agric. Implement Workers of Am. Int'l Union v. Fortuno*, 633 F.3d 37 (1st Cir. 2011) (quoting *Trans-Spec Truck Serv., Inc. v. Caterpillar, Inc.*, 524 F.3d 315, 320 (1st Cir. 2008)).

Based on this circumstance, the Court would not have granted Mr. Widi's motion for leave to supplement, if one had been made. By contrast, if Mr. Widi's TD Bank reply had been docketed, the Court would have considered it.

To complete the analysis, the Court carefully reviewed the contents of each document and concludes that neither would have changed the Court's February 18, 2014 order, denying the motions for reconsideration.

The Court ORDERS the Clerk's Office to docket "Widi's Reply to TD Bank's Opposition of the Motion to Reconsider Summary Judgment" and his "Supplemental Motion for Reconsideration". The Court further determines that no further action is necessary on either filing.

SO ORDERED.

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
UNITED STATES DISTRICT JUDGE

Dated this 10th day of January, 2017