

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 BARBARA MOMEYER,)
4)
5 Plaintiff,)
6 vs.)
7 BANK OF AMERICA, N.A., a national)
8 banking association; JOHN DOE I; and)
9 DOES I through X, and ROE BUSINESS)
10 ENTITIES I through X, inclusive,)
11 Defendants.)

Case No.: 2:14-cv-01608-GMN-GWF

ORDER

11 Pending before the Court is a Motion to Reconsider (ECF No. 24) filed by Plaintiff
12 Barbara Momeyer (“Plaintiff”). Defendant Bank of America, N.A. (“Defendant”) filed a
13 Response. (ECF No. 31).

14 **I. BACKGROUND**

15 Plaintiff allegedly tripped and fell over a crack in the cement outside of a Bank of
16 America located at 1140 E. Desert Inn Rd., Las Vegas, Nevada on June 12, 2012. (Compl. ¶¶
17 6–7, ECF No. 1–1). During discovery, Plaintiff requested Defendant provide “any and all
18 documents pertaining to any changes, modifications, repairs, and/or maintenance to the area
19 where the subject incident occurred from the date of the incident to the present.” (Mot.
20 Reconsider 3:1–4, ECF No. 24). Defendant did not respond to Plaintiff’s discovery requests to
21 Plaintiff’s satisfaction. (*Id.* 3:5–9). Plaintiff filed a Motion to Compel (ECF No. 15) after
22 Plaintiff and Defendant failed to resolve the discovery issues on their own (*Id.* at 3:10–16).

23 On April 9, 2015, Magistrate Judge George Foley, Jr. heard Plaintiff’s Motion to
24 Compel and ruled that documents merely showing that the crack was repaired were not
25 discoverable because such evidence would be inadmissible at trial as a subsequent remedial

1 measure. (*See* Audio of Apr. 9, 2015 Hearing, 9:52:09AM–9:55:07AM). Plaintiff
2 subsequently filed the instant Motion to Reconsider. (ECF No. 24).

3 **II. LEGAL STANDARD**

4 Local Rule IB 3–1 provides that “[a] district judge may reconsider any pretrial matter
5 referred to a magistrate judge in a civil ... case ... where it has been shown that the magistrate
6 judge's ruling is clearly erroneous or contrary to law.” A ruling is clearly erroneous if the
7 reviewing court is left with “a definite and firm conviction that a mistake has been committed.”
8 *Burdick v. C.I.R.*, 979 F.2d 1369, 1370 (9th Cir. 1992). The district judge may affirm, reverse,
9 modify, or remand with instructions the ruling made by the magistrate judge. LR IB 3–1(b).

10 **III. DISCUSSION**

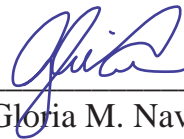
11 Plaintiff argues that Judge Foley erred when he “denied Plaintiff’s Motion to Compel
12 discovery of any and all documents pertaining to any changes, modifications, repairs, and/or
13 maintenance to the area where the subject incident occurred from the date of the incident to the
14 present. (Mot. to Reconsider 3:17–22, ECF No. 24). However, Plaintiff misinterprets Judge
15 Foley’s ruling. At the hearing, Plaintiff argued for the discoverability of pictures, reports, and
16 documentation related to subsequent remedial measures solely for the purposes of determining
17 the dimensions of the crack. (*See* Audio of Apr. 9, 2015 Hearing, 9:53:13AM–9:53:43AM).
18 While Judge Foley held that such evidence merely showing that the crack had been repaired
19 would not be discoverable, he also held that evidence related to subsequent remedial measures
20 containing information related to the dimensions of the crack would be discoverable as Plaintiff
21 requested. (*See id.*, 9:53:43AM–9:55:07AM). Thus, Judge Foley merely limited discovery
22 related to subsequent remedial measures to what Plaintiff requested at the hearing—documents
23 that demonstrated the dimensions of the crack. (*See id.*, 9:53:13AM–9:55:07AM).
24 Accordingly, because Plaintiff’s arguments are premised on a misstatement of Judge Foley’s
25

1 holding, the Court finds that Plaintiff failed to meet her burden to show that the ruling was
2 “clearly erroneous” or “contrary to law.”

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Reconsider (ECF No. 24) is
5 **DENIED.**

6 **DATED** this 18 day of August, 2015.

7
8
9
10
11 

12 _____
13 Gloria M. Navarro, Chief Judge
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25