

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RICHARD GREEN (FINE PAINTINGS) ,

Plaintiff,

08 Civ. 8496 (JGK)

- against -

MEMORANDUM  
OPINION AND ORDER

MARY ALICE MCCLENDON,

Defendant.

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JOHN G. KOELTL, District Judge:

The defendant, Mary Alice McClendon, has moved for reconsideration of this Court's September 17, 2010 Amended Memorandum Opinion and Order, in which the Court granted the motion of plaintiff Richard Green (Fine Paintings) for summary judgment, and denied Ms. McClendon's motion for summary judgment. There is no merit to the motion for reconsideration.

The standard to be applied to a motion for reconsideration under Local Rule 6.3, as well as under Federal Rule of Civil Procedure 59(e), is well-established. It is the same as the standard that was applied under former Local Civil Rule 3(j). See United States v. Letscher, 83 F. Supp. 2d 367, 382 (S.D.N.Y. 1999) (collecting cases). The moving party is required to demonstrate that the Court overlooked the controlling decisions or factual matters that were put before the Court in the underlying motion and which, had they been considered, might have reasonably altered the result reached by the Court. Nakano

v. Jamie Sadock, Inc., 98 Civ. 0515, 2000 WL 1010825, at \*1 (S.D.N.Y. July 20, 2000). The decision to grant or deny a motion for reconsideration "rests within the sound discretion of the district court." Id. The rule is "narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the court." Walsh v. McGee, 918 F. Supp. 107, 110 (S.D.N.Y. 1996) (internal citation and quotation marks omitted); see also Eaton Vance Mutual Funds Fee Litigation, 403 F. Supp. 2d 310, 312-13 (S.D.N.Y. 2005), aff'd Bellikoff v. Eaton Vance Corp., 481 F.3d 110 (2d Cir. 2007); Nakano, 2000 WL 1010825, at \*1.

In this case, the defendant has not pointed to any facts or law that were placed before the Court and that the Court overlooked. The defendant simply disagrees with the Court's decision. This is not a basis for reconsideration.

The defendant argues that the Court overlooked the dispute as to whether the initial \$500,000 payment was a "deposit," but the Court found that the alleged dispute was not a genuine issue of material fact because there was no genuine dispute that there was a firm contract to purchase the painting for the full contract price of \$4.2 million. See Am. Mem. at 5-6, 13-14. Indeed, in her memorandum in support of the current motion, the defendant concedes: "Ms. McClendon is not attempting to argue

that the parties did not have an oral agreement to buy the work for \$4.2 million." Def. Mem. at 13.<sup>1</sup>

The defendant also argues that she did not have a "reasonable opportunity to inspect" the painting, and therefore she did not accept it within the meaning of N.Y. U.C.C. § 2-606. This argument about the reasonable opportunity for inspection was made for the first time in the reply brief on the motion for reconsideration, and is therefore not a basis for reconsideration. In any event, the argument is without merit. See Am. Mem. at 5-7.

The Court has considered all of the arguments by the defendant and finds them to be without merit.

The Court also found that the plaintiff was entitled to the purchase price, pursuant to section 2-709 of the UCC, and the plaintiff has submitted a proposed judgment incorporating such a judgment amount. The defendant contends that the plaintiff is not entitled to such a judgment, and should be limited to a judgment for damages under section 2-708 of the UCC. The defendant does not, however, dispute that the proposed judgment reflects a judgment pursuant to section 2-709 of the UCC. The defendant argues that it would be inequitable to enter a judgment pursuant to section 2-709 of the UCC, but there is

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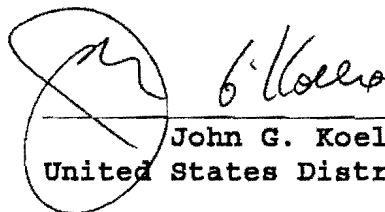
<sup>1</sup> The Court also found that there were sufficient writings to satisfy the Statute of Frauds.

nothing inequitable in providing the plaintiff with the relief to which it is entitled. The effect of the relief is to place the parties in the position for which they bargained - namely, the plaintiff can recover the price of the painting that the defendant agreed to pay and, when that price (plus interest) is paid, the painting that the plaintiff bought will be delivered to the plaintiff. It is plain that there are possibilities for the parties to resolve the dispute between themselves, but that is for the parties. At this point, the plaintiff has established its entitlement to the proposed judgment.

The Court will order that the judgment proposed by the plaintiff be entered.

SO ORDERED.

Dated: New York, New York  
November 13, 2010



John G. Koeltl  
United States District Judge