

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		:	
DANIEL SUAREZ,		:	
	Plaintiff,	:	
		:	17cv00477
	-v-	:	
		:	<u>MEMORANDUM OPINION</u>
MOSAIC SALES SOLUTIONS US OPERATING		:	<u>& ORDER</u>
CO., LLC,		:	
	Defendant.	:	
		:	
-----X		:	

APPEARANCES

For Daniel Suarez:
David Abrams
305 Broadway, Suite 601
New York, NY 10007

DENISE COTE, District Judge:

The first amended complaint in this employment discrimination case was dismissed on July 7, 2017 for lack of subject matter jurisdiction. On July 20, Suarez moved for reconsideration pursuant to Local Civil Rule 6.3 and Federal Rule of Civil Procedure 60.

Local Civil Rule 6.3 provides parties with an opportunity to inform the Court of "matters or controlling decisions" which counsel believes the Court has "overlooked." It does not provide counsel the opportunity to supplement their factual submissions after a case has been dismissed. "Local Rule 6.3 is narrowly construed and strictly applied so as to avoid repetitive arguments on issues that the court has already

considered fully.” In re Gen. Elec. Co. Sec. Litig., 856 F. Supp. 2d 645, 652 (S.D.N.Y. 2012). The Rule also directs that “[n]o affidavits shall be filed by any party unless directed by the Court.”

Suarez also appears to bring his motion for reconsideration pursuant to Rule 60(b)(1), 60(b)(3), or 60(b)(6). Under these provisions, a court

may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

. . .

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

. . .

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Relief under Rule 60(b) is “generally not favored and is properly granted only upon a showing of exceptional circumstances.” Insurance Co. of N. Am. v. Pub. Serv. Mut. Ins. Co., 609 F.3d 122, 131 (2d Cir. 2010) (citation omitted). “[A] Rule 60(b)(3) motion cannot be granted absent clear and convincing evidence of material misrepresentations and cannot serve as an attempt to relitigate the merits.” Fleming v. New York Univ., 865 F.2d 478, 484 (2d Cir. 1989). A Rule

60(b)(3) movant “must show that the conduct complained of prevented the moving party from fully and fairly presenting his case.” State St. Bank & Trust Co. v. Inversiones Errazuriz Limitada, 374 F.3d 158, 176 (2d Cir. 2004) (citation omitted). Moreover, Rule 60(b)(6) applies only “when the asserted grounds for relief are not recognized in clauses (1)-(5) of the Rule and there are extraordinary circumstances justifying relief.” Tapper v. Hearn, 833 F.3d 166, 172 (2d Cir. 2016) (citation omitted). “Rule 60(b) strikes a balance between serving the ends of justice and preserving the finality of judgments. Although it should be broadly construed to do substantial justice, final judgments should not be lightly reopened.” Id. at 170 (citation omitted). The decision to grant or deny a Rule 60(b) motion is within the sound discretion of the district court. Aczel v. Labonia, 584 F.3d 52, 61 (2d Cir. 2009).

Suarez’s motion for reconsideration rests entirely on his argument that the Court should not have relied on the defendant’s representation that it offered Suarez other employment after it discovered that it had rescinded its prior job offer in error. Suarez attaches a January 10, 2017 email to his memorandum to argue that he was only offered “an expedited interview” for alternate positions, as opposed to a job offer.¹


¹ Local Rule 6.3 prohibits parties from filing affidavits in connection with a motion for reconsideration unless directed by

This is not an appropriate use of a motion for reconsideration. The defendant's representations to which Suarez now objects were contained in the defendant's motion to dismiss. Suarez had the opportunity at that time to dispute those representations and to submit evidence in opposition to them. He did not do either. It is too late to do so now.

Moreover, as described in the July 7 Opinion, the fact that Suarez was offered other employment was only one of several facts relied upon by the Court in determining that Suarez failed to adequately plead the jurisdictional minimum. Accordingly, it is hereby

ORDERED that Suarez's July 20 motion for reconsideration is denied.

Dated: New York, New York
July 26, 2017



DENISE COTE
United States District Judge

the Court. Suarez did not seek the Court's permission to attach the January 10 email.