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Citation: **2004 U.S. Dist. LEXIS 23864***2004 U.S. Dist. LEXIS 23864, **

SARAH SCHOTTENSTEIN, Plaintiff, - against - STEVEN SCHOTTENSTEIN; M/I HOMES, INC.; and DOES I through X, Defendants.

04 Civ. 5851 (SAS)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2004 U.S. Dist. LEXIS 23864

November 22, 2004, Decided
November 22, 2004, Filed**PRIOR HISTORY:** Schottenstein v. Schottenstein, 2004 U.S. Dist. LEXIS 22648 (S.D.N.Y., Nov. 5, 2004)**DISPOSITION:** [*1] Plaintiff's motion for reconsideration denied.**CASE SUMMARY****PROCEDURAL POSTURE:** Plaintiff individual filed a motion for reconsideration, pursuant to U.S. Dist. Ct., S.D.N.Y., R. 6.3, of an order, which granted defendant corporation's motion to dismiss plaintiff's claims for false imprisonment and conversion.**OVERVIEW:** The individual's argument rested on the premise that the court misconstrued the corporation's level of participation in the wrongdoing alleged in the complaint. The court held that nothing in the motion connected the corporation in any way to the sole remaining conversion claim against the president of the corporation. Rather, the individual simply reiterated her allegations against the corporation with respect to her purported false imprisonment claim, which had previously been dismissed. The individual offered no support for her argument that a false imprisonment claim should lie against the corporation even though one did not lie against the president. The court rejected the individual's argument that the acts of a president and sole stockholder could have been held to have been "authorized" by the company itself, because the president was not the sole shareholder of the corporation, and even a finding that the corporation authorized the president's conduct would not have changed the fact that the individual's false imprisonment claim would have been dismissed against the corporation for the same reasons that it was dismissed against the president.**OUTCOME:** The court denied the individual's motion for reconsideration.**CORE TERMS:** reconsideration, false imprisonment, quotation, altered, conversion claim, reign**LEXISNEXIS® HEADNOTES** **Hide**[Civil Procedure > Pleading & Practice > Pleadings > Amended Pleadings > General Overview](#) [Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend](#) [Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review](#) **HN1**  A motion for reconsideration is governed by U.S. Dist. Ct., S.D.N.Y., R. 6.3 and is appropriate where a court overlooks controlling decisions or factual matters that were put before it on the underlying motion and which, had they been considered, might have reasonably altered the result before the court. Alternatively, a motion for reconsideration may be granted to correct a clear error or prevent manifest injustice. [More Like This Headnote](#)[Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend](#) **HN2**  The standard for granting a motion for reconsideration is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court. [More Like This Headnote](#)[Civil Procedure > Judgments > Relief From Judgment > General Overview](#) **HN3**  U.S. Dist. Ct., S.D.N.Y., R. 6.3 should be narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the court. [More Like This Headnote](#)[Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend](#) **HN4**  A motion for reconsideration is not a substitute for appeal. Courts have repeatedly been forced to warn counsel that such motions should not be made reflexively, to reargue those issues already considered when a party does not like the way the original motion was resolved. [More Like This Headnote](#)

COUNSEL: For Plaintiff: Thomas M. Burton, Esq., Pleasanton, CA.

For Defendant Steven Schottenstein: Barry H. Wolinetz, Esq., David C. Levine, Esq., Baker & Hostetler, LLP, Columbus, OH.

For Defendant M/I Holmes Inc.: Thomas Edward Riley, Esq., Chadbourne & Parke LLP, New York, NY.

JUDGES: Shira A. Scheindlin, U.S.D.J.

OPINION BY: Shira A. Scheindlin

OPINION

MEMORANDUM OPINION AND ORDER

SHIRA A. SCHEINDLIN, U.S.D.J.:

I. BACKGROUND

On August 23, 2003, defendant M/I Homes, Inc. ("M/I Homes") filed a motion to dismiss plaintiff's complaint. In my Opinion dated November 8, 2004, I granted M/I Homes' motion and dismissed all claims against M/I Homes. Plaintiff now moves for reconsideration of that Order. For the following reasons, the motion for reconsideration is denied.

II. LEGAL STANDARD

^{HN1} A motion for reconsideration is governed by Local Rule 6.3 and is appropriate where a court overlooks "controlling decisions or factual matters that were put before it on the underlying motion . . . and which, had they been considered, might have reasonably altered the result before the court." ¹ Alternatively, a motion **[*2]** for reconsideration may be granted to "correct a clear error or prevent manifest injustice." ²

FOOTNOTES

¹ Range Road Music, Inc. v. Music Sales Corp., 90 F. Supp. 2d 390, 392 (S.D.N.Y. 2000) (quotation marks and citation omitted). See also Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995) ^{HN2} ("The standard for granting . . . a motion [for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.").

² Doe v. New York City Dep't of Soc. Servs., 709 F.2d 782, 789 (2d Cir. 1983).

^{HN3} Local Rule 6.3 should be "narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the Court." ³ ^{HN4} A motion for reconsideration "is not a substitute for appeal." ⁴ Courts have repeatedly been forced to **[*3]** warn counsel that such motions should not be made reflexively, "to reargue those issues already considered when a party does not like the way the original motion was resolved." ⁵ The purpose of Local Rule 6.3 is to "ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters." ⁶

FOOTNOTES

³ DelleFave v. Access Temps., Inc., 2001 U.S. Dist. LEXIS 3165, No. 99 Civ. 6098, 2001 WL 286771, at *1 (S.D.N.Y. Mar. 22, 2001).

⁴ RMED Int'l, Inc. v. Sloan's Supermarkets, Inc., 207 F. Supp. 2d 292, 296 (S.D.N.Y. 2002) (quotation omitted).

⁵ Houbigant, Inc. v. ACB Mercantile, 914 F. Supp. 997, 1001 (S.D.N.Y. 1996).

⁶ Carolco Pictures, Inc. v. Sirota, 700 F. Supp. 169, 170 (S.D.N.Y. 1988).

III. DISCUSSION

Plaintiff offers no legitimate grounds for reconsideration. Plaintiff's argument rests on the premise that the Court misconstrued M/I Homes' level of participation **[*4]** in the wrongdoing alleged in plaintiff's Complaint. ⁷ However, nothing in plaintiff's motion connects M/I Homes in any way to the sole remaining conversion claim against Steven Schottenstein. Rather, plaintiff simply reiterates her allegations against M/I Homes with respect to her purported false imprisonment claim. ⁸ That claim, as well as all other claims except plaintiff's conversion claim against Steven Schottenstein, was dismissed as to all defendants in my November 8, 2004 Order (the "November 18 Order"). Plaintiff asserts -- but makes no argument to support -- the position that a false imprisonment claim should lie against M/I Homes even though one does not lie against Steven Schottenstein.

FOOTNOTES

⁷ See 11/18/04 Memorandum in Support of Plaintiff's Motion for Reconsideration of Order Dismissing M/I Homes ("11/18/04

Motion") at 2 ("Sarah's statement of claim against M/I Homes was not based on its failure to reign in [Steven Schottenstein] but upon his implicitly authorized use of M/I Homes assets . . . to keep Sarah confined, and move her about as part of a shell game to hide her from her mother."). [*5]

8 See *id.* at 2-3.

Plaintiff's argument makes little sense. Plaintiff takes issue with the November 18 Order's construction of plaintiff's claims against M/I Homes, claiming that plaintiff's "claim against M/I Homes was not based on its failure to reign in" Steven Schottenstein, but rather on his "implicitly authorized use" of M/I Homes' resources to falsely imprison plaintiff. ⁹ However, one page later, plaintiff justifies her "implicit authorization" theory with the observation that "M/I Homes neither intervened, prohibited, nor criticized [Steven Schottenstein's] personal use of its aircraft." ¹⁰ Plaintiff's distinction between 'reigning in' Steven Schottenstein and 'intervening, prohibiting or criticizing' him is difficult to discern.

FOOTNOTES

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

Finally, plaintiff offers a closing argument that, under Second Circuit precedent, the acts of a president and sole stockholder may be held [*6] to have been "authorized" by the company itself. ¹¹ First, it should be noted that, in the lone case cited by plaintiff, the Second Circuit never reached the issue of whether such acts were authorized, because that issue was not raised on appeal. ¹² Second, Steven Schottenstein is not, as was the president in *Field*, the sole shareholder in M/I Homes. Finally, even a finding that M/I Homes authorized Steven Schottenstein's conduct would not change the fact that plaintiff's false imprisonment claim would be dismissed against M/I Homes for the same reasons it was dismissed against Steven Schottenstein. Thus, plaintiff's proffered precedent, even if relevant, could not "have reasonably altered the result" originally before the Court. ¹³

FOOTNOTES

¹¹ See *id.* at 4 (citing *Field v. Bankers Trust Co.*, 296 F.2d 109 (2d Cir. 1961)).

¹² See *Field*, 296 F.2d at 110-11.

¹³ See *Range Road Music*, 90 F. Supp. 2d at 392.

IV. CONCLUSION

Accordingly, [*7] plaintiff's motion for reconsideration is denied. The Clerk is directed to close this motion [# 43 on the docket sheet].

SO ORDERED:

Shira A. Scheindlin

U.S.D.J.

Dated: New York, New York

November 22, 2004

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