

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MCDONALD’S CORPORATION,)	
Plaintiff,)	
)	Civil Action No. 14-313
vs.)	Chief Magistrate Judge Maureen P. Kelly
)	
EAST LIBERTY STATION)	Re: ECF No. 101
ASSOCIATES,)	
Defendant.)	

OPINION AND ORDER

KELLY, Chief Magistrate Judge

Presently before the Court is a Motion for Reconsideration filed by Plaintiff/Counterclaim Defendant McDonald’s Corporation (“McDonald’s”). ECF No. 101. McDonald’s asks the Court to reconsider its April 12, 2017 Opinion and Order in which the Court found that, because McDonald’s proposed subdivision plan was not in a form that could have been approved by the Planning Commission, McDonald’s failed to show that subdivision approval could have been obtained thereby failing to satisfy the condition precedent to exercising the purchase option as set forth in the Ground Lease entered into between the parties.

“‘The purpose of a motion for reconsideration,’ . . . ‘is to correct manifest errors of law or fact or to present newly discovered evidence.’” Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999), *quoting* Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). “Accordingly, a judgment may be altered or amended if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” Id.

McDonald's does not cite to any intervening change in the law or previously unavailable evidence but challenges the Court's findings based on the third ground, arguing that the Court erred by improperly interpreting the purchase option and by allowing Defendant East Liberty Station Associates ("ELSA") to avoid its contractual obligations. Neither argument has merit. In so finding, the Court makes the following observations.

First, the issue as framed by McDonald's in its Complaint and by the parties at the summary judgment stage of the proceedings (and the issue which the Court, without objection by McDonald's, deemed necessitated adjudication before the remaining issues could be resolved), was whether or not McDonald's had validly exercised the purchase option. See ECF 1 ¶ 77; ECF No. 44 at 1, 3-4, 11; ECF No. 61 at 18; ECF No. 73. See ECF No. 99 ¶ I.1., ¶ I.D.58. ¶ II.B.8.; ECF No. 100 at 2, 3. More specifically, the issue was whether McDonald's could show that it had satisfied the condition precedent to exercising the purchase option, *i.e.*, whether McDonald's had shown that it could obtain subdivision approval. Now, for the first time, McDonald's has taken the position that the language set forth in the purchase option, which requires McDonald's to show that subdivision approval can be obtained, is not a condition precedent to exercising the purchase option but is a condition precedent to McDonald's ultimate purchase of the Property at issue, and that McDonald's did/does not have to show could obtain subdivision approval to exercise the purchase option. McDonald's change of position, however, comes too late in the day and does not provide the basis for this Court to reconsider its earlier ruling.

Second, McDonald's argument that the Court erred in concluding that McDonald's would have to show that it satisfied all of the prerequisites for obtaining final approval by the Planning Commission, *i.e.*, preliminary review by the zoning office and the requisite signatures on the

mylar, in order to show that it could obtain subdivision approval, misses the mark. The Court did not, and indeed, as acknowledged by McDonald's, cannot substitute its judgment for that of the Planning Commission as McDonald's has suggested that the Court has done. As McDonald's itself has stated, either the Planning Commission grants final subdivision approval or it does not regardless of this Court's findings. Without satisfying the prerequisites, however, the Planning Commission surely would not have granted final subdivision approval and thus McDonald's cannot show that it could have obtained subdivision approval.

Third, McDonald's argument that the Court erred by holding that McDonald's needed to obtain ELSA's signature, amongst others, before exercising the purchase option because McDonald's could not have proceeded any further without ELSA's cooperation, ignores the evidence of record, and the primary basis upon which the Court found McDonald's efforts lacking, *i.e.*, that the proposed subdivision plan submitted by McDonald's to the zoning office for preliminary review was significantly defective. ECF No. 100 at 6. McDonald's failure to present a proposed subdivision plan that the Planning Commission would have even considered approving alone precludes a finding that McDonald's could have obtained subdivision approval when it attempted to exercise the purchase option in June of 2012. Moreover, the record is clear that at the time it attempted to exercise the purchase option, McDonald's had not even approached ELSA about exercising the purchase option or having ELSA sign the mylar.

Fourth, and finally, McDonald's argument that the Court erred in interpreting the purchase option in a manner that allows ELSA to circumvent its contractual obligations and unilaterally prevent subdivision of the Property, does not commend reconsideration of the Court's findings. McDonald's argument is not only premised, at least in part, on its new, and untimely, re-characterization of the issue before the Court, *i.e.*, that showing it could obtain

subdivision approval is a condition precedent to purchasing the property and not to a valid exercise of the purchase option, but, as argued by ELSA, McDonald's position confuses ELSA's contractual obligation to convey the Property once McDonald's successfully exercises the purchase option with ELSA's refusal to sign off on a proposed subdivision plan that was significantly defective.

Having found that McDonald's has failed to set forth a valid basis upon which this Court should reconsider its April 12, 2017 Opinion and Order, the following Order is entered:

ORDER

AND NOW, this 25th day of July, 2017, upon consideration of Plaintiff/Counterclaim Defendant McDonald's Corporation's Motion for Reconsideration of this Court's April 12, 2017 Opinion and Order, ECF No. 101, Defendant/Counterclaim Plaintiff ELSA's Brief in Opposition, and Plaintiff/Counterclaim Defendant's Reply, IT IS HEREBY ORDERED that Plaintiff/Counterclaim Defendant McDonald's Corporation's Motion for Reconsideration, ECF No. 101, is DENIED.

BY THE COURT:

/s/ Maureen P. Kelly
MAUREEN P. KELLY
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: All counsel of record by Notice of Electronic Filing