



On October 27, 2022, Plaintiff filed a Motion to Compel Discovery Responses (Motion to Compel) pursuant to Rule 37 of the Superior Court Rules of Civil Procedure and a memorandum of law in support thereof. *See* Docket; *see also* Pl.’s Mot. to Compel Disc. Resps. Plaintiff sought to compel Defendants to produce evidence of (1) all communications between “Corsetti and any employees . . . throughout Plaintiff’s employment with [Mare] to September 7, 2020[,]” (2) all documents relating to “the work schedule, time records, pay and benefits received by each manager . . . working for [Mare] from April 30, 2018 and continuing through September 7, 2020[,]” (3) all documents relating to verbal and written disciplinary action, coaching, and termination “for any and all employees [of Mare] from April 30, 2018 and continuing through September 7, 2020[,]” (4) all documents that defined, described, or identified “the names, race, color, ethnicity, national origin, sexual orientation, job titles, job duties and responsibilities, and job qualifications for all employees . . . [of Mare] throughout Plaintiff’s employment with Defendant to September 7, 2020[,]” and (5) the identification of every employee of Mare during Plaintiff’s employment through September 7, 2020 including their names, addresses, race, sexual orientation, job title, dates of employment and reasons for separation of employment. (Pl.’s Mem. of Law in Supp. of Mot. to Compel Disc. Resps. at 5-7.)

On November 7, 2022, Defendants objected to Plaintiff’s Motion to Compel and argued that the information Plaintiff requested was not about her own employment, but rather “highly personal and confidential information” about every other employee of Mare during Plaintiff’s employment and for two years after Plaintiff was fired. (Defs.’ Obj. to Pl.’s Mot. to Compel Disc. Resps. at 2.) On November 30, 2022, Plaintiff filed a reply brief that explained the parties had worked out a partial agreement, but still needed the Court to determine (1) whether an “attorney’s eyes only” provision in the proposed protective order was appropriate and (2) whether Plaintiff

was entitled to documents after Plaintiff's employment was terminated. (Pl.'s Reply in Supp. of Mot. to Compel Disc. Resps. at 1-4.)

On December 1, 2022, the Court held a hearing on Plaintiff's Motion to Compel which resulted in the Court denying Plaintiff's Motion to Compel. *See* Docket. On December 16, 2022, the Court entered the Order which denied Plaintiff's requests for: (1) a protective order without an "attorneys' eyes only" provision, (2) employee payroll information for one year past Plaintiff's termination, (3) general and personal employee information for one year past Plaintiff's termination, and (4) attorneys' fees. *See* Order, Dec. 16, 2022 (Cruise, J.).

On January 23, 2023, Plaintiff filed a Motion for Reconsideration of the Decision and the Order (Plaintiff's Motion). *See* Docket. Defendants objected to Plaintiff's Motion on January 30, 2023. *See id.* On February 2, 2023, the Court held a hearing on Plaintiff's Motion which resulted in the Court denying Plaintiff's Motion. *See id.* Plaintiff requested that the Court issue a written decision. *See* Order, Mar. 1, 2023 (Cruise, J.).

## II

### Standard of Review

A motion to reconsider has historically been treated as a motion to vacate under Rule 60(b) of the Superior Court Rules of Civil Procedure. *Atmed Treatment Center, Inc. v. Travelers Indemnity Company*, 285 A.3d 352, 359 (R.I. 2022). Rule 60(b) states, in pertinent part:

"On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

"(1) Mistake, inadvertence, surprise, or excusable neglect;

"(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

"(3) Fraud, misrepresentation, or other misconduct of an adverse party;

"(4) The judgment is void;

“(5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which the judgment is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or  
“(6) Any other reason justifying relief from the operation of the judgment.” Super. R. Civ. P. 60(b).

“It is well settled that a motion to vacate a judgment is left to the sound discretion of the trial justice[.]” *Atmed*, 285 A.3d at 359 (quoting *Renewable Resources, Inc. v. Town of Westerly*, 110 A.3d 1166, 1171 (R.I. 2015)). “Neither a Rule 60 motion nor a motion to reconsider may serve as a substitute for a party’s failure to file a timely appeal.” *Turacova v. DeThomas*, 45 A.3d 509, 515 (R.I. 2012).

Furthermore, a motion to reconsider “should not be undertaken lightly.” *Atmed*, 285 A.3d at 362. “Because the prevailing party has a stake in the original decision, when confronted with a motion to reconsider, a trial justice must balance the interests of the parties against a thoughtful determination that a change of course is proper under the circumstances, a serious event to all concerned.” *Id.* Further, the trial justice “must rely not on the parties’ after-the-fact arguments as set forth in their papers in support of or opposition to the motion to reconsider, but rather on the arguments originally made.” *Id.* (citing *Cochran v. Quest Software, Inc.*, 328 F.3d 1, 11 (1st Cir. 2003)) (“It is generally accepted that a party may not, on a motion for reconsideration, advance a new argument that could (and should) have been presented prior to the district court’s original ruling.”).

### **III**

#### **Analysis**

Plaintiff argues that the Court should reconsider the Decision because it is incorrect as a matter of law because Defendants failed to meet their “high burden of proof” for the attorneys’ eyes only provision of the Order. (Pl.’s Mot. at 7.) Conversely, Defendants argue that Plaintiff has

not met her burden to justify reconsideration of the Decision because Plaintiff's Motion "is an attempt to rehash legal arguments that [she] previously made," and Plaintiff has failed to specify what grounds under Rule 60(b) of the Superior Court Rules of Civil Procedure Plaintiff seeks reconsideration. (Defs.' Obj. to Pl.'s Mot. for Recons. at 3.)

It is unclear from Plaintiff's Motion exactly what provision under Rule 60(b) Plaintiff is seeking relief from the Decision. *See generally* Pl.'s Mot. It appears that Plaintiff is arguing that the Court should vacate the Decision and the Order under Rule 60(b)(1) because the Court made a mistake of law when it decided that Defendants had met their burden for requiring an attorney's eyes only provision. (Pl.'s Mot. at 4-8.) However, "a mistake of law is not the kind of 'mistake' that is included within the coverage of that term as it is used in Rule 60(b)(1)." *Jackson v. Medical Coaches*, 734 A.2d 502, 507 (R.I. 1999); *see also* Robert B. Kent et al., *Rhode Island Civil Procedure* § 60:3, VII-60 (West 2022) ("[j]udicial error of the trial judge, however, as contrasted with mechanical error, cannot be corrected under this rule, for it would constitute use of the rule as a substitute for an appeal or for a motion for a new trial"). Plaintiff's Motion seems to be arguing judicial error by the Court, which is more appropriate for an appeal rather than a motion to reconsider. *See Turacova*, 45 A.3d at 515. Therefore, the Court will not reconsider its Decision and Order under Rule 60(b)(1) because a mistake of law is not a permissible reason under Rule 60(b)(1). *See Jackson*, 734 A.2d at 507. Accordingly, because Plaintiff has not articulated any other provision under Rule 60(b) that would allow Plaintiff to seek relief, this Court will not reconsider its Decision and Order.

#### IV

#### Conclusion

For the foregoing reasons, Plaintiff's Motion to Reconsider is **DENIED**.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Shumate v. Mare Restaurant, LLC., et al.

**CASE NO:** PC-2018-8363

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** March 29, 2023

**JUSTICE/MAGISTRATE:** Cruise, J.

**ATTORNEYS:**

**For Plaintiff:** Danilo A. Borgas, Esq.

**For Defendant:** Jessica A. Roberge, Esq.