



**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

SAMUEL FAIBISH, YEHUDA	:	NOVEMBER TERM 2013
OLEWSKI, KALMAN FARKIS, and	:	
I.M. ROTTENBERG,	:	
	:	
Plaintiffs,	:	
v.	:	No. 189
	:	
THE LINCOLN ON LOCUST, LP,	:	Commerce Program
and ADAR, LLC,	:	
	:	
Defendants.	:	Control No. 13111551
_____	:	

**OPINION**

The Court denies Plaintiffs’ Motion for Reconsideration for the reasons that follow.

Motions for reconsideration “should be granted sparingly” in order to preserve the finality of judgments or orders. “The only proper grounds for granting reconsideration are new and material evidence or facts, a change in the controlling law or a clear error in applying the facts or law to the case at hand so that it is necessary to correct a clear error and prevent a manifest injustice from occurring. Mere disagreement with the court's conclusion is not a basis for reconsideration.”<sup>1</sup>

The Plaintiffs argue in their Motion for Reconsideration that the requested preliminary injunction should not have been denied without an evidentiary hearing. This is incorrect; Pa. R. Civ. P. 1531 states that a court “shall issue a preliminary or special injunction only after written notice and hearing” except in the case of immediate and irreparable harm; it does not say that a

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<sup>1</sup> Scartelli Gen. Contractors Inc. v. Selective Way Ins. Co., 2008 WL 5575968 (Pa. Com. Pl. Sept. 9, 2008).

hearing must be held before denying the request for an injunction. In determining whether to issue an injunction or to hold a hearing, the Rules states that the Court “may act on the basis of the averments of the pleadings or petition and may consider affidavits of parties or third persons or any other proof which the court may require.”<sup>2</sup>

Moreover, Plaintiffs, as noted by Defendants, never requested a further evidentiary hearing, neither in their Motion papers, nor orally when they appeared before the Court on November 6, 2013.<sup>3</sup> Evidence was presented to the court in the form of affidavits and opinions from, and testimony before, other courts in this matter. There was little, if any, indication at that appearance that the Plaintiffs wished to present further evidence before the court ruled; accordingly, it has been waived and they may not now request it.<sup>4</sup>

Plaintiffs argue that the Court erred in denying the entire petition, including the petition to compel arbitration. The Court declines to compel all parties to return to arbitration, as not all parties were involved in the original agreement to arbitrate.

Finally, Plaintiffs have alleged irreparable harm if the proceeds from the mortgage are moved offshore where it would be difficult to pursue a judgment. However, the matter at stake is money, which is compensable with money damages by definition. There is no indication that a judgment could not be collected from the Defendants domestically, should Plaintiffs receive one. The Court cannot find irreparable harm based on the possibility that Plaintiffs might not be

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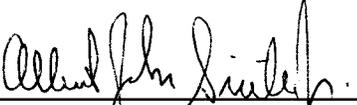
<sup>2</sup> Pa. R. Civ. P. 1531(a).

<sup>3</sup> Counsel for Plaintiffs, Mr. Teitelman, did request a hearing “if it [the case] is proceeding.” Transcript, p. 92. However, the case is not proceeding, and there was no request made by Plaintiffs for a further hearing before the Court ruled on the instant petition.

<sup>4</sup> McCluskey v. Washington Twp., 700 A.2d 573, 575 (Pa. Commw. Ct. 1997).

able to pierce the corporate veil to collect on the judgment. Accordingly, the Motion was properly denied.

**BY THE COURT:**

  
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**ALBERT JOHN SNITE, JR., J.**