By order of the court, Judge PERRY B. INOS

FOR PUBLICATION

E-FILED
CNMI SUPERIOR COURT
E-filed: Oct 26 2010 2:38PM
Clerk Review: N/A
Filing ID: 34003613
Case Number: 08-0029-CV
N/A

IN THE SUPERIOR COURT OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

NORMA S. ADA, *et al.*, **Plaintiffs,** **v.** **MASAJI NAKAMOTO, *et al.*,** **Defendants.**	**CIVIL ACTION NO. 08-0029 D** **ORDER PARTIALLY GRANTING DEFENDANTS' MOTION TO RECONSIDER**

THIS MATTER came before the Court for a hearing pursuant to Defendants' Motion to Reconsider Part of Order Entered February 17, 2010. Timothy H. Bellas appeared on behalf of plaintiffs Norma S. Ada, Mary Asper, William R. Barrineau, Maria H. Zarzosa, Willi Gutowski, Anita Gutowski, Eric W. Smith, Rhoda Smith, Jack Hardy, and Shan Ping Bacon ("Plaintiffs"). Douglass F. Cushnie represented Anaks Resort Development, Inc., Saipan Shangrila Resort Inc. ("Defendants").

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are leaseholders at Anaks Resort Development Inc. ("Anaks"), and allege misappropriation of a $395.00 monthly maintenance fee. Pursuant to Rule 34 of the NMI Rules of Civil Procedure, Plaintiffs requested discovery of documents related to how the monthly maintenance fee had been spent. On June 29, 2009 the Court ordered a preliminary injunction requiring, among other things,

a response to the Plaintiffs' discovery request. In response to the request, Defendants delivered over 9,000 documents, some of which were entirely in the Japanese language.

On February 17, 2010 the Court issued an order compelling Defendants to "translate, at their expense, all documents provided in the responses to the discovery requests from Japanese to the English language." *Ada v. Nakamoto*, Civ. No. 08-0029 (N.M.I. Super. Ct. 02/17/2010) (Decision and Order Re Plaintiffs' Motion to Compel and Order to Show Cause) ("02/17/10 Order"). On April 24, 2010, after establishing the costs of compliance with the 02/17/10 Order, Defendants filed their Motion to Reconsider Part of Order Entered February 17, 2010 ("Motion").

II. MOTION TO RECONSIDER

A. Legal Standard

Under NMI R. Civ. P. 59(e), a party may move to alter or amend a judgment if the motion is filed not later than 10 days after entry of the judgment. Such a motion is commonly referred to as a motion for reconsideration. *See Computerized Thermal Imaging, Inc. v. Bloomberg, L.P.*, 312 F. 3d 1292, 1296 n.3 (10th Cir. 2002). The 02/17/10 Order granting Plaintiffs' motion to compel discovery against Defendants did not constitute a final judgment triggering the running of the 10-day period. *See Hooker v. Cont'l Life Ins. Co.*, 965 F.2d 903, 904 (10th Cir. 1992). The instant motion is therefore timely.

The major grounds justifying reconsideration of a judgment involve "an intervening change in the controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Camacho v. Tenorio Enterprises*, 2 NMI 407, 414 (1992). In addition to these grounds, Defendants contend the Court should reconsider the 02/17/10 Order because compliance with the Order would be unduly burdensome in light of the costs to translate the documents. (*See* Defs.' Mem. Supp. Mot. to Recon. at 7.) Defendants argue that in order to determine the relevance of the documents, they all must be translated. (*Id.* at 5.) Defendants also argue that the documents have already been reviewed by a major accounting firm who has issued reports outlining the corporation's funds and expenditures. (*Id.* at 5-7.) The Court will address these arguments and reconsider the 02/17/10 Order to relieve much of the Defendants' burden.

B. Discussion

Discovery matters are within the sound discretion of the trial court. *Muna ex rel. Lacy v. CNMI*, 2007 MP 16. Generally, each party must bear their own pretrial discovery costs[1], including the costs incurred to translate foreign documents. *In re P.R. Elec. Power Auth.*, 687 F.2d 501, 507 (1st Cir. 1982). Nevertheless, translation costs may be taxed as costs at the conclusion of the litigation. *Id.*; *see also East Boston Ecumenical Community Council, Inc. v. Mastrorillo*, 124 F.R.D. 14, 15 (D. Mass. 1989) ("If the defendants prevail on the merits, the costs incurred for the interpreters may be taxed in defendants' favor against the plaintiffs."); *In re Korean Air Lines Disaster*, 103 F.R.D. 357, 358 (D.D.C. 1984) ("the Federal Rules do not confer upon the district court the power to require payment of translation expenses at the pretrial stage").

Under, NMI R. Civ. P. 34, a party is required to produce documents for inspection as they are kept in the ordinary course of business or organize and label them to correspond to the requests. The production of large amounts of documents in no apparent order fails to comply with Rule 34[2]. *Stiller v. Arnold*, 167 F.R.D. 68, 70-71 (N.D. Ind. 1996). Additionally, a party "may not excuse itself from compliance with Rule 34[] by utilizing a system of record-keeping which conceals rather than discloses relevant records, or makes it unduly difficult to identify or locate them, thus rendering the production of the documents an excessively burdensome and costly expedition." *Kozlowski v. Sears, Roebuck & Co.*, 73 F.R.D. 73, 76 (D. Mass. 1976).

In this case, Defendants concede that for many years Anaks failed to comply with 4 CMC § 4104(c) which requires all CNMI corporations to keep their business records in the English language.[3] As a result, many of Anaks' corporate business records and documents are in the Japanese language. (*See* Defs.' Mem. Supp. Mot. to Recon. at 4.) Defendants' argument is that since these documents are

[1] When the relationship between the parties is adverse, each party must pay their own costs as part of the ordinary burden of financing their suit. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178-79 (1974).

[2] Because the Commonwealth Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, federal cases interpreting the counterpart Federal Rules are helpful in interpreting the Commonwealth Rules of Civil Procedure. *Ada v. Sadhwani's Inc.*, 3 NMI 303 (1992).

[3] All corporations shall maintain in the English language their financial, bookkeeping, accounting, and business records. Failure to comply with this subsection shall result in rejection of an application for or revocation of a corporate charter as well as a possible civil penalty of $10,000. Corporations presently chartered shall have until April 30, 1991, to comply. 4 CMC § 4104(c).

in Japanese, it is necessary to translate all of them to ascertain their relevance and organize them to correspond to the discovery requests. (*Id.* at 4-5.) Defendants move the Court to completely relieve them of this burden and instead require Plaintiffs to extract the information they seek from financial reports created by a third party accounting firm. (*Id.* at 5-8.) Unfortunately, these financial reports lack the specificity of showing how the monthly maintenance fee has been spent and therefore fail to adequately respond to the discovery requests.

It would be fundamentally unfair to the Plaintiffs for the Court to allow Defendants to be relieved of their burden of production for failing to follow CNMI law. However, requiring the Defendants to pay for the translation of each document, irrespective of its value to the litigation, would impose a heavy financial burden.[4] Instead, the Court chooses a more equitable approach. Requiring Defendants to translate only titles[5] and subtitles[6], from Japanese to English, would significantly decrease their translation costs. Additionally, this requirement would allow Defendants to organize the documents in a manner that complies with Rule 34. Should the Plaintiffs wish to translate the documents further, it would be at their own cost, which could be taxed on Defendants should the Plaintiffs ultimately prevail upon final adjudication.

III. CONCLUSION

For the foregoing reasons, the Court hereby partially GRANTS Defendants' Motion to Reconsider based upon new evidence of the costs involved in complying with the translation requirements of paragraph four of the 02/17/10 Order. Defendants shall, translate, at their expense, all titles and subtitles of the documents provided in their responses to the discovery requests from Japanese to the English language. Such translated discovery documents shall be provided to Plaintiffs within sixty (60) days from this Order. The amendment of the 02/17/10 Order is limited to paragraphs four and five therein. All other mandates of the 02/17/10 Order remain in force.

[4]Defendants have already spent over $15,000 for translation services attempting to comply with the 02/17/10 Order. (Aff. of Shuichi Nishimura at 3.)

[5]For purposes of this Order and in the interest of clarity, "title" means a descriptive or general heading.

[6]For purposes of this Order and in the interest of clarity, "subtitle" means a secondary or explanatory title.

SO ORDERED this 25th day of October, 2010.

/s/
PERRY B. INOS, Associate Judge