



By Order of the Court, Judge Joseph N. Camacho

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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

LC RENTAL COMPANY, LLC,)	CIVIL ACTION NO. 16-0146
)	
Plaintiff,)	ORDER GRANTING IN PART
)	PLAINTIFF’S MOTION FOR
v.)	RECONSIDERATION AS AN
)	EVIDENTIARY HEARING MUST BE
CHINA YANBIAN FOREIGN)	CONDUCTED AS SWORN AFFIDAVITS
ECONOMIC & TECHNICAL)	ALONE ARE INSUFFICIENT TO
COOPERATION CORPORATION,)	RESOLVE A FACTUAL DISPUTE
)	
Defendant.)	
)	
)	
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I. INTRODUCTION

This matter came before the Court on December 21, 2016 at 1:30 p.m. in Courtroom 220 on Plaintiff LC Rental Company LLC’s Motion for Reconsideration of Order Granting Defendant’s Motion to Set Aside Default Judgment. Attorneys Benjamin K. Petersburg and Bruce Berline appeared on behalf of the Plaintiff, LC Rental Company, LLC (“LC Rental”). Attorneys Janet H. King and Daniel Guidotti¹ appeared on behalf of the Defendant, China Yanbian Foreign Economic & Technical Cooperation Corporation (“China Yanbian”).

Based on a review of the filings, oral arguments, and applicable law, the Court makes the following order.

II. BACKGROUND

The case involves a dispute regarding rental payments for commercial retail space in the LC Building in Garapan. China Yanbian owns and operates two restaurants, Seoul One Restaurant and

¹ Mr. Guidotti appeared for attorney Colin M. Thompson.

1 Shinsen Restaurant in the LC Building. Byung Deuk Lee is the president of China Yanbian. Byung
2 Deuk Lee's son, Sang Hun Lee, is the organizing member of LC Rental Company. Sang Hun Lee
3 was the manager of the two restaurants until March or April of 2016, when Byung Deuk Lee
4 removed him from China Yanbian.

5 The summons and complaint in this case were filed with the Court on July 18, 2016. On
6 July 21, 2016, a copy of the summons and complaint were delivered to Wu Shun Yu, who was
7 listed as a "general manager" on the proof of service. In her filed affidavit, Wu Shun Yu describes
8 herself as a waitress at Seoul One Restaurant. Byung Deuk Lee describes Wu Shun Yu as a cook in
9 his affidavit. When the summons and complaint were delivered to Wu Shun Yu, Byung Deuk Lee
10 was off-island in South Korea.² Sang Hun Lee stated in his declaration that Wu Shun Yu had taken
11 over management duties in China Yanbian after he was ousted from the organization by his father.
12 LC Rental Company never requested, mentioned, or argued about whether an evidentiary hearing
13 should be held regarding Wu Shun Yu's role in China Yanbian until the present Motion for
14 Reconsideration.

15 LC Rental filed a Motion for Default Judgment on August 12, 2016, and the Court entered a
16 default judgment on August 26, 2016. China Yanbian subsequently filed Defendant's Motion to Set
17 Aside the Default Judgment Pursuant to Com. R. Civ. P. 60(b) on September 22, 2016. The Court
18 ultimately set aside the default judgment on October 27, 2016. *See LC Rental v. China Yanbian*,
19 Civ. No. 16-0146 (NMI Super. Ct. Oct. 27, 2016) (Order Granting Defendant's Motion to Set Aside
20 Default Judgment as Plaintiff Failed to Properly Serve the Defendant, Therefore the Judgment is
21 Void) ("October 27 Order").

22
23 ² The Court notes that Byung Deuk Lee was ultimately properly served on October 28, 2016, the day after the Court
24 issued its order that set aside the default judgment. Proof of Service (Oct. 28, 2016); *LC Rental v. China Yanbian*, Civ.
No. 16-0146 (NMI Super. Ct. Oct. 27, 2016) (Order Granting Defendant's Motion to Set Aside Default Judgment as
Plaintiff Failed to Properly Serve the Defendant, Therefore the Judgment is Void).

1 In the October 27 Order, the Court found that Wu Shun Yu, as a waitress and/or cook, was
2 not a proper person to receive service under Rule 4(h) of the Commonwealth Rules of Civil
3 Procedure. October 27 Order at 10. The Court also found that China Yanbian was not properly
4 served pursuant to the Holdover Tenancy Act. *Id.* at 11. Sang Hun Lee claimed in his declaration
5 that Wu Shun Yu took over his management duties in March or April of 2016, when his father
6 removed him from his management position in China Yanbian. In weighing Sang Hun Lee's
7 statement in the October 27 Order, the Court noted that "Sang Hun Lee by his own admission was
8 ousted from the organization by his father. Although Sang Hun Lee claims that Wu Shun Yu is
9 heavily integrated in China Yanbian's business affairs, Sang Hun Lee's statements about Wu Shun
10 Yu appear to be speculation rather than fact." *Id.* at 7.

11 LC Rental filed the present Motion for Reconsideration on November 14, 2016, arguing that
12 the Court must reconsider the October 27 Order, since "the order resolved disputed facts as to Wun
13 [sic] Shun Yu's capacity to accept service based on conclusory affidavits and without an
14 evidentiary hearing." Mot. for Reconsideration at 1. China Yanbian filed its Opposition to Motion
15 for Reconsideration of Order Granting Defendant's Motion to Set Aside Default Judgment on
16 December 2, 2016. LC Rental filed its Reply Brief Re: Motion for Reconsideration of Order
17 Granting Defendant's Motion to Set Aside Default Judgment on December 12, 2016. The Court
18 heard arguments from the parties on December 21, 2016 at 1:30 p.m.³

19 III. LEGAL STANDARD

20 A court may reconsider its earlier ruling when there is "an intervening change of controlling
21 law, availability of new evidence, or the need to correct a clear error or prevent manifest injustice."

22 ³ On October 28, 2016, LC Rental filed Plaintiff's Opposition to Defendant's Motion to Dissolve Writ/Motion for
23 Reconsideration. That opposition/motion deals with who has rights to possession of the subject property following the
24 Court's October 27 Order. Both that motion and the present motion deal with who has access to the subject property in
the aftermath of the Court granting the Defendant's Motion to Set Aside Default Judgment. The Court's ruling in this
order is meant to address both Plaintiff's opposition/motion for reconsideration filed October 28, 2016, as well as
Plaintiff's motion to reconsider filed on November 14, 2016.

1 *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7 (citing *Camacho v. J.C. Tenorio Enterprises, Inc.*, 2 NMI
2 408, 414 (1992)). This standard applies in both civil and criminal cases. *Id.* Reconsideration may
3 not be used “to repeat old arguments previously considered and rejected, or to raise new legal
4 theories that should have been raised earlier.” *National Metal Finishing Com. v.*
5 *BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 123 (1st Cir. 1990). Commonwealth law favors
6 the finality of court decisions, to “maintain consistency and avoid reconsideration of matters once
7 decided during the course of a single continuing lawsuit.” *Cushnie v. Arriola*, 2000 MP 7 ¶ 14.
8 Motions to reconsider “[serve] the narrow purpose of allowing a party to correct manifest errors of
9 law or fact or to present newly discovered evidence.” *Templet v. Hydrochem Inc.*, 367 F.3d 473,
10 479 (5th Cir. 2004) (quoting *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)).

11 **IV. DISCUSSION**

12 LC Rental argues that the Court should reconsider its October 27 Order, since the Court
13 made its order without holding an evidentiary hearing as to Wu Shun Yu’s capacity to accept
14 service for China Yanbian. Mot. for Reconsideration at 1. LC Rental further argues that they were
15 denied the “opportunity to challenge the alleged facts and to present contradictory facts by
16 admissible evidence.” Reply at 3.

17 The key issue in the present case is whether Wu Shun Yu held a position within China
18 Yanbian that made her a proper person to receive service⁴ for China Yanbian. In her declaration,
19 Wu Shun Yu describes herself as a waitress at Seoul One Restaurant. Byung Deuk Lee describes

21 ⁴ Rule 4(h) of the Commonwealth Rules of Civil Procedure covers service of corporations and associations. Under Rule
22 4(h)(1), a domestic corporation may be served:

23 [I]n a jurisdiction of the United States (including the Commonwealth) in the manner prescribed for
24 individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to
an officer, a managing or general agent, or to any other agent authorized by statute and the statute
so requires, by also mailing a copy to the defendant.

NMI R. Civ. P. 4(h)(1) (emphasis added).

1 Wu Shun Yu as a cook. Sang Hun Lee, on the other hand, stated in his declaration that Wu Shun Yu
2 had taken over the management of China Yanbian after he left the organization. On the proof of
3 service dated July 21, 2016, Wu Shun Yu was described as a “general manager.”

4 “A determination of credibility cannot be made on the basis of an affidavit. That is, a judge
5 cannot take two affidavits that swear to opposite things and say, ‘I find one of the affidavits more
6 credible than the other, and therefore I shall accept it as true.’” *Durukan America, LLC v. Rain*
7 *Trading, Inc.*, 787 F.3d 1161, 1164 (7th Cir. 2015) (quoting *Castillo v. United States*, 34 F.3d 443,
8 446 (7th Cir. 1994). *See also Franco v. United States*, 762 F.3d 761, 765 (8th Cir. 2014) (“[T]he
9 district court received conflicting affidavits and announced one was more credible than the other.
10 On this record, making a factual determination on the relative credibility [of the declarants] without
11 the benefit of an evidentiary hearing was an abuse of discretion.”); *Bischoff v. Osceola County*, 222
12 F.3d 874, 882 (11th Cir. 2000) (holding the district court erred by failing to hold an evidentiary
13 hearing before making judgments related to witness credibility).

14 Here, the Court had opposing affidavits containing conflicting information. Wu Shun Yu, in
15 her affidavit, described herself as a waitress. Byung Deuk Lee described Wu Shun Yu as a cook. On
16 the other hand, Sang Hun Lee asserts that Wu Shun Yu was a manager at China Yanbian. Thus, the
17 Court will hold an evidentiary hearing to determine what position Wu Shun Yu held within China
18 Yanbian and whether Wu Shun Yu was consequently a proper person to receive service of process
19 under the Commonwealth Rules of Civil Procedure.

20 This order applies to the issue of holding an evidentiary hearing to resolve factual disputes.
21 Although the Court is granting LC Rental’s Motion for Reconsideration as to the issue of an
22 evidentiary hearing, the Court is not vacating its prior order until after a determination has been
23 made as to whether Wu Shun Yu is a person who could properly receive service. In the interim, the
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1 restaurants may continue operation in the subject property, until the Court issues a ruling as to Wu
2 Shun Yu's role in China Yanbian.

3 **V. CONCLUSION**

4 Accordingly, LC Rental's Motion for Reconsideration is **GRANTED IN PART** as to the
5 issue of holding an evidentiary hearing to resolve a factual dispute.

6 All other aspects of the Court's prior order shall remain in place until the Court orders
7 otherwise.

8 The Court will issue a separate order setting an evidentiary hearing.

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10 **IT IS SO ORDERED** this 5th day of April, 2017.

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12 /s/
13 JOSEPH N. CAMACHO
14 Associate Judge
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