



## LEGAL ANALYSIS

### I. The Standard of Review

The standard for granting a motion for reconsideration is strict. Channer v. Brooks, 2001 WL 1094964 at \*1 (D.Conn. 2001). See Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Such a motion generally will be denied unless the "moving party can point to controlling decisions or data that the court overlooked - - matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Id.* Thus, "the function of a motion for reconsideration is to present the court with an opportunity to correct 'manifest errors of law or fact or to consider newly discovered evidence.'" LoSacco v. City of Middletown, 822 F.Supp. 870, 876-77 (D.Conn. 1993), *aff'd* 33 F.3d 50 (2d Cir. 1994), quoting Rothwell Cotton Co. v. Rosenthal & Co., 827 F.2d 246, 251 (7<sup>th</sup> Cir. 1987). *Accord* Hock v. Thipedeau, 245 F.Supp. 451, 453 (D.Conn. 2003).

### II. The Standard As Applied

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Connecticut. See *Ruling on Defendants' Motion for Summary Judgment*, Jan. 9, 2004, at n.1. ("Counsel in this case are hereby forewarned of any future failure to comply with the pertinent provisions of the Local Rules."). Plaintiff's counsel continues its lack of compliance with these Local Rules, first, by filing this Motion in an untimely matter, and, second, by continuing to refer to the repealed Local Rule 9. This Court will not punish Plaintiff for his counsel's continuing ignorance one last time. In the future, any motion or response thereto filed by Plaintiff's law firm before this Court, in continual non-compliance with the Local Rules, will immediately result in the grant or denial of their Motion or objection thereto, with prejudice.

The Court has thoroughly reviewed Plaintiff's fifty-one statements of alleged material facts and finds that the vast majority are not supported by the citations they refer to. See, e.g., ¶ 37: "Brunt had received complaints regarding the air quality at Foxwoods, including complaints from the plaintiff". They are seven cites to the Deposition of defendant Edmund Brunt in support of this statement, covering one hundred fifty-six lines of testimony. However, upon review, just thirty-six lines of testimony are relevant in three cites; further, Brunt revealed at page one-hundred, lines 15-16, that he had received complaints about **both** casinos.

In the meantime, as was cited in this Court's original *Ruling on Defendants' Motion for Summary Judgment*, Plaintiff testified at his deposition as follows:

p. 75: L 9-25. He had "mentioned that the casino [Foxwoods] was smokey", but he did not advise Brunt that it was a health issue for him.

P. 24: L 4-6; 14-16. He never requested to be transferred from Foxwoods due to this smoke.

P. 22: L. 4-5; 24 L: 14-17. He had worked at Foxwoods for approximately six years, commencing in 1993. He never requested to be reassigned or transferred to a different unit because of the smoke at Foxwoods prior to 1999.

*Deposition of Dean S. Mercer, Jr.* (November 21, 2003).

Nor has he set forth one new fact or legal decision regarding his claim of violation of the Equal Protection Clause.

Rather, that part of the Memorandum of Law in Support of the Motion for Reconsideration on this issue is **IDENTICAL** to that already contained in his Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment.

In any event, "[i]n short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines; . . . it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment." New Orleans v. Dukes, 427 U.S. 297, 303-04 (1975)(per curiam). In no manner does Plaintiff meet this stringent standard, as the facts and law as set forth in this Court's prior Ruling plainly demonstrate.

As to Plaintiff's claim under the ADA, his own testimony answers any inquiry. As set forth in the Original Ruling, the Plaintiff never requested any accommodations because "I was on medication. I accommodated myself." *Ruling, p.5, citing to Plaintiff's Deposition*. Further, as also noted in the Original Ruling, Plaintiff also testified that his hypertension, too, was controlled by medication and it did not affect his job performance. *Id.* at 6. See also *Ruling, p.12-13, citing to Plaintiff's Deposition*

and controlling law.<sup>2/</sup>

Lastly, and incredibly, Plaintiff's counsel writes: "The plaintiff alleged a claim of Substantive Due Process to [sic] which the defendants did not address and did not move for summary judgment against in their Memorandum in Support of the Motion for Summary Judgment, therefore the court should not have granted Summary Judgment against such claim." The Court takes judicial notice of the fact that the sole paragraph of Plaintiff's Complaint (¶ 26), using the talismanic phrase "substantive due process," sets forth no facts upon which a claim of legal violation of substantive due process could possibly be found. Secondly, if a party does not move against a certain claim of a complaint, it is the professional responsibility of the opposing party to bring this to the Court's attention in her initial Memorandum of Law. Because nowhere in Plaintiff's original Memorandum of Law is such notice given, Plaintiff has waived the right to move for reconsideration on this issue.

#### **CONCLUSION**

After thorough review of the parties moving papers, especially the citations to fifty-one paragraphs allegedly supportive of Plaintiff's claim, the Motion for Reconsideration [Doc. No. 39] is hereby DENIED, with prejudice, Plaintiff having failed to meet the stringent standards for the grant of such a Motion. The Clerk is

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<sup>2/</sup> Never challenged by Plaintiff.

directed to close this case.

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this \_\_\_\_ day of February, 2004.