UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LOUIS S. D'AMICO and RITA D. WILLIS, AS CO-ADMINISTRATORS OF THE ESTATE OF SALVATORE D. D'AMICO, DECEASED, Plaintiffs,	:	
v.	:	CIVIL ACTION NO. 3:03cv2164 (SRU)
JOHN DOE 1 and JOHN DOE 2, the true names being presently unknown; WARREN ADELSON, ADELSON GALLERIES, INC. and MARK BORGHI, Defendants.	:	

RULING ON MOTION FOR RECONSIDERATION

Louis S. D'Amico and Rita D. Willis, co-administrators of the estate of Salvatore D. D'Amico (collectively "D'Amico Estate"), have moved for reconsideration of my ruling granting the defendants' motion to dismiss, *D'Amico v. Doe*, No. 3:03cv2164 (D. Conn. filed Jan. 20, 2005) ("Ruling"). Subsequent to filing that motion, the D'Amico Estate requested that I not rule on it and instead permit my earlier dismissal to stand. Nevertheless, because I have considered the plaintiffs' motion and the arguments raised in their memorandum of law, I write to elaborate further my reasons for abiding by my original decision.

I. Standard of Review

The standard for granting a motion for reconsideration is "strict." *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). A motion for reconsideration "is not simply a second opportunity for the movant to advance arguments already rejected." *Id.* "The major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice."

Doe v. New York City Dep't of Social Services, 709 F.2d 782, 789 (2d Cir. 1983). The D'Amico Estate purports to move for reconsideration in order to correct a clear error of law or to prevent manifest injustice.[1]

II. Procedural Background

Initially, the D'Amico Estate filed suit against Louis Corneroli and two unidentified defendants and asserted subject matter jurisdiction in federal court under 28 U.S.C. § 1332, diversity of citizenship. During discovery, the D'Amico Estate subpoenaed Warren Adelson. Adelson filed a motion to quash, arguing that the court did not have subject matter jurisdiction because Corneroli was a Connecticut citizen and, thus, not diverse.

The D'Amico Estate then moved for partial withdrawal and an amendment of the complaint. The plaintiffs sought to withdraw Corneroli as a defendant in order to create diversity jurisdiction. Rather than dismissing the complaint for lack of subject matter jurisdiction, I granted their motion to withdraw Corneroli as a defendant and to amend the complaint.

In the amended complaint, the D'Amico Estate sued the current defendants, Warren Adelson and the Adelson Galleries (collectively the "Adelson Defendants"), Mark Borghi, and two unidentified defendants, John Doe 1 and John Doe 2 (collectively the "John Doe Defendants"). The D'Amico Estate sought a declaratory judgment, an order of replevin, and damages for conversion and fraud.

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[1] In its memorandum of law in support of the motion for reconsideration, the D'Amico Estate puts forth three arguments: (1) the court did not consider controlling case law in the Second Circuit with respect to partial dismissals; (2) the court did not consider authority that predecessors in title are not necessary parties to a quiet title action; (3) the court should have ordered the disclosure of the John Doe defendants. The plaintiffs presented persuasive case law in support of only the first argument regarding partial dismissals. The other two arguments do not meet the strict standard necessary to merit reconsideration.

Although he was not named as a defendant, the amended complaint again mentioned Corneroli and even referred to him as a defendant:

> *Louis Corneroli's and the other defendants'* unauthorized possession, transport, advertisement, and sole exercise of claimed ownership over "Carmencita Dancing" has lead [*sic*] to a controversy of ownership.

Am. Compl. ¶ 79 (emphasis added).

The Adelson Defendants filed a motion to dismiss the case for failure to join persons needed for just adjudication in accordance with Rule 19 of the Federal Rules of Civil Procedure. Borghi joined the Adelson Defendants' motion to dismiss. On January 20, 2005, I granted the defendants' motion and dismissed the case for failure to join an indispensable party. I analyzed the amended complaint under Rule 19 and concluded that Corneroli was a necessary party with respect to the declaratory judgment counts, although he was not necessary with respect to the replevin, fraud, and conversion counts.

The D'Amico Estate then moved for reconsideration, arguing principally that I should have dismissed only the counts to which Corneroli was indispensable, i.e., the declaratory judgment counts, rather than the entire complaint. *See Jota v. Texaco Inc.*, 157 F.3d 153 (2d Cir. 1998) (vacating and remanding dismissal of entire complaint when district court's rationale only justified dismissal of certain claims for equitable relief).

On March 22, 2005, I conducted a conference call on the record. During that call, the defendants voiced concerns that dismissing only the declaratory judgment counts would permit those counts to be filed in state court, thus resulting in duplicative litigation and prejudicing the defendants. Because the D'Amico Estate acknowledged that the declaratory judgment counts were unnecessary and duplicative of the replevin claims, I suggested that the plaintiffs consider

withdrawing the declaratory judgment counts with prejudice.[2] The D'Amico Estate declined to represent that it would not refile the declaratory judgment claims in a separate state court lawsuit if only those counts were dismissed. Additionally, the parties again confirmed that the entire action could be brought against all necessary defendants in New York or Connecticut state court, and thus, the plaintiffs can litigate all their claims in a single forum.

After the telephone conference, the D'Amico Estate wrote to the court to request that I not rule on the motion for reconsideration, permitting the original decision to stand. Letter from John L. Bonee, III, dated Mar. 23, 2005.[3]

III. Factual Background

The factual background of the parties' dispute is set forth in my earlier ruling. Ruling at 2-4. In short, the dispute centers on the rightful possession and ownership of two paintings, which the D'Amico Estate alleges were purchased and owned by Salvatore D'Amico. Each of the defendants and the absent Corneroli allegedly possessed at least one of the paintings after the artwork disappeared from the basement of the deceased Salvatore D'Amico.

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[2] Although the D'Amico Estate would have been barred from again bringing the declaratory judgment claims against the defendants, there would have been no collateral estoppel with respect to the underlying issues of rightful possession and ownership of the paintings, nor would res judicata have barred the D'Amico Estate's then pending replevin, conversion, or fraud claims.

[3] In his letter, Mr. Bonee incorrectly suggests that during the conference call I indicated that I was considering dismissing with prejudice the declaratory judgment counts. An involuntary dismissal on Rule 19 grounds does not operate as an adjudication on the merits. *See* 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* (3d ed. 2004) § 1359. *Cf.* Fed. R. Civ. P. 41(b).

IV. Discussion

A. Initial Decision Concluding Absent Party was Necessary for Adjudication of Declaratory Judgment Counts

In my initial ruling on the defendants' motion to dismiss, I analyzed the amended complaint pursuant to Rule 19. An analysis under Rule 19 consists of two parts. First, Rule 19(a) requires an inquiry whether the "absent party belongs in the suit" and whether joinder is feasible. *Viacom In'tl Inc. v. Kearney*, 212 F.3d 721, 724 (2d Cir. 2000). Second, the analysis involves an inquiry whether failure to join the absent party warrants dismissal. *Associated Dry Goods Corp. v. Towers Financial Corp.*, 920 F.2d 1121, 1123 (2d Cir. 1990).

I concluded that Corneroli was a necessary party with respect to the declaratory judgment counts, but that he was not a necessary party with respect to the replevin claims against the John Doe defendants, the conversion claims against the Adelson defendants and Borghi, and the fraud claims against Borghi. Ruling at 7.

Though I did not say so explicitly in the initial decision, I note that the amended complaint itself implies that Corneroli is a necessary party with respect to the declaratory judgment claims.

> *Louis Corneroli's and the other defendants'* unauthorized possession, transport, advertisement, and sole exercise of claimed ownership over "Carmencita Dancing" has lead [*sic*] to a controversy of ownership.

Am. Compl. ¶ 79 (emphasis added).

> Louis Corneroli's and Mark Borghi's unauthorized possession, transport, advertisement, and sole exercise of claimed ownership over the Lancret has lead [*sic*] to a controversy of ownership.

Id. ¶ 82.

In the initial ruling, I outlined the prejudice the defendants would suffer if Corneroli were not a party to the declaratory judgment claims. Ruling at 7-10. First, the parties "would be 'subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations' in Corneroli's absence because they could lose this declaratory judgment claim and also lose a similar claim to Corneroli, who would not be bound by any decision in this case." Ruling at 7 (quoting Fed. R. Civ. P. 19(a)). Second, if the defendants attempted to remedy the problem caused by Corneroli's absence by asserting a voluntary counterclaim against him, Borghi would be prejudiced because he previously settled a lawsuit in New York and released Corneroli from liability. *Id.* at 9. The Adelson Defendants similarly settled a New Jersey lawsuit and exchanged mutual releases with Borghi. *Id.*

The defendants' motion for reconsideration raises an additional risk of prejudice that I have not previously addressed: defending duplicative litigation against the D'Amico Estate in multiple courts. Such suits could result in inconsistent judgments and obligations.

B. Motion for Reconsideration, Partial Dismissals, and the Effect of *Jota*

In their motion for reconsideration, the plaintiffs cite the Second Circuit's decision in *Jota* to argue that the decision to dismiss their entire complaint was erroneous. In *Jota,* the Second Circuit vacated and remanded a district court's Rule 19 dismissal of an entire complaint when the lower court had reasoned that the absent party was indispensable only to providing the equitable relief demanded in certain counts. 157 F.3d at 162.

Jota involved consolidated appeals from two actions filed on behalf of two putative classes. Residents of Ecuador and Peru had brought equitable and legal claims against Texaco, an American oil company. The Republic of Ecuador was not named as a defendant, and the

District Court held that the involvement of Ecuador, the current owner and operator of the oil drilling equipment, would have been necessary for certain equitable relief to be enforceable. *Id.* at 161. The Second Circuit discussed the District Court's rationale for dismissing the entire complaint and noted:

> In effect, the Court dismissed the case because the "Ecuador-directed" equitable remedies sought by the plaintiffs would be possible only if Ecuador was joined as a party and, without Ecuador in the case, the court would be unable to provide the plaintiffs with "complete relief."

Id. The Court did not hold that the District Court was required to dismiss only those counts to which Ecuador was a necessary party. Rather, its Rule 19 holding was limited to the District Court's reasoning:

> We . . . hold that the District Court's reasoning regarding the plaintiffs' failure to join an indispensable party sufficed only to support dismissing so much of the complaint as sought to enjoin activities currently under the Republic's control.

Id. at 155. The Court of Appeals did not, however, reverse the District Court's dismissal, nor did it hold as a matter of law that a district court must dismiss only those claims to which the absent party is deemed indispensable. Rather, the Second Circuit vacated and remanded it to the District Court "to consider the dismissal on Rule 19 grounds." *Id.*

The application of Rule 19 in this case differs from the application in *Jota* in four significant ways. First, in *Jota*, the absent defendant, the Republic of Ecuador, had moved to intervene.[4] Second, the equitable relief sought in *Jota* was not duplicative of the relief sought in

[4] The Second Circuit did not explicitly rely on this fact, and the Court of Appeals agreed with the District Court that the Republic's intervention motion was "insufficient because it did not include a full waiver of sovereign immunity." *Id.* at 163. Nevertheless, the arguable willingness of the absent party to participate in the suit affects the posture of that case. *Cf. id.* (noting that on remand Ecuador's motion to intervene will be available for reconsideration and

other claims. Third, the defendant in *Jota* would not have been prejudiced if the District Court dismissed only those equitable claims that required the participation of Ecuador. Specifically, it would not have risked duplicative litigation in state and federal courts that could have given rise to inconsistent judgments. Fourth, when the Court of Appeals decided *Jota*, there was no apparent alternative forum in which the plaintiffs could bring their claims.

The third and fourth differences merit elaboration. In *Jota*, the equitable relief sought consisted of environmental cleanup, renovation or closure of the Trans-Ecuadoran Pipeline, formulation of standards to govern future Texaco oil development, establishment of a medical monitoring fund, an injunction against Texaco regarding future high risk activities, and restitution. *Id*. at 156 n.2. The plaintiffs also sought money damages against Texaco under various theories of liability. *Id.* at 156. The District Court found that the participation of Ecuador was not necessary with respect to much of the relief sought. *Id.* at 162.

The D'Amico complaint can be divided into two sets of claims: the declaratory judgment claims and the replevin, fraud, and conversion claims. Although the latter claims can be pursued absent Corneroli, he is an indispensable party with respect to the declaratory judgment claims. Unlike in *Jota*, however, a bifurcation of the case would prejudice the defendants, who would be subject to duplicative litigation in state and federal courts and face potentially inconsistent judgments regarding the ownership of the paintings. *Cf. Legal Aid Society v. City of New York*, 114 F. Supp. 2d 204, 221 (dismissing only equitable claims on Rule 19 grounds because dismissal of those claims would "alleviate any perceived prejudice" and defendant only moved to dismiss those claims).

Ecuador will have the opportunity to revise its position on waiver of sovereign immunity).

In response to the defendants' concern that a partial dismissal would subject them to redundant suits and potentially inconsistent judgments, the D'Amico Estate refused to withdraw voluntarily the declaratory judgment counts with prejudice while acknowledging that they were unnecessary and duplicative. Furthermore, after being confronted with the defendants' concern, the D'Amico Estate requested that I not rule on the motion for reconsideration. These decisions suggest that the risk of prejudice in the form of duplicative litigation and potentially inconsistent judgments is not insignificant.

In *Jota* two other significant jurisdictional issues were before the courts. The District Court had dismissed the plaintiffs' complaint on grounds of *forum non conveniens* and international comity, in addition to ruling that Ecuador was an indispensable party under Rule 19. *Aquinda v. Texaco*, 945 F. Supp. 625 (S.D.N.Y. 1996). The Second Circuit vacated and remanded the District Court's rulings grounded in *forum non conveniens*, comity, and Rule 19. *Jota*, 157 F.3d at 162. With respect to Rule 19, the Court of Appeals reasoned that because "much of the relief sought could be fully provided by Texaco without any participation by Ecuador, dismissal of the entire complaint on Rule 19 grounds exceeds [the District Court's] discretion." *Id.*

When *Jota* was before the Second Circuit, it was not apparent that the plaintiffs had an alternative forum for their claims because Texaco had not consented to suit in Ecuador or Peru. *Id.* at 159. Thus, by dismissing the entire complaint, the District Court had potentially deprived the plaintiffs of their only forum for adjudication of even those claims that did not require

Ecuador's presence.[5] These circumstances led the Second Circuit to conclude that the District Court's "dismissal of the entire complaint on Rule 19 grounds exceed[ed] that [Court's] discretion." *Id.* at 162. The claims of the D'Amico Estate, however, can be filed in state court where – the plaintiffs and defendants agree – all parties can be joined. Thus, I conclude that the availability of an alternative forum distinguishes this case from *Jota* and informs the exercise of my discretion.

V. Conclusion

Rule 19(b) requires me to consider "whether in equity and good conscience the action should proceed among the [present] parties" or "should be dismissed, the absent person being thus regarded as indispensable." Fed. R. Civ. P. 19(b). On plaintiffs' motion for reconsideration, I again considered the necessary factors: (1) the extent to which a judgment rendered in Corneroli's absence might prejudice those who are already parties; (2) the extent to which the prejudice can be lessened or avoided; (3) whether a judgment rendered in Corneroli's absence will be adequate, and (4) whether the D'Amico Estate will have an adequate remedy if the action is dismissed for nonjoinder. As discussed above, Corneroli's absence would prejudice the defendants. The plaintiffs have been unwilling to dismiss with prejudice the unnecessary and duplicative declaratory judgments. Most importantly, the D'Amico Estate will have an adequate remedy if the action is dismissed: adjudication of all claims in a state court action in which all necessary parties can be joined.

Furthermore, I have now considered *Jota* and its holding regarding partial dismissals.

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[5] On remand, after Texaco consented to jurisdiction in Ecuador and Peru, the District Court again dismissed *Jota* and the related case on grounds of *forum non conveniens*. *Aguinda v. Texaco*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001), *aff'd as modified*, 303 F.3d 470 (2d Cir. 2002).

The facts and circumstances surrounding that case were unique. *Jota* did not involve the same kinds of prejudice to the defendants, and the plaintiffs in that case had no alternative forum available to them. Thus, *Jota* does not control the Rule 19 motion in this case.

Equity and good conscience require that I exercise my discretion and dismiss this case for failure to join an indispensable party. The plaintiffs' motion for reconsideration (**doc. # 68**) is GRANTED. On reconsideration, the relief requested is DENIED.

It is so ordered.

Dated at Bridgeport, Connecticut, this 11th day of April 2005.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge