

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, :
ex rel. WALTER M. DRAKE, : :
 Plaintiff, :
 :
 v. : No. 3:94-CV-963(EBB)
 :
NORDEN SYSTEMS, INC., and :
UNITED TECHNOLOGIES CORP., :
 Defendants. :

RULING ON RELATOR'S MOTION TO ALTER OR AMEND AND/OR
FOR RELIEF FROM JUDGMENT AND FOR AN EVIDENTIARY HEARING

Relator Walter M. Drake ("Drake") moves this Court,
pursuant to Fed. R. Civ. P. Rule 59(e) and Rule 60(b), to
alter or amend and/or for relief, in whole or in part, from
the judgment entered on February 21, 2003 dismissing all of
Drake's claims. Drake also moves for an evidentiary hearing
in connection with the Court's determination of his Motion to
Alter or Amend and/or for Relief from Judgment. For the
reasons discussed below, Drake's motions [Doc. No. 142; Doc.
No. 143] are DENIED.

BACKGROUND

The Court sets forth herein only those facts necessary to
an understanding of the issues raised in, and the decisions
rendered on, the present motions. Briefly, the facts of this
case as they pertain to the pending motions are as follows.

The Court ordered Drake to file a third amended complaint
within sixty (60) days of the Court's August 24, 2000 ruling.

Drake failed to file anything for seventeen (17) months. On January 31, 2002, the Clerk's office issued, pursuant to the Local Rules, a Rule 16(a) Notice to Counsel for lack of prosecution. Shortly thereafter, Drake filed a response to the Rule 16 Notice as well as his belated third amended complaint. Defendants United Technologies Corporation and Norden Systems, Inc. (collectively "Defendants") subsequently filed a motion under Rules 12(f) and 41(b) of the Fed. R. Civ. P., and the Local Rules of this Court, to strike Drake's third amended complaint and to dismiss this case with prejudice. On February 19, 2003, following a status conference in chambers and responsive pleadings, the Court granted Defendants' motion and dismissed this case with prejudice. The Clerk of the Court entered judgment in this matter on February 21, 2003. Drake then timely filed his present motions.

STANDARD

The standard for granting a motion to alter or amend a judgment under Rule 59(e) "is strict, and reconsideration will generally 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." Shrader v. CSX Transp. Inc., 70 F.3d 255, 257 (2d. Cir. 1997). "[A] motion

to reconsider should not be granted where the moving party seeks solely to relitigate old issues." Id. Moreover, parties may not address facts, issues, or arguments not previously presented to the court, see Walsh v. McGee, 918 F.Supp. 107, 110 (S.D.N.Y. 1996), nor "reargue those issues already considered." In re Houbigant, Inc., 914 F.Supp. 997, 1001 (S.D.N.Y. 1996). Rather, a motion under Rule 59(e) "provides the Court with an opportunity to correct manifest errors of law or fact, hear newly discovered evidence, consider a change in the applicable law or prevent manifest injustice." U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co., Ltd., 182 F.R.D. 97, 100 (S.D.N.Y. 1998).

Rule 60(b) provides relief from a final judgment for, inter alia, mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the judgment. See Fed. R. Civ. P. 60(b)(1),(5). Relief under Rule 60(b) may be granted only in "extraordinary circumstances." See Ackermann v. United States, 340 U.S. 193, 199-202 (1950); United States v. Bank of New York, 14 F.3d 756, 759 (2d Cir. 1994). A motion for reconsideration under Rule 60(b) is the opportunity for the Court to correct manifest errors of law or fact and to review newly discovered evidence or to review a prior decision when there has been a

change in the law. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985).

The Court's rulings on motions pursuant to both Rule 59 and Rule 60(b) are committed to the sound discretion of the Court. See In re Lawrence, 293 F.3d 615, 624-25 (2d Cir. 2002) (noting "well-settled rule that [appellate court] review[s] dismissal of a Rule 60(b) motion by a district court for abuse of discretion"); McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir. 1983) (holding that Rule 59 motion "will not be overturned on appeal absent an abuse of discretion").

DISCUSSION

Drake does not cite to any change in controlling law or submit any newly discovered evidence. Thus, under Rule 59(e), amending or altering the Court's earlier ruling is appropriate only if Drake can point to clear error or the need to prevent manifest injustice. In attempting to do so, Drake submits what he labels "the type of data which justifies reconsideration of the Court's prior Ruling," to wit, "detailed evidence . . . concerning the continued availability at trial of witnesses and documents material to defendants' defense of each of relator's claims in this action" Relator's Memorandum in Support of Motion to Alter or Amend and/or for Relief from Judgment at 38. Drake also contends

that the Court "misapprehended" certain factual matters involved in this matter.

Through the submission of this data, and based on his claim that the Court misapprehended the data previously provided, Drake contends that the Court erroneously found that the defendants were actually prejudiced as a result of Drake's failure to prosecute.

The Court rejects Drake's suggestion that the "detailed evidence" now provided sheds new light on the issues already presented to and decided upon by the Court. What Drake offers now is not "new" evidence. Moreover, because Drake's earlier pleadings in this matter extensively detailed the discovery already conducted, the Court had, at the time of its February ruling, a clear understanding of the pertinent facts and issues.

Indeed, contrary to Drake's suggestion, the Court did not overlook or misapprehend the facts involved in this matter. As the Court stated in its earlier ruling, Drake's delay actually prejudiced the defendants in their ability to defend themselves in this matter. That Drake points to the availability of trial witnesses and documents material to the defendants' defense does not avoid the Court's earlier finding.

Furthermore, notwithstanding the Court's alleged "misapprehension" of the facts in question, the Court's February 19, 2003 Ruling found that prejudice was presumed from Drake's unreasonable delay. Actual prejudice, although found to exist, was not a necessary finding in support of the Court's dismissal of this lawsuit. Thus, while Drake suggests that the Court "misapprehended" the facts in question when determining whether actual prejudice existed, the Court need not even revisit those facts because prejudice was presumed from Drake's unreasonable delay.

On the issue of presumed prejudice, Drake suggests that the Court failed to consider case law that supports a "rebuttable presumption" rule in cases where prejudice is presumed due to an unreasonable delay. Because the Second Circuit holds that prejudice can be presumed due to unreasonable delay, see Peart v. City of New York, 992 F.2d 458, 462 (2d Cir. 1993); Lyell Theatre Corp. v. Loews Corp., 682 F.2d 37, 42 (2d Cir. 1982), and because the Court hesitates to embrace Drake's reading of Southwest Marine Inc.

v. Danzig, 217 F.3d 1128 (9th Cir. 2000),¹ the Court rejects this argument.

Drake also claims that the Court failed to consider the possible sanction of dismissing only those claims that were actually affected by the delay in filing Drake's third amended complaint. Drake suggests that "the description of his claims and available evidence now before the Court affords the Court a basis . . . to tailor its sanction appropriately only to those claims where defendants have been prejudiced" Drake's Reply at 9. Such a proposed alternative remedy was curiously not heretofore suggested by Drake. Nevertheless, the Court stands by its earlier finding that, because of the prejudice that flows from Drake's delay, the Court finds that no lesser sanction would adequately suffice here.

Lastly, the Court also rejects Drake's request for an evidentiary hearing, which was also never before sought by Drake. The facts in dispute were extensively detailed in the

¹ Drake suggests that Southwest Marine supports the argument that prejudice presumed from unreasonable delay is rebuttable. However, the Court in Southwest Marine held that "[Southwest's] failure to show the delay was unreasonable made the presumption of prejudice rebuttable and, in turn, made Southwest's failure to show actual prejudice a proper basis for the district court's denial of the motion." 217 F.3d at 1138 (emphasis added). Here, of course, Drake's seventeen-month delay was deemed unreasonable. Thus, even under Southwest Marine, it appears that the presumption of prejudice found here is not rebuttable.

pre-dismissal pleadings, and an evidentiary hearing would add little, if anything, to the Court's final analysis.

CONCLUSION

In conclusion, Drake has failed to carry his burden under either Rule 59(e) or Rule 60(b). The Court overlooked neither controlling decisions nor data that might reasonably be expected to alter or amend the ruling to dismiss previously reached by the Court. Similarly, the Court does not find "extraordinary circumstances" justifying relief from the operation of the judgment. Thus, the Court hereby DENIES Drake's motion to alter or amend and/or for relief from judgment [Doc. No. 142], as well DENIES Drake's motion for an evidentiary hearing [Doc. No. 143].

SO ORDERED.

ELLEN BREE BURNS
SENIOR DISTRICT JUDGE

Dated at New Haven, Connecticut, this ___ day of June, 2003.