

Court stated it could find no prejudice to F.A.F. because both parties had already substantially briefed the issue of repudiation. Indeed, F.A.F., in its Motion for Summary Judgment, explicitly stated that if the Court were to assume for purposes of argument that a count for repudiation was contained within its count for breach of good faith and fair dealing, then there were several reasons as to why the repudiation argument should fail. Essentially, in its Decision, the Court found no justification in preventing the repudiation argument from proceeding to the merits.

Generally, our Supreme Court “treat[s] motions for ‘reconsideration’ (which are not mentioned as such in the Rules of Civil Procedure) as the equivalent of motions to vacate under Rule 60(b) of the Superior Court Rules of Civil Procedure.” Flanagan v. Blair, 882 A.2d 569, 574 (R.I. 2005) (citing Keystone Elevator Co. v. Johnson & Wales Univ., 850 A.2d 912, 916 (R.I. 2004)). In Keystone, the Court explained that “[a] Rule 60(b) motion to vacate is addressed to the trial justice’s sound judicial discretion and will not be disturbed on appeal, absent a showing of abuse of discretion.” Keystone, 850 A.2d at 916 (internal quotation marks omitted). Importantly, as this Court has previously stated, “a party should not use Rule 60(b) merely to seek reconsideration of a legal issue or as a request that the trial court change its mind.” Krupinski v. Deyesso, No. PB-07-3484, 2013 WL 1562564, at *2 (R.I. Super. Apr. 10, 2013) (Silverstein, J.) (citing Jackson v. Med. Coaches, 734 A.2d 502, 507 n.8 (R.I. 1999) (“Rule 60(b) does not authorize a motion merely for reconsideration of a legal issue. . . . Where the motion is nothing more than a request that the district court change its mind, . . . it is not authorized by Rule 60(b).” (quoting United States v. Williams, 674 F.2d 310, 312-13 (4th Cir. 1982)))).

F.A.F.’s Motion principally argues that had Management filed a Motion to Amend to add a count for repudiation prior to a decision on the summary judgment motion, the Court would

have denied that motion due to prejudice to F.A.F. To that end, F.A.F. argues that any amendment at this time would require a reopening of discovery and a postponement of trial. Moreover, F.A.F. argues that there was no reasonable explanation as to why Management waited seven years after filing to bring such a count and, as a result, should constitute undue delay. Management opposes F.A.F.'s Motion.

Prior to addressing the arguments regarding prejudice and undue delay, F.A.F. argues no authority exists for the Court to sua sponte amend a complaint under Rule 15 prior to trial. Putting aside that Super. R. Civ. P. 60 motions are not the proper vehicle to reconsider and/or correct a court's prior finding of law, F.A.F. claims that it could find no case where a court has sua sponte amended a complaint during the pleading phase of the case. However—apart from this issue possibly being a moot point because Management has since actually filed a Motion to Amend—the case of Werner v. Katal Country Club, 650 N.Y.S.2d 866, 868 (N.Y. App. Div. 1996) does squarely resolve this issue. There, the defendant appealed from the New York Supreme Court's sua sponte amendment of the complaint while reviewing a motion for summary judgment prior to trial. See id. at 867-68. The court provided the following relevant discussion:

“[Defendant] takes exception to Supreme Court's *sua sponte* amendment of the complaint, contending that he was substantially prejudiced since the amendment changed the theory of liability after extensive discovery based upon plaintiff's claim of an express written commission agreement had been completed. An application to amend under CPLR 3025(c)¹ is addressed to the sound discretion of the trial court and should be determined in the same manner and by weighing the same considerations as upon a

¹ New York's Rule 3025 of the Civil Practice Law and Rules is substantially similar to Rhode Island's Rule 15 of the Superior Court Rules of Civil Procedure. Compare N.Y. C.P.L.R. 3025(c) (McKinney 2012) (“The court may permit pleadings to be amended before or after judgment to conform them to the evidence, upon such terms as may be just including the granting of costs and continuances.”) with Super. R. Civ. P. 15(b) (“When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.”).

motion under CPLR 3025(b)². Pursuant to that subdivision, leave to amend pleadings is freely given in the absence of operative prejudice. *Moreover, since a summary judgment motion is the procedural equivalent of a trial, Supreme Court was free to invoke the provisions of CPLR 3025(c).*” Id. at 868 (internal citations omitted) (emphasis added).

Without question, as the Court here was free to amend on its own pursuant to the provisions of Rule 15(b), the Court properly amended the Complaint before trial on a summary judgment motion (which is said to be the procedural equivalent of a trial). See id. Moreover, the Werner court found that there was no abuse of discretion in allowing the amendment sua sponte because any prejudice that may have resulted could easily be alleviated by allowing the party to conduct discovery on the new issue. Id.

With that in mind, however, the Court must then determine whether F.A.F. would suffer any prejudice, as alleged, if new discovery was allowed or, in all actuality, even required in this matter. It is generally held that on a motion to amend, “[t]he question of prejudice to the party opposing the amendment is central to the investigation into whether an amendment should be granted.” Faerber v. Cavanagh, 568 A.2d 326, 329 (R.I. 1990). The Court also stated that an amendment should be denied where there is undue and excessive delay causing prejudice to the nonmoving party. Id. Yet, seemingly most important, the Court went on to explain: “[T]he trial justice’s discretionary authority to deny amendments to pleadings when delay is involved must always be placed within the scope of the spirit of the Superior Court Rules of Civil Procedure: ‘They shall be construed to secure the just, speedy, and inexpensive determination of every action.’” Id. (quoting Super. R. Civ. P. 1). The Court in Faerber held the trial justice did not abuse his discretion when he denied the motion to amend because it “would have caused

² Governing amendments and supplemental pleadings by leave.

substantial prejudice to plaintiff since it would have involved a considerable amount of new discovery.” Id. at 330.

Here, the Court would be hard-pressed to determine what new discovery in this matter would need to be done and what trial strategies need to be changed in order to address a claim for repudiation—especially considering the issue was fully briefed on the Motion for Summary Judgment. See Thailer v. LaRocca, 571 N.Y.S.2d 569, 570 (N.Y. App. Div. 1991) (finding no error where court sua sponte raised defense not pleaded by the defendant because the plaintiff had already addressed the issue on the merits and failed to raise any claim of prejudice; thus, the plaintiff “cannot claim surprise” that the defense would be relied on). While F.A.F. is arguing prejudice now, there does not appear to the Court to be any material alteration of trial strategies and/or significant, laborious discovery hereinafter required. Furthermore, as our Supreme Court has consistently stated, Rule 15 is to be liberally construed and there is no reason for the Court to now modify its prior holding. As Super. R. Civ. P. 1 makes clear, denying an amendment on an issue that the Court specifically granted F.A.F. the opportunity to brief in anticipation of the summary judgment motion, would simply not be in the interests of securing a speedy determination of this action. The Court need not address this argument any further. Accordingly, F.A.F.’s Motion for Reconsideration is hereby denied and judgment as originally ordered is affirmed.³

³ In its Motion for Reconsideration, F.A.F. also requests that the Court qualify its prior holding by ordering that any prejudgment interest under G.L. 1956 § 9-21-10 accrue from the date of the Amended Complaint. At the hearing on the Motion, F.A.F. maintained its claimed prejudice lies in the addition of prejudgment interest several years after the original Complaint was filed. Section 9-21-10(a) expressly states prejudgment interest shall be assessed at a rate of twelve percent per annum “from the date the cause of action accrued.” Generally, a cause of action does not begin to accrue “until an injured party has a right to seek relief in court.” Cardi Corp. v. State, 561 A.2d 384, 387 (R.I. 1989). While § 9-21-10 “must be strictly construed,” Margadonna v. Otis Elevator Co., 542 A.2d 232, 235 (R.I. 1988), F.A.F. argues that the purposes

Lastly, the Court will briefly address the arguments raised in F.A.F.'s supplemental memorandum that take issue with Management's recently filed Amended Complaint. While the Court authorized Management to file an Amended Complaint on a very narrow basis, it appears to the Court that Management has exceeded the Court's original contemplation of what that Amended Complaint shall consist of. For example, the Court did not permit Management to substitute its previous Count V (for injunctive relief) with its new count for repudiation. In the Court's prior Decision, Management was permitted to present only those new facts and allegations necessary to plead a count for repudiation. To the extent that Management has exceeded the Court's April 2, 2015 holding, the parties are directed to meet and confer as to which paragraphs shall be stricken from the Amended Complaint. If the parties are unable to agree, the Court will confer with the parties in chambers to resolve any remaining issues.

behind the prejudgment interest statute would not be served if interest was to date back several years based on this new cause of action. See Martin v. Lumbermen's Mut. Cas. Co., 559 A.2d 1028, 1031 (R.I. 1989) ("Statutes that award prejudgment interest generally serve the dual purposes of encouraging the early settlement of claims and compensating plaintiffs for waiting for recompense to which they were legally entitled." (internal citations omitted)). In addition, our Supreme Court has consistently made clear that "prejudgment interest is not an element of damages, it is purely statutory and is peremptorily added to the jury verdict by the clerk of the court." DiMeo v. Philbin, 502 A.2d 825, 826 (R.I. 1986). More specifically, our Supreme Court has cautioned that "[t]his is a purely ministerial act; it contemplates no judicial intervention." Id. (quoting Kastal v. Hickory House, Inc., 95 R.I. 366, 369, 187 A.2d 262, 264 (1963)). Notwithstanding the above, as the issue of repudiation has not yet been resolved, any determination by the Court as to the date when prejudgment interest should begin to accrue is premature. As the Court stated in a prior decision, a determination of this issue today would amount to an advisory opinion, which the Court has no authority to issue. See Heritage Healthcare Servs., Inc. v. The Beacon Mut. Ins. Co., No. 02-7016, 2008 WL 4376187 (R.I. Super. Sept. 4, 2008.) (Silverstein, J.) (addressing issue of prejudgment interest in light of claimed prejudice on a motion to amend). As a result, the Court will defer ruling on this issue until a later date if and when Management prevails to warrant such a determination of prejudgment interest.

For the reasons set forth herein, F.A.F.'s Motion is denied and the Court's April 2, 2015 Decision is affirmed. Prevailing counsel shall present an order consistent herewith which shall be settled after due notice to counsel of record.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Management Capital, L.L.C. v. F.A.F., Inc., et al.

CASE NO: PB 08-2364

COURT: Providence County Superior Court

DATE DECISION FILED: May 18, 2015

JUSTICE/MAGISTRATE: Silverstein, J.

ATTORNEYS:

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