STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: January 8, 2013)

TANTARA CORPORATION, a/k/a TANTARA ASSOCIATES CORPORATION	:	
	:	**C.A. No. NC-11-55**
V.	:	**(Consolidated cases)**
BAY STREET NEIGHBORHOOD, LLC, et al.	:	

****

TANTARA CORPORATION, A/K/A TANTARA ASSOCIATES CORPORATION	:	
	:	
V.	:	**C.A. No. NM 11-66**
SHIRLEY CORDEIRO AND PATRICIA AGUIAR	:	

****

TANTARA CORPORATION, A/K/A TANTARA ASSOCIATES CORPORATION	:	
	:	
V.	:	**C.A. No. NM 11-67**
DIMAS PAVAO and ANNE MEDEIROS AS TRUSTEES OF THE PAVAO FAMILY TRUST	:	

****

TANTARA CORPORATION, A/K/A TANTARA ASSOCIATES CORPORATION	:	
	:	
V.	:	**C.A. No. NM 11-68**
STEPHEN A. FERRY and ROCHELLE I. FERRY	:	

****

TANTARA CORPORATION, A/K/A TANTARA ASSOCIATES CORPORATION	**:**	
V.	**:**	**C.A. No. NM 11-69**
ROBERT M. FERREIRA and LINDA M. FERREIRA	**:**	

****

TANTARA CORPORATION, A/K/A TANTARA ASSOCIATES CORPORATION	**:**	
V.	**:**	**C.A. NO. NM 11-70**
GARY P. ROSE	**:**	

****

TANTARA CORPORATION, A/K/A TANTARA ASSOCIATES CORPORATION	**:**	
V.	**:**	**C.A. NO. NM 11-71**
JOHN CAMBRA and JUNYA CAMBRA	**:**	

DECISION

SILVERSTEIN, J. Before this Court is Tantara Corporation, a/k/a Tantara Associates Corporation's ("Plaintiff" or "Tantara") Motion for Clarification and/or Partial Reconsideration of this Court's October 4, 2012 Decision (the "Decision"), which granted summary judgment in favor of the Defendants—Bay Street Neighborhood Association ("BSN") and eighty-five individual property owners—on Tantara's unjust enrichment claims relating to excavation and removal of more soil than estimated (also known as the "additional soil claims"). Tantara seeks "clarification as to the intent and effect of the Decision" or, alternatively, reconsideration "to the

extent the Decision intended to award summary judgment on the entirety of Tantara's unjust enrichment claims."

I

Facts and Travel

The facts and travel of this case were well-documented in this Court's previous Decision. See Tantara Corporation v. Bay Street Neighborhood Association, LLC et al., No. NC-11-55 (consolidated with NM-11-66, NM-11-67, NM-11-68, NM-11-69, NM-11-70, NM-11-71), 2012 WL 4848704 (R.I. Super. Ct. Oct. 4, 2012). Therefore, the Court will not repeat the facts and travel here.

II

Standard of Review

The Rhode Island Superior Court Rules of Civil Procedure, similar to the Federal Rules of Civil Procedure, do not specifically provide for motions to reconsider. School Comm. of City of Cranston v. Bergin-Andrews, 984 A.2d 629, 649 (R.I. 2009). However, our Supreme Court applies a liberal interpretation of the rules, and "look[s] to substance, not labels." Sarni v. Melocarro, 113 R.I. 630, 636, 324 A.2d 648, 651 (1974). Accordingly, courts should treat a motion to reconsider as a motion to vacate under Super. R. Civ. P. 60(b). Bergin-Andrews, 984 A.2d at 649 (citing Keystone Elevator Co. v. Johnson & Wales Univ., 850 A.2d 912, 916 (R.I. 2004)).

Rule 60(b) provides that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from final judgment, order, or proceeding . . . ." Super. R. Civ. P. 60(b). It is well settled 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 Elevator Co., 850 A.2d at 916 (quoting Crystal Rest. Mgmt. Corp. v. Calcagni, 732 A.2d 706, 710 (R.I. 1999)). However, our Supreme Court has cautioned that Rule 60(b) is not "a vehicle for the motion judge to reconsider the previous judgments in light of later-discovered legal authority that could have and should have been presented to the court before the original judgment entered." Jackson v. Medical Coaches, 734 A.2d 502, 505 (R.I. 1999) (citations omitted). Similarly, 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. See id., 734 A.2d at 508 n.8 (citing United States v. Williams, 674 F.2d 310, 312-13 (4th Cir. 1982)); see also Cashner v. Freedom Stores, Inc., 98 F.3d 572, 577 (10th Cir. 1996) (noting that Rule 60(b) is not intended "to allow a party merely to reargue an issue previously addressed by the court when the re-argument merely advances new arguments or supporting facts which were available for presentation at the time of the original argument").

III

Discussion

In support of its Motion for Clarification and/or Partial Reconsideration, Tantara argues that (1) the Defendants' Motion for Partial Summary Judgment was limited to the "additional soil claims," and (2) if the Court intended to grant summary judgment on the entirety of Tantara's unjust enrichment claims, such a ruling is contrary to Rhode Island law. The Defendants contend that (1) the Court decided only the unjust enrichment claim presented in the Motion for Summary Judgment; (2) the Plaintiff's motion is premised on a mischaracterization of the Decision; (3) the Court's ruling was grounded in the substantive terms of the Subcontract; and (4) any difference between New York and Rhode Island unjust enrichment law is immaterial

to the Decision. Upon due consideration of the record, together with the arguments advanced by counsel at the hearing and in their memoranda, the Court clarifies its Decision as follows.

Throughout the Decision, the Court repeatedly stated that it was addressing the "additional soil claims." In the opening paragraph, the Court noted that "[t]he Defendants seek summary judgment only on 'Tantara's unjust enrichment and mechanics' lien claims relating to the excavation and removal of more soil than Tantara estimated it would be required to excavate and remove (hereinafter the 'Additional-Soil Claims')." Tantara Corp., No. NC-11-55, slip op. at 1 (quoting Defs.' Mem. Supp. Summ. J. 4). When addressing the relationship between unjust enrichment and contract, the Court stated that "the Subcontract governed the work that Tantara was to perform on the Owners' properties, which is also the subject matter of the 'additional soil' unjust enrichment claims." Id. at 8. When addressing the interpretation of the Subcontract, the Court noted that:

> If the Subcontract is a fixed-price contract, then all remediation is within the scope of the contract, thus Tantara's "additional soil" unjust enrichment claims are precluded. If the Subcontract is for an identified scope, and Tantara's work exceeded that scope, then the "additional soil claims" are outside the scope of the contract, thus unjust enrichment is not precluded. Id. at 11.

Finally, the Court was analyzing purported additional soil claims when it concluded that the fixed-price provision required Tantara to perform "more than just the remediation identified in Table A1" and when it noted that materially different conditions under the Prime Contract did not include "area(s) of impacted soil greater than anticipated . . . ." Id. at 13, 15. Therefore, the Decision only granted summary judgment to BSN on the "additional soil" portion of Tantara's unjust enrichment claims; it did not grant summary judgment on the entirety of Tantara's unjust enrichment claims.

Tantara claims that the Decision "suggests that a subcontractor can never sue a property owner for unjust enrichment for 'in scope' contract work, that is not paid for, when a general contractor goes bankrupt or otherwise fails to pay a subcontractor." (Pl.'s Mot. Clarification and/or Reconsideration 9.) This Court's Decision does not suggest that. As discussed above, the Decision was limited to the "additional soil claims." Furthermore, two coordinate points are worthy of emphasis. First, stepping out of the trees, the Court announced at the beginning of its discussion of unjust enrichment, that its task was to analyze whether Tantara could prove the third element of unjust enrichment—that the defendant must accept a benefit from the plaintiff "under such circumstances that it would be inequitable for him to retain the benefit without paying the value thereof"—as it applied to the "additional soil claims." Tantara Corp., No. NC-11-55, slip op. at 6-7 (quoting R & B Elec. Co., Amco Const. Co., Inc., 471 A.2d 1351, 1355-56 (R.I. 1984)). Second, the core of the Motion for Partial Summary Judgment was the interpretation of the Subcontract. See id. at 7, 10-15. Thus, after deciding that the Subcontract required Tantara to perform all remediation for a fixed price, Tantara could not prove the third element of unjust enrichment as to the "additional soil claims" because, in essence, there was no additional soil—it was all within the scope of the Subcontract.

Because Tantara cannot eschew the Subcontract, a direct effect of the Decision is that unjust enrichment is capped at the Subcontract's fixed price of $850,000. Additionally, a claim for unjust enrichment must account for the $255,000 already paid to Tantara. However, Tantara still has a live claim for a greater share of the $850,000 Subcontract price. While BSN notes that legal principles in the Decision "may have application to Tantara's remaining unjust enrichment claims," the Court will consider the further effects of the Decision as the issues arise in the context of this litigation. See Defs.' Opp. to Pl.'s Mot. Clarification and/or Reconsideration 3.

Because the Court has clarified that it did not grant summary judgment on the entirety of the unjust enrichment claims, the Court need not address the substantive arguments for reconsideration because reconsideration was presented as an alternative to an adverse clarification. See Pl.'s Mot. Clarification and/or Reconsideration 1-2 (requesting reconsideration "to the extent the Decision intended to award summary judgment on the entirety of Tantara's unjust enrichment claims"); Id. at 3 ("Tantara does not oppose Defendants' Proposed Order to the extent that it states Tantara may still seek recovery for unjust enrichment up to the Subcontract price.").

IV

Conclusion

The Court has clarified its October 4, 2012 Decision on the Defendants' Motion for Summary Judgment above. Accordingly, the Court need not address the arguments for reconsideration. Prevailing counsel may present an Order consistent herewith which shall be settled after due notice to counsel of record.