

NOTICE TO THE PARTIES

DOCKET NUMBER

1143CV000293**Trial Court of Massachusetts
District Court Department**CASE NAME **Brian Johnson v. Peter Frei**

ATTORNEY (OR PRO SE PARTY) TO WHOM THIS COPY OF NOTICE IS ISSUED

**Peter Frei
101 Maybrook Road
HOLLAND, MA 01521**

COURT NAME & ADDRESS

**Palmer District Court
235 Sykes Street - Suite 3
Palmer, MA 01069****TO THE PARTIES TO THIS CASE:**

The enclosed indicates the Court's action in this matter.

Please see attached Memorandum of Decision.

DATE ISSUED

April 29, 2019

CLERK-MAGISTRATE/ASST. CLERK

Brian M St. Onge

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

Trial Court of the Commonwealth
District Court Department
Palmer Division
Civil Docket No. 1143CV00293

BRIAN JOHNSON

Plaintiff

v.

PETER FREI

Defendant

Memorandum of Decision

PROCEDURAL BACKGROUND: The Plaintiff, Brian Johnson, commenced this action in June of 2011. The Defendant, Peter Frei, filed a Answer to the Complaint and asserted several counterclaims, including a count for Abuse of Process. Subsequent to a trial on the merits and an appeal, the only count remaining for trial is the aforesaid Abuse of Process count brought by Mr. Frei against Mr. Johnson. The Defendant filed a motion seeking to reopen discovery in this matter. A hearing on said motion was held on February 26, 2019. The court denied said motion. The Defendant thereafter filed the present Motion for Reconsideration on April 23, 2019.

DISCUSSION: The standard for addressing a motion for reconsideration is fairly discretionary. *See Audubon Hill Cono Ass'n v. Conty. Ass'n Underwriters of Am.*, 82 Mass. App. Ct. 461, 470, 975 N.E. 2nd 458 (2012). It has been stated that though there is no duty to reconsider a case, an

issue, or question of fact or law once decided, the power to do so remains in the court until final judgment. *King v. Globe Newspaper Company*, 400 Mass. 705, 707, 512 N.E. 2nd 241 (1987). It is within the inherent authority of a trial judge to reconsider decisions made on the road to final judgment. *Sullivan v. Utica Mutual Ins., Co.*, 439 Mass. 387, 401, 788 N.E.2nd 522 (2003). A party seeking reconsideration of a prior ruling must show; a) newly discovered evidence; b) a change in circumstances; c) a change in law; or d) a plain error of fact or law in the original ruling. See *Mass.R.Civ.P. 60(a)*, *Peterson v. Hobson*, 306 Mass. 597, 600, 29 N.E. 2nd 140 (1940). The court finds that the Defendant has failed to establish such a showing. The Defendant seeks to reopen discovery to obtain a copy of the record of the Commonwealth of Massachusetts State Ethics Commission relative to Mr. Johnson. The investigation was concluded in March of 2015, approximately 4 years after the assertion of Mr. Frei's counterclaim alleging an abuse of process by Mr. Johnson. The Defendant's Motion For Reconsideration includes no new information or contention which could not have been presented as part of the original motion. See *Liberty Square Dev. Trust*, 441 Mass. 605, 611, 808 N.E. 2nd 245 (2004).

CONCLUSION: Based upon the foregoing the Defendant's Motion for Reconsideration is DENIED.

SO ORDERED.

Date: 4/26/19



Bruce S. Melikian

Associate Justice of the District Court