

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
SANMINA CORPORATION,	:	
	:	
Plaintiff,	:	Case No.: 1:19-cv-11710-KPF
	:	<i>related to</i>
vs.	:	Case No. 1:19-cv-11712-KPF
	:	
DIALIGHT PLC,	:	
	:	
Defendant.	:	
	:	
	:	
	:	
	:	
-----X		

**DIALIGHT PLC’S MEMORANDUM OF LAW IN OPPOSITION TO SANMINA’S
MOTION FOR RECONSIDERATION OF DENIAL OF SUMMARY ADJUDICATION
AS TO SANMINA’S ACCOUNTS RECEIVABLE CLAIM
(COUNT 1 OF FIRST AMENDED COMPLAINT)**

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On March 14, 2023, this Court issued a detailed and well-reasoned decision denying the motion filed by Sanmina Corporation (“Sanmina”) for partial summary judgment on Dialight’s fraudulent inducement claim and, at issue here, Sanmina’s accounts receivable claim (the “Opinion and Order”) (ECF No. 121). In issuing its Opinion and Order, this Court considered nearly 100 pages of briefing, 273 statements of disputed fact, and over 330 exhibits including, but not limited to, all of the deposition transcripts from the case. *See* ECF Nos. 81-108. In Sanmina’s motion for reconsideration, Sanmina violates the governing Local Civil Rules by filing a new declaration without the Court directing it to do so. L. Civ. R. 6.3. Sanmina also fails to cite any new evidence that was unavailable earlier, refers to no new intervening case law, and cannot and does not demonstrate a clear error of law or manifest injustice in the Court’s Opinion and Order. Consequently, Sanmina fails to satisfy the exacting requirements for obtaining reconsideration of this Court’s prior ruling. *See* Fed. R. Civ. P. 59(e); L. Civ. R. 6.3.

Moreover, even if this Court were to permit Sanmina to re-litigate the accounts receivable claim anew, the same result would follow. This Court declined to grant summary judgment to Sanmina on this claim because Dialight cited evidence demonstrating that there is a genuine issue of material fact as to whether the shipments at issue were sent and received without rejections. The evidence in the record confirms that this ruling was correct.

RELEVANT BACKGROUND

Sanmina moved for partial summary judgment on May 2, 2022. ECF No. 81. Sanmina devoted the final page-and-a-half of its moving brief to arguing for summary judgment on its accounts receivable claim. ECF No. 83 at 23-24. Sanmina argued that it should be awarded summary judgment on this claim because it involves goods and materials that “Sanmina shipped to Dialight, Dialight did not timely reject, and for which Dialight failed to pay.” *Id.* at 23.

Dialight opposed Sanmina's motion for summary judgment and presented evidence in the form of deposition testimony and documentary evidence establishing that there is a triable issue of fact on this claim. ECF No. 92. Dialight explained that "roughly twenty percent of Sanmina's accounts receivable claim is in factual dispute because the evidence shows it is based on product that never shipped or [was] shipped with actual defects." ECF No. 92 at 25 (citing Dialight SOF (ECF No. 93) ¶¶ 64-68). In support, Dialight cited the deposition testimony of its former financial controller, Ronan Sheehy, who testified at his deposition that there were instances throughout the duration of the Manufacturing Services Agreement ("MSA") where Sanmina invoiced Dialight for goods it did not ship. Dialight SOF (ECF No. 93) ¶ 66 (citing Sheehy Tr. (ECF No. 98-71) 349:19-23). Dialight further cited Sanmina's own internal documents expressly stating that invoicing Dialight but not shipping products "was a major ongoing problem for Sanmina." Dialight SOF (ECF No. 93) ¶ 66 (citing Rader Decl. Ex. 104 (ECF No. 96-34)).

Dialight also cited the testimony of Angel Escamilla to demonstrate that, of the materials at issue that actually shipped, many were shipped after the MSA was terminated, and Dialight specifically organized the goods into large tents to determine which were defective. Dialight SOF (ECF No. 93) ¶ 67 (citing Escamilla Tr. (ECF No. 98-55) 201:24-202:22; 221:12-14). Mr. Escamilla's testimony further demonstrated that discrepancy reports were sent to Sanmina identifying the defective product. *Id.* Tr. 204:8-17. Mr. Sheehy also testified that Dialight rejected a number of the goods at issue following inspection. Sheehy Tr. (ECF No. 98-71) at 351:3-12; 352:15-353:4.

Sanmina then submitted a reply brief in support of its motion for summary judgment and did not address the accounts receivable issue or any of the above-cited evidence at all. Instead, Sanmina wrote:

[W]ith respect to Sanmina's First Cause of Action, Dialight's alleged offset rights do not raise a triable issue of fact on the amount of Sanmina's A/R claim. **That issue is fully addressed in the moving papers and, due to space constraints, not further addressed in this Reply.**

ECF No. 102 at 1 (emphasis added).

This Court's Opinion and Order acknowledged—and therefore did not overlook, as Sanmina now suggests—Sanmina's argument for summary judgment on the accounts receivable claim, which is the same argument that Sanmina makes again now. ECF No. 121 at 30-31. As this Court described, Sanmina's argument is that Sanmina is entitled to the amount it seeks “per the MSA's terms because it sent Dialight invoices contemporaneously with its shipments and Dialight did not reject the shipments within the acceptance period defined in the MSA.” ECF No. 121 at 30. After acknowledging Sanmina's argument, this Court denied Sanmina's motion for summary judgment, because the evidence presented by Dialight establishes a triable factual issue:

To support its view of the facts, Dialight cites, among other things, the deposition testimony of former Dialight financial controller Ronan Sheehy. (*See* Rader Decl., Ex. 22). As relevant here, Mr. Sheehy testified that on multiple occasions Sanmina billed Dialight for goods it did not ship (or that were not delivered); Dialight rejected portions of the relevant goods following inspection; and Dialight sent Sanmina regular emails detailing its rejection of delivered goods. (*Id.* at 349-55). Dialight has thus met its burden of identifying evidence in the record sufficient to establish a genuine issue for trial on Sanmina's accounts receivable claim.

Id. at 30.

Sanmina now moves for reconsideration of this issue. In support, Sanmina includes an affidavit from its attorney attaching two documents, one of which is a document that was available to Sanmina at the time of its summary judgment filing but that Sanmina did not submit. ECF Nos. 131; 131-1; 132-2.

STANDARD OF REVIEW

It is well-settled that “[r]econsideration of a court’s previous order is an ‘extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.’” *Parrish v. Sollecito*, 253 F. Supp. 2d 713, 715 (S.D.N.Y. 2003) (citation omitted). This Court recently explained the exacting standard that a movant for reconsideration must meet:

A movant may not rely upon facts, issues, or arguments that were previously available but not presented to the court. Nor is a motion for reconsideration the proper avenue for the submission of new material. Rather, under Local Rule 6.3, the moving party must 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. Compelling reasons for granting a motion for reconsideration are limited to an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice. Indeed, ***because Rule 6.3 is intended to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters, the manifest injustice standard is, by definition, deferential to district courts and provides relief only in the proverbial rare case.***

Brainbuilders LLC v. EmblemHealth, Inc., No. 21 Civ. 4627 (KPF), 2022 U.S. Dist. LEXIS 211711, at *3-4 (S.D.N.Y. Nov. 22, 2022) (Failla, J.) (internal quotation marks, citations, parentheticals, and alterations omitted and emphasis added).

The standard for granting a motion for reconsideration “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 Tansp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). As such, motions for reconsideration “must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the Court.” *Range Rd. Music, Inc. v. Music Sales Corp.*, 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000).

Further, “reconsideration will generally be denied.” *Ursa Minor Ltd. v. Aon Fin. Prods., Inc.*, No. 00 Civ. 2474 (AGS), 2000 U.S. Dist. LEXIS 12968, at *1 (S.D.N.Y. Sept. 8, 2000).

ARGUMENT

A. Sanmina’s Motion for Reconsideration Fails to Satisfy the Legal Requirements for Such a Motion

Sanmina’s motion for reconsideration identifies no new facts, no intervening change in the law, and no clear error of law or manifest injustice that needs correcting. Rather than meet the necessary legal standard, Sanmina’s motion largely restates in additional pages the arguments that Sanmina made in its partial summary judgment motion. Sanmina’s current argument, in essence, boils down to its opinion that “Dialight did not introduce evidence sufficient to carry its summary judgment burden in the face of the Camacho declaration” and that the Court should have weighed certain factual issues differently. Sanmina Mtn. for Recon. Br. (ECF No. 130) at 6. But Sanmina’s view that Dialight’s cited evidence was insufficient and that the Court did not appropriately weigh Sanmina’s evidence fails to satisfy the “clear error” or “manifest injustice” standard. *See In re Houbigant, Inc.*, 914 F. Supp. 997, 1001 (S.D.N.Y. 1996) (a motion for reconsideration under Southern District of New York Local Civil Rule 6.3 “is not a motion to reargue those issues already considered when a party does not like the way the original motion was resolved”); *Range Rd. Music, Inc.*, 90 F. Supp. 2d at 392 (that a party is “unhappy with the Court’s decision to deny their motion for summary judgment affords no basis to support a motion for reconsideration.”).

Because Sanmina has set forth no basis for seeking reconsideration other than disagreeing with how the Court weighted the evidence in the Court’s Opinion and Order and presenting one additional document that was available to it earlier (and in no way changes the outcome), Sanmina’s motion for reconsideration must fail as a matter of law. *See Devinsky v. Kingsford*, No.

05 Civ. 2064 (PAC), 2008 U.S. Dist. LEXIS 52675, at * 8 (S.D.N.Y. July 10, 2008) (party’s “attempt to re-argue the same points in a motion for reconsideration fails as a matter of law”).

Further, the governing Local Civil Rules expressly prohibit a party from filing an affidavit in connection with its motion for reconsideration unless directed by the Court to do so: “No affidavits shall be filed by any party unless directed by the Court.” L. Civ. R. 6.3. Sanmina has filed and relies upon its newly submitted attorney declaration and accompanying documents (ECF No. 131) to support its arguments but provides no indication that the Court directed it to file an affidavit. This is plainly improper, and Sanmina’s attorney declaration and accompanying exhibits should be disregarded because they were filed in violation of the applicable rules. *See Tescher v. Experian Info. Sols., Inc.*, 2023 U.S. Dist. LEXIS 20775, at *2 n.1. (S.D.N.Y. Feb. 7, 2023) (“[The movant] did not seek leave from the Court to file a declaration or documents in support of his motion for reconsideration. Accordingly, the Zemel Declaration and the accompanying exhibits are stricken and will be disregarded.”).

B. Sanmina’s Motion for Reconsideration Seeks to End Run This Court’s Page Limits

In Sanmina’s reply brief in support of its motion for partial summary judgment, Sanmina chose not to address Dialight’s arguments and evidence that Dialight presented in opposition to Sanmina’s motion for summary judgment on its account receivables claim. *See* ECF No. 102 (Sanmina Reply Brief) at 1 (“That issue is fully addressed in the moving papers and, due to space constraints, not further addressed in this Reply.”).

Now that this Court has rejected Sanmina’s argument, however, Sanmina presents a six-page motion and improper attorney declaration and exhibits thereto—consisting of a document (ECF No. 131-1) that Sanmina had available but did not submit with its summary judgment motion, and a declaration (ECF No. 131-2) that Sanmina filed with its moving brief (as ECF No.

85-1) but did not reference in its reply brief—that Sanmina now claims respond to Dialight’s position. This is plainly improper. Sanmina attempted to obtain summary judgment on this issue without addressing it in its reply brief; and, having lost the argument, it now seeks a do-over and attempts to present its arguments and evidence in response to Dialight’s opposition brief in additional pages in a motion for reconsideration. This approach effectively seeks to make an end run around this Court’s page limits for reply briefs and thus defies this Court’s established rules for litigating summary judgment motions. Individual Rules of Practice in Civil Cases, Katherine Polk Failla, Rule 4(B). Moreover, as explained above and below, even this attempt fails to meet the requirements of a successful motion for reconsideration.

C. The Evidence Establishes a Genuine Issue of Material Fact as to Whether the Materials at Issue Were Received and/or Rejected

Even if this Court were to consider Sanmina’s motion for summary judgment anew—which there is no basis for Sanmina to ask this Court to do—the same result would follow. At summary judgment, the court must “‘construe the facts in the light most favorable to the non-moving party’ and ‘resolve all ambiguities and draw all reasonable inferences against the movant.’” *Hanks v. Voya Ret. Ins. & Annuity Co.*, 492 F. Supp.3d 232, 239 (S.D.N.Y. 2020) (citation omitted). Weighing the credibility of competing witnesses is outside the Court’s domain at summary judgment. *Murray v. Ubs Sec.*, No. 14 Civ. 927 (KPF), 2017 U.S. Dist. LEXIS 62978, at *35 (S.D.N.Y. Apr. 25, 2017) (Failla, J.).

Dialight submitted deposition testimony of Dialight employees who testified on the multitude of issues with Sanmina’s order deliveries and lack thereof. As the Court recognized, Ronan Sheehy (Dialight’s former group financial controller and interim CFO, who continues to serve the company as a consultant) testified that Sanmina billed Dialight for goods that were never delivered and goods that Dialight rejected following inspection. *See Sheehy Tr.* (ECF No. 98-71)

at 66:7-20; 166:19-167:12; 199:2-12; 349:19-23; 351:3-12; 352:15-24. Additionally, Dan Harris (Dialight's Group Reporting Manager during the relevant time period) testified that Dialight informed Sanmina contemporaneously in a written report that Dialight could not pay a number of Sanmina invoices because Dialight had no record of receiving the goods and required proof of delivery, among other issues that Dialight identified to Sanmina. *See* Harris Tr. (ECF No. 98-54) at 269:4-14. Further, Angel Escamilla (Dialight's Director of Global Quality, Warranty Service during the relevant time period) gave similar testimony. Escamilla Tr. (ECF No. 98-55) at 201:19-202:22; 204:12-17.

Sanmina asserts that Ronan Sheehy's testimony should not be credited because he was compensated by Dialight and is thus "under Dialight's control." Sanmina Mtn. for Recon. Br. (ECF No. 130) fn. 2. This is nonsense. Jorge Camacho, whom Sanmina relies upon for its motion, is under Sanmina's control as its employee and is compensated for the work he does. Camacho Decl. (ECF No. 85-1) ¶ 1. And relying on the testimony of a current or former employee who is compensated for their time spent preparing and testifying in a deposition is permissible. *See Prasad v. MML Investors Servs.*, No. 04 Civ. 380 (RWS), 2004 U.S. Dist. LEXIS 9289, at *17, 20-21 (S.D.N.Y. May 27, 2004) (stating that a "witness may be compensated for the time spent preparing to testify or otherwise consulting on a litigation matter in addition to the time spent providing testimony in a deposition" and holding the rate a witness normally charges as a self-employed consultant is reasonable compensation).

Sanmina also cannot rely on Jorge Camacho's declaration to obtain summary judgment. (ECF No. 85-1.) Dialight does not dispute that Exhibit A to Camacho's declaration lists the invoices that Sanmina claims Dialight owed. Dialight disputes that it *actually owes* the listed amounts because, as the Court recognized, there is evidence in the record to support Dialight's

position that roughly twenty percent of Sanmina's accounts receivable claim is based on products that Sanmina never shipped or shipped with material defects and were timely rejected. Opinion and Order at 31. Jorge Camacho claims that he "did not find any evidence that Dialight provided a notice of rejection of any of the other A/R invoices listed in Exhibit A within 15 business days of issuance to Dialight." Camacho Decl. (ECF No. 85-1) ¶¶ 11-12. But in light of the testimony from Dialight witnesses referenced above, the Court correctly determined that this is a factual dispute that should be resolved at trial. *See Murray*, 2017 U.S. Dist. LEXIS 62978, at *35.

Sanmina also argues that the Uniform Commercial Code ("UCC"), which states that "the buyer is deemed to accept all goods it fails to timely reject," should apply here. Sanmina Mtn. for Recon. Br. (ECF No. 130) at 6. Sanmina disregards the Court's observation that "Dialight appears to have the better of the argument" that the UCC does not apply to the MSA. ECF No. 121 at 16, fn. 5. Moreover, even the UCC does not support Sanmina's position because the UCC requires rejection of goods "within a reasonable time *after their delivery or tender.*" N.Y. U.C.C. Law § 2-602 (emphasis added). Dialight has presented evidence demonstrating that a portion of Sanmina's accounts receivable claim stems from products that were never delivered or tendered to Dialight and that Dialight never received. *See, e.g., Sheehy Tr.* (ECF No. 98-71) at 349:19-23. As such, even under the UCC, disputes of material fact remain as to the accounts receivable claim and the Court properly denied summary judgment.

CONCLUSION

For the foregoing reasons, Dialight respectfully requests that this Court deny Sanmina's motion for reconsideration of the Court's detailed and well-reasoned Opinion and Order on Sanmina's partial motion for summary judgment.

Dated: New York, New York
April 11, 2023

Respectfully submitted,

**MINTZ LEVIN COHEN FERRIS GLOVSKY
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CERTIFICATE OF SERVICE

I, Scott A. Rader, hereby certify that on April 11, 2023, I caused to be served a true and correct copy of the foregoing **DIALIGHT'S OPPOSITION TO SANMINA'S MOTION FOR RECONSIDERATION** with the Clerk of the Court using the CM/ECF filing system, which will send notification of such filing to all attorneys on record.

Dated: April 11, 2023
New York, New York

/s/ Scott A. Rader
Scott A. Rader, Esq.