

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

JEFFREY EPSTEIN and L.S.J., LLC.,)	CIVIL NO. ST-10-CV-443
)	
	Plaintiffs,)
)	
v.)	ACTION FOR DAMAGES
)	
FANCELLI PANELING, INC.,)	
)	
	Defendant.)

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiffs' Motion for Reconsideration of Order Entered May 24, 2011.¹ The Plaintiffs request that the Court reconsider its decision to require Plaintiffs to add J.P. Molyneux Studio, Ltd. as a party to the action. The Court will deny the Motion because complete relief cannot be afforded to the parties in the absence of J.P. Molyneux Studio, Ltd. The Court also notes that in its May 16, 2011 Order following its Memorandum Opinion, the Court intended to order the Plaintiffs to add J.P. Molyneux Studio, Ltd. to the action and not Juan Pablo Molyneux individually.

FACTUAL AND PROCEDURAL BACKGROUND

The Court will give a brief recitation of the facts and procedural history that are relevant to this Motion for Reconsideration.²

In 2005, Plaintiff Jeffrey Epstein contracted with J.P. Molyneux Studio, Ltd. to design a residential project on Little St. James. In its Amended Complaint, the Plaintiffs attached as an exhibit, a copy of the proposal that it later accepted. The proposal document provided the specifications for the "Office and Sitting Area."³ In addition, the caption "J.P. Molyneux Studio, Ltd. appeared in the center of the document along with "Proposal No. 29764."⁴ At the conclusion of the proposal document, directions were given "to make your check payable to J.P. Molyneux Studio, Ltd."⁵ Soon after entering into the agreement with Epstein, Molyneux contracted with Fancelli Paneling to install furniture and other paneling in the residence's library cabinetry. Upon discovering various deficiencies in Fancelli's work, Plaintiffs, as third party

¹ Plaintiffs Jeffrey Epstein and L.S.J., LLC are represented by Denise Francois, Esq. Defendant Fancelli Paneling, Inc., is represented by Treston E. Moore, Esq.

² For a complete recitation of the factual and procedural history in this matter see this Court's May 16, 2011 Memorandum Opinion. *Epstein v. Fancelli*, No. ST-10-CV-443, 2011 WL 2215166, at *1 (Super Ct., May 16, 2011).

³ Plaintiffs Amended Complaint Exhibit 3.

⁴ *Id.*

⁵ *Id.*

beneficiaries, filed suit against Fancelli for breach of contract and negligence. Subsequently, on December 30, 2010, Plaintiffs entered into a "Confidential Agreement" with Juan Pablo Molyneux and J.P. Molyneux Studio, Ltd. in which the parties provided one another with general releases with respect to events relating to the Little St. James Project.

In its May 16, 2011 Order, the Court, pursuant to Federal Rule of Civil Procedure 19(a),⁶ ordered the Plaintiffs to join J.P. Molyneux Studio, Ltd. in the action. The Plaintiffs have moved the Court to reconsider its decision on several grounds.

STANDARD OF REVIEW

Virgin Islands Local Rule of Civil Procedure 7.3 governs motions for reconsideration.⁷ It provides that a motion to reconsider shall be based on: (1) intervening change in controlling law; (2) availability of new evidence, or; (3) the need to correct clear error or prevent manifest injustice. Although granting a motion for reconsideration is an "extraordinary" remedy not to be used as a substitute for appeal,⁸ correction of a manifest error of law or fact is an appropriate purpose of such a motion.⁹

DISCUSSION

I. COMPLETE RELIEF CANNOT BE AFFORDED TO THE PARTIES IN THE ABSENCE OF MOLYNEUX

In its Motion for Reconsideration, Epstein argues that it was clear error for the Court to Order the Plaintiffs to join Molyneux as a party because complete relief can be accorded to the parties in this matter without Molyneux.

"Under Rule 19, pragmatic concerns, especially the effect on the parties and on the litigation, control a court's decision on joinder."¹⁰ A Rule 19 inquiry is a fact specific and practical one, which "should not be based on formalistic or mechanistic grounds but rather on pragmatic analysis of the effect of a potential party's absence."¹¹ The Court remains of the belief that complete relief of the parties cannot be accorded without including a party such as Molyneux Studio, who was central to the series of transactions that led to the development of a cause of action in this matter. As alluded to in the Courts' May 16, 2011 Memorandum Opinion, Molyneux Studio issued, with specific terms and specifications, the Purchase Order that is now at issue and representatives of Molyneux Studio also approved Fancelli's work on two separate

⁶ Federal Rule of Civil Procedure 19(a)(1)(A) states that "A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if, in that person's absence, the court cannot accord complete relief among the existing parties."

⁷ Superior Court Rule 7 states that "the practice and procedure in the Superior Court shall be governed by the Rules of the Superior Court and, to the extent not inconsistent therewith, by the Rules of the District Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence."

⁸ *Bostic v. AT&T of the V.I.*, 312 F. Supp. 2d 731, 733 (D.V.I. 2004).

⁹ *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985).

¹⁰ *F & M Distributors, Inc. v. American Hardware Supply Co.*, 129 F.R.D. 494 (W.D. Pa. 1990).

¹¹ *Southeastern Sheet Metal Joint Apprenticeship Training Fund v. Barsuli*, 950 F. Supp. 1406, 1414 (E.D. Wis. 1997).

occasions.¹² In this action for breach of contract and negligence, full relief cannot be awarded to the parties without the addition of Molyneux Studio because by approving Fancelli's work, which is now alleged to be defective, and providing specifications in the Purchase Order, its role in this litigation is integral and it may be at least partially liable for the various deficiencies in Fancelli's work that are alleged by Epstein. Accordingly, it is the Court's position that Molyneux Studio's "presence is critical to the disposition of the important issues in the litigation."¹³ Notwithstanding the Plaintiffs' arguments to the contrary, the Court is of the belief that generally, courts interpreting contracts require that all parties to the contract join the action.¹⁴ As to the negligence claim, while the Plaintiff is correct that "it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit,"¹⁵ the Court will order that Molyneux Studio be joined because it is not merely "a tortfeasor with the usual 'joint-and-several' liability,"¹⁶ but also a party to the contract that is at the center of the litigation. In the Court's discretion, in this particular case, all parties to the contract should be joined so that complete relief can be afforded to all parties.

Furthermore, as alluded to in the Courts' May 24, 2011 Memorandum Opinion, Epstein is claiming third-party beneficiary status in bringing this action. Under the Restatement, "[u]nless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties"¹⁷ Accordingly, Plaintiffs must show that the circumstances of the contract between Molyneux Studio and Fancelli indicate that Fancelli intended to give Plaintiffs the "benefit of the promised performance" and that this arrangement accomplished the intention of the parties.¹⁸ With respect to the Plaintiffs' burden of proof on this point and other matters involving Molyneux Studio in this litigation, as a practical matter, the Court considers it important for the parties to be able to fully engage Molyneux Studio as a party in the discovery process, as opposed to the more limited means of discovery available to the parties if Molyneux Studio is a mere witness. While authority exists which state that the Court may not determine that a party is necessary solely based on evidentiary concerns,¹⁹ the Court will note that its

¹² Molyneux allegedly approved Fancelli's work on site in Italy in April of 2008 and also in March 22, 2010 in response to the Purchase Order.

¹³ *F & M Distributors*, 129 F.R.D. at 497; see also *Haas v. Jefferson Nat'l Bank*, 442 F.2d 394, 398 (5th Cir. Fla. 1971).

¹⁴ *Ward v. Deavers*, 203 F.2d 72, 75 (D.C. Cir. 1953) ("[T]here is a general rule that where rights sued upon arise from a contract, all parties to it must be joined."); see also *Dawavendewa v. Salt River Project Agr. Imp. & Power Dist.*, 276 F.3d 1150, 1156-57 (9th Cir. 2002) (referring to the "fundamental principle" that parties who may be affected by a contract action must be joined to it); see also *Rojas v Loewen Group Int'l*, F.R.D. 356 (D.P.R. 1998) ("Generally, in breach of contract actions, all parties to the contract are necessary ones"); see also *Travelers Indem. Co. v. Household Int'l, Inc.*, 775 F. Supp. 518 (D. Conn. 1991)

¹⁵ *Temple v. Synthes Corp., Ltd.*, 498 U.S. 5, 7, 111 S. Ct. 315, 112 L.Ed 2d 263 (1990).

¹⁶ *Id.* (quoting the Advisory Committee Notes to Rule 19(a) at 28 U. S. C. App., p. 595).

¹⁷ RESTATEMENT (SECOND) OF CONTRACTS § 302(1) (1981); V.I. CODE ANN. tit. 1, § 4 (1994) (in the absence of local law to the contrary, the Restatements provide the rules of decision in the Virgin Islands courts).

¹⁸ *Id.*

¹⁹ *Costello Publ'g Co. v. Rotelle*, 216 U.S. App. D.C. 216, 670 F.2d 1035, 1044 (D.C. Cir. 1981) ("The question of whether or not an entity or individual should be a party to an action is something quite different from the questions and problems associated with obtaining evidence from such an entity or individual. Rule 19 . . . does not list the need to obtain evidence from an entity or individual as a factor bearing upon whether or not a party is necessary or indispensable to a just adjudication.")

decision to order joinder of Molyneux is not based solely on the availability of evidence²⁰ and that a concern for facilitating discovery is just one of several pragmatic considerations that the Court has contemplated in arriving at its decision.

As to the Plaintiffs' contention that their being ordered to join Molyneux Studio in this action will result in manifest injustice since doing so would violate its Confidential Settlement Agreement with Molyneux Studio, the Court is not convinced that this is true. When the Plaintiffs commenced this action in 2010, they should have contemplated that the Court would join additional parties as it saw fit and that one of those parties could be Molyneux Studio. The likelihood of this possibility should have been considered by the Plaintiffs and Molyneux Studio during settlement discussions. A private agreement cannot take precedence over the Court's application of the Federal Rules. Furthermore, any agreement or document that the Plaintiffs wish to be considered by the Court should be filed as an exhibit with the Court in its entirety and not introduced to the Court in incomplete, piecemeal fashion.

Because the Court is still of the opinion that complete relief of the parties cannot be accorded without the addition of Molyneux Studio, Ltd., the Court will deny the Plaintiffs' Motion for Reconsideration.

II. THE COURT ORDERED THE PLAINTIFFS TO JOIN J.P. MOLYNEUX STUDIO, LTD. TO THE ACTION, NOT JUAN PABLO MOLYNEUX INDIVIDUALLY

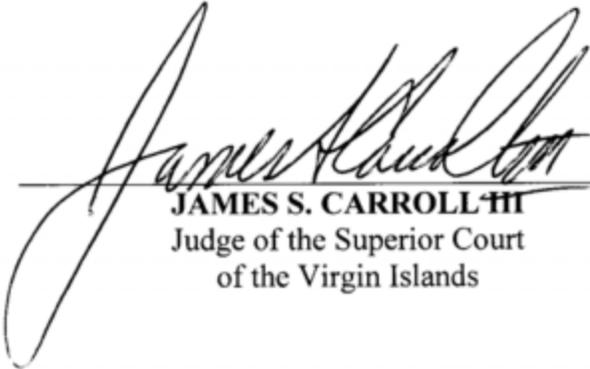
In its Opposition to Reconsider with Points and Authorities, Fancelli argues that the Court made a "scrivener's error" in its May 16, 2011 Order following its Memorandum Opinion by restricting necessary party status to Molyneux Studio and not also to Juan Pablo Molyneux individually. While the Court agrees with Plaintiffs that a request for relief of this sort is misplaced in a reply brief and should be raised by motion, the Court will nonetheless note that it purposefully ordered the Plaintiffs to join Molyneux Studio, Ltd. and not Juan Pablo Molyneux individually since J.P. Molyneux Studio Ltd. was the party named on the proposal that was submitted to the Court. If the Defendants want to further contest the issue, they can properly raise the issue by motion.

²⁰ *Johnson v. Smithsonian Inst.*, 189 F.3d 180, 188 (2d Cir. N.Y. 1999) (finding that the District Court erred in considering a party a necessary party because it based its decision solely on the evidentiary concerns); *see also Costello*, 670 F.2d at 1044 (finding that the District Court erred in finding that Talbot Press was an indispensable party because "Costello [was] left only with the argument that Talbot Press is indispensable because Costello needs evidence from Talbot Press for a defense" and "the question of whether or not an entity or individual should be a party to an action is something quite different from the questions and problems associated with obtaining evidence from such an entity or individual" under Rule 19.).

CONCLUSION

In conclusion, the Court will deny the Plaintiffs' Motion for Reconsideration because complete relief cannot be afforded to the parties in the absence of J.P. Molyneux Studio, Ltd. In addition, the Court will order the Plaintiffs to join J.P. Molyneux Studio, LTD, to the action within 14 days of the date of entry of this Order, or the Court may dismiss the action.

DATED: March 13, 2012



JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST: VENETIA H. VELAZQUEZ,
ESQUIRE
Clerk of the Court

BY:



3/14/12

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

JEFFREY EPSTEIN and L.S.J., LLC.,) CIVIL NO. ST-10-CV-443
)
Plaintiffs,)
)
v.) ACTION FOR DAMAGES
)
FANCELLI PANELING, INC.,)
)
Defendant.)

ORDER

AND NOW for the reasons stated in the Memorandum Opinion issued today, it is hereby

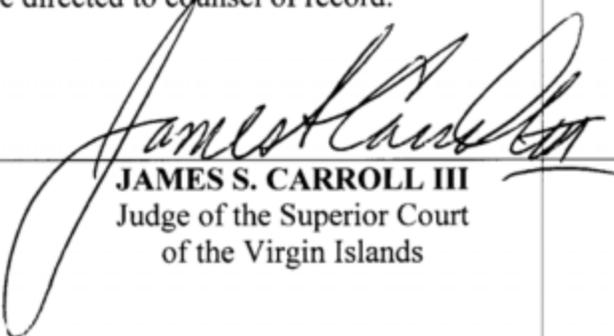
ORDERED that Plaintiffs Jeffrey Epstein and L.S.J., LLC.'s Motion for Reconsideration is **DENIED**; and it is further

ORDERED that Plaintiffs Jeffrey Epstein and L.S.J., LLC. shall join as a party to this action, J. P. Molyneux Studios, Ltd., and to that end shall file a Second Amended Complaint within fourteen days of the date of entry of this Order, which shall differ from the original Complaint only in the caption and in any claims that it may assert against Molyneux Studios, Ltd; and it is further

ORDERED that Plaintiffs Jeffrey Epstein and L.S.J., LLC, shall file proof of service of the second amended Complaint on Molyneux Studios, Ltd., within thirty days of the date of entry of this Order; and it is further

ORDERED that a copy of this Order shall be directed to counsel of record.

DATED: March 13, 2012



JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST: VENETIA H. VELAZQUEZ,
ESQUIRE
Clerk of the Court

BY: 

LORI BOYNES-TYSON
Court Clerk Supervisor 3/14/2012