

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HOWARD MILLS, SUPERINTENDENT OF	:	
INSURANCE OF THE STATE OF NEW	:	
YORK, in his capacity as Rehabilitator of	:	
FRONTIER INSURANCE COMPANY,	:	
Plaintiff,	:	
	:	
v.	:	7:05-cv-8928 (WWE)
	:	
EVEREST REINSURANCE COMPANY and	:	
BENFIELD INC., f/k/a E.W. BLANCH CO.,	:	
Defendants.	:	

**MEMORANDUM OF DECISION ON
MOTIONS FOR RECONSIDERATION**

This action arises from Frontier Insurance Company’s attempts to secure reinsurance on its casualty and property insurance products. In 1999, plaintiff entered into an Underlying Professional Liability Excess of Loss Reinsurance Contract (“UPL Contract”) with defendant Everest Reinsurance Company as the reinsurance provider and Benfield Inc. as the broker/agent. Plaintiff asserted claims against each defendant for fraudulent conveyance related to the UPL Contract and defendants Benfield and Everest filed separate motions for summary judgment.

In its ruling on summary judgment, the Court denied defendant Benfield’s motion for summary judgment but granted defendant Everest’s motion for summary judgment. Plaintiff and defendant Benfield have moved separately for reconsideration of that ruling. The motions for reconsideration will be granted.

Discussion

A motion for reconsideration may be based solely upon “matters or controlling decisions which counsel believes the Court overlooked in the initial decision or order.” Local R. Civ. P. 7(c)(1). Such a motion should be granted only where the Court has overlooked facts or precedents which might have “materially influenced” the earlier decision. Park South Tenants Corp. v. 200 Cent. Park South Assocs. L.P., 754 F. Supp. 352, 354 (S.D.N.Y. 1991). The movant’s burden is made weighty to avoid “wasteful repetition of arguments already briefed, considered and decided.” Weissman v. Fruchtman, 124 F.R.D. 559, 560 (S.D.N.Y. 1989).

Upon review of plaintiff’s motion for reconsideration, this Court finds that that the Court has not misconstrued precedent or the law of the case. Plaintiff maintains that this Court did not make a proper inquiry into whether the challenged transfer was made for fair consideration. In its ruling, the Court applied “the broad principle” that payment on an antecedent debt qualifies as fair consideration. Sharp Int’l Corp. v. State St. Bank & Trust Co., 403 F.3d 43, 54 (2d Cir. 2005). Further, the Court found that no evidence gave rise to an inference that Frontier’s debt to Everest was “disproportionately small” compared to the payments made by Frontier to Everest. Accordingly, the Court will adhere to its prior ruling granting Everest’s motion for summary judgment.

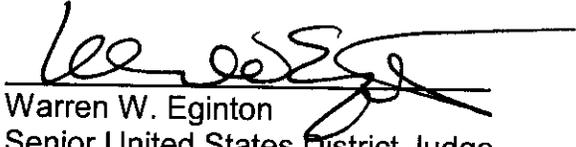
Upon review of Benfield’s motion for reconsideration, the Court will also adhere to its prior decision denying Benfield’s motion for summary judgment. Benfield also requests that the Court declare that “the Rehabilitator may not seek recovery at trial of the funds that Frontier paid directly to Everest, but it may seek recovery at trial of the

brokerage that Everest paid to Benfield.” The Court declines to issue such language limiting plaintiff’s damages prior to trial. The Court will determine the proper extent of damages at trial.

Conclusion

For the foregoing reasons, the Court GRANTS the motions for reconsideration [docs. #175 and 176]. However, upon review, the Court adheres to its previous decision.

Dated at White Plains, New York, this 8th day of June, 2009.


Warren W. Eginton
Senior United States District Judge