UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ACUMEN RE MANAGEMENT CORP.,

Plaintiff,

-against-

GENERAL SECURITY NATIONAL INSURANCE CO.,

Defendant.

MEMORANDUM DECISION AND ORDER

09 Civ. 1796 (GBD) (FM)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Acumen Re moves this Court to reconsider its September 7, 2012 Memorandum Decision Order (the "September Order," Dkt. No. 94, granting, in part, Defendant General Security National Insurance Co.'s ("GSNIC") Motion for Summary Judgment), or in the alternative, to certify the September Order as final pursuant to Fed. R. Civ. P. 54(b) and allow Acumen an immediate appeal. Acumen claims that this Court erred by not considering each party's motion on its own and misapplying Fed. R. Civ. P. 56. Acumen argues that despite having the opportunity to brief the issues surrounding summary judgment both in its own motion for summary judgment as well as in opposition to GSNIC's motion for summary judgment, the Court "failed to afford Acumen an opportunity to present either argument or evidence that may have affected the Court's decision."[1] (Acumen Br. at 6). Acumen's motion for reconsideration is DENIED. This Court will, however, GRANT Acumen's motion to certify the September Order as final and allow Acumen to appeal it immediately pursuant to Fed. R. Civ. P. 54(b).

In order to establish that it is entitled to reconsideration, Acumen must show that this Court overlooked factual matters or controlling decisions when it granted, in part, GSNIC's motion for summary judgment. See Eisemann v. Greene, 204 F.3d 393, 395 n.2 (2d Cir. 2000) (*quoting* Shamis v.

[1] The facts and procedural history of this matter were addressed extensively in the September Order.

Ambassador Factors Corp., 187 F.R.D. 148, 151 (S.D.N.Y. 1999)); see also, Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995); S.D.N.Y. Local Rule 6.3. "Reconsideration is an 'extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.'" Winkler v. Metro. Life Ins. Co., 2006 WL 2850247, at *1 (S.D.N.Y. Sept. 28, 2006) (quoting In re Health Mgmt. Sys., Inc. Sec. Litig., 113 F.Supp.2d 613, 614 (S.D.N.Y.2000)). A motion to reconsider should be denied where the movant simply seeks to re-litigate an issue already decided by the Court. Shrader, 70 F.3d at 257. A party may not raise arguments for the first time in a motion for reconsideration. Caribbean Trading & Fld. Corp. v. Nigerian Nat'l Petroleum Corp., 948 F.2d 111, 115 (2d Cir. 1991).

Acumen's motion does not raise any controlling decisions or factual matters that this Court overlooked. The Court considered both motions for summary judgment and both parties' Local Rule 56.1 statements. When there is no genuine issue of material fact, it is within the Court's discretion to grant summary judgment on a given issue, even though the Court frames the issues in a way that differed from the way the moving party presented them to the Court. See Coach Leatherware Co. v. AnnTaylor, Inc., 933 F.2d 162, 167 (2d Cir. 1991). Each party had a full and fair opportunity to brief the issues and provide the facts they deemed material. See First Fin. Ins. Co. v. Allstate Interior Demolition Corp., 193 F.3d 109, 115 (2d Cir. 1999). Granting GSNIC partial summary judgment did not oblige the Court to track the structure of GSNIC's motion in its decision.

Although this Court declines Acumen's invitation to re-litigate the September Order, it will certify that order as final pursuant to Fed. R. Civ. P. 54(b) and allow Acumen to appeal it immediately.[2] Rule 54(b) permits certification of a final judgment where "(1) there are multiple claims or parties, (2) at least one of the claims or the rights and liabilities of at least one party has been finally

[2] GSNIC opposes certification, arguing that there is no compelling reason to certify this Court's dismissal order as final since there was only one breach of contract count and the Court's decision did not finally determine any separate claims at issue. As demonstrated, however, certification reaps a substantial gain in judicial economy. Acumen does claim that GSNIC breached the contract in multiple ways, most of which the September Order finally determined.

determined, and (3) there is no just reason for delay." Grand River Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 164-65 (2d Cir. 2005) (internal quotations omitted). Although this option should be used sparingly, it is particularly appropriate when it would avoid an expensive, duplicative trial. Advanced Magnetics, Inc. v. Bayfront Partners, Inc., 106 F.3d 11, 16 (2d Cir. 1997). The Court must "take into account judicial administrative interests as well as the equities involved." Zaratzian v. Abadir, No. 10 Civ. 9049, 2011 U.S. Dist. LEXIS 129775 at 3 (S.D.N.Y. Sept 20. 2011) (citing Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 8 (1980)). The decision is discretionary, although a district court must provide a brief, reasoned statement in support of the determination that there is no just reason for delay. Ginett v. Computer Task Group, 962 F.2d 1085, 1092 (2d Cir. 1992).

The first prong is met because Acumen claims that GSNIC breached its contract in several distinct ways. Acumen alleged that GSNIC breached its contract in five ways: (1) by failing to provide quarterly reports, (2) by failing to consult on the required IBNR calculation, (3) by commuting the certificates that Acumen generated and misallocating the losses from that commutation, (4) by carrying forward deficits in the contingency commission calculation, and (5) by failing to maintain accurate information on the reinsurance certificates Acumen underwrote. This Court granted GSNIC summary judgment on the first four of the five grounds in support of its claims. This also fulfilled the second prong, as the September Order finally determined liability on all of Acumen's claims for compensatory damages. This Court found that Acumen had not put any evidence into the record that could support an award of compensatory damages to Acumen with reasonable certainty.

The third prong—the most important—is met because resolving the issues finally decided in the September Order will likely avoid a costly, duplicative trial (or the need for any trial at all). If Acumen loses the appeal, it has represented that it is "unlikely to ask for a trial limited to nominal damages." (Acumen Br. at 23).[3] If Acumen's appeal is successful, this Court can dispose of all of the

[3] In its reply brief, Acumen goes further and states that if it loses this appeal, any trial would be "unnecessary." (Acumen Reply at 9).

issues relating to liability and/or damages in a single trial. Without certification, the parties would be forced to go to trial on a limited theory in support of a claim for nominal damages, in order for Plaintiff to thereafter be able to appeal the issues decided in the September Order. What would remain is the spectre that both parties may have to go to trial a second time should Acumen prevail on a post-trial appeal. Thus, allowing an immediate appeal on the primary issues finally decided in the September Order is in the interest of sound judicial administration as it would avoid a potentially duplicative trial.[4] See Curtis-Wright, 446 U.S. at 10.

Allowing an appeal at this stage does not work hardship on either party. If Acumen loses its appeal, then the case is likely over and both sides avoid the expense of trial. There is no just reason for delay.

Conclusion

Acumen's Motion for Reconsideration is DENIED. Acumen's motion to certify the September Order (Dkt. No. 94) as final judgment for appeal pursuant to Fed. R. Civ. P. 54(b) is GRANTED. The Clerk of the Court is directed to close this case.

Dated: December 3, 2012
New York, New York

SO ORDERED:

George B Daniels

GEORGE B. DANIELS
United States District Judge

[4] The Court is mindful of the policy against piecemeal appeals (Curtis-Wright, 446 U.S. at 8), but does not see its decision today as likely to increase the burden on the Second Circuit. If the Circuit affirms the decision of this Court, then the case is over (as Acumen deems a trial for nominal damages "unnecessary"). In that event, no trial or further appeal would be warranted.