

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

Elizabeth Allen v. Michael Fuller and XVSOUTH, LLC

Allen · No. 23-CV-10549-AK · Decided December 11, 2025

SUMMARY

The United States District Court for the District of Massachusetts denied without prejudice Elizabeth Allen’s motion for reconsideration of the denial of her anti-SLAPP motion to dismiss a counterclaim, finding that the motion was unreasonably late. The court allowed Allen’s oral motion to amend to add a promissory estoppel claim because the amendment would not prejudice the defendants or require additional discovery or delay. The court noted that the anti-SLAPP issue could be addressed in an appropriately filed post-trial motion.

CASE DETAILS

COURT	United States District Court for the District of Massachusetts
WRITING FOR THE COURT	Angel Kelley
JURISDICTION	United States District Court for the District of Massachusetts
DECIDED	December 11, 2025
DOCKET	23-CV-10549-AK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for reconsideration of the denial of her special motion to dismiss defendants' counterclaim under the Massachusetts Anti-SLAPP statute and orally moved to amend the complaint to add a promissory-estoppel claim.
STANDARD OF REVIEW	A motion for reconsideration of an interlocutory order is timely only if it is not filed unreasonably late. Reconsideration is an extraordinary remedy available for newly discovered evidence, an intervening change in law, manifest error of law, or clear injustice. Leave to amend may be denied when the amendment would prejudice the opposing party, including by requiring reopened discovery, additional costs, trial postponement, or substantial changes in trial strategy.
PRECEDENTIAL VALUE	Unknown; memorandum and order from a federal district court with no reported citation.

TOPICS

[motion for reconsideration](#)

[motion to amend](#)

[promissory estoppel](#)

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QUESTIONS PRESENTED

1. Whether plaintiff's motion for reconsideration, filed nearly two years after an asserted intervening change in law and five days before trial, was unreasonably late.
2. Whether plaintiff should be permitted to amend the complaint to add a promissory-estoppel claim despite the timing of the amendment.

HOLDINGS

1. Plaintiff's motion for reconsideration was unreasonably late because it was filed nearly two years after the asserted change in law and five days before trial, and was therefore denied without prejudice.
2. The court allowed plaintiff's oral motion to amend to add a promissory-estoppel claim because the theory had been clear throughout the litigation and the amendment would not prejudice defendants.

KEY QUOTATIONS

“Granting a motion for reconsideration is “an extraordinary remedy which should be used sparingly.””
(Section I)

“The answer is resoundingly, yes.” (Section I)

“Plaintiff’s Motion for Reconsideration of the Motion to Dismiss the Counterclaim Pursuant to the Anti-SLAPP Statute [Dkt. 124] is DENIED WITHOUT PREJUDICE.” (Section III)

“Plaintiff’s oral Motion to Amend to add a claim for promissory estoppel is ALLOWED.” (Section III)

FACTUAL BACKGROUND

The court had denied plaintiff's special motion to dismiss defendants' counterclaim in July 2023. Although the Massachusetts Supreme Judicial Court later modified the Anti-SLAPP framework in *Bristol Asphalt*, plaintiff waited nearly two years after that decision and filed for reconsideration five days before a trial that had been scheduled for approximately five months. The proposed promissory-estoppel amendment reflected a theory that had been clear throughout the litigation and would not require additional discovery, costs, trial postponement, or changes in trial strategy.

PROCEDURAL HISTORY

Plaintiff filed the original complaint on February 13, 2023. Defendants answered and asserted counterclaims, and plaintiff filed an Anti-SLAPP motion to dismiss the counterclaim, which the court denied on July 24, 2023. After the Massachusetts Supreme Judicial Court issued *Bristol Asphalt* in February 2024, the case proceeded

through amended pleadings, discovery, dispositive motion practice, and trial preparation. Plaintiff filed the motion for reconsideration on December 10, 2025, five days before the scheduled trial; the court denied it without prejudice but allowed plaintiff's oral motion to amend.

DISPOSITION

other

CASES CITED

- Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006)
- United States v. Allen, 573 F.3d 42, 53 (1st Cir. 2009)
- Villanueva-Mendez v. Nieves Vazquez, 360 F. Supp. 2d 320, 323 (D.P.R. 2005), aff'd, 440 F.3d 11 (1st Cir. 2006)
- Standard Quimica De Venezuela v. Cent. Hispano Int'l, Inc., 189 F.R.D. 202, 205 (D.P.R. 1999)
- Duracraft Corp. v. Holmes Prods. Corp., 427 Mass. 156, 161-62 (1998)
- Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 548 (2024)
- Steir v. Girl Scouts of the USA, 383 F.3d 7, 12 (1st Cir. 2004)
- Acosta-Mestre v. Hilton Int'l of P.R., Inc., 156 F.3d 49, 52 (1st Cir. 1998)

OPINION

Allen

PER CURIAM.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)

ELIZABETH ALLEN,)

) Plaintiff,))) Civil Action No. 23-CV-10549-AK v.)) MICHAEL FULLER and)
XVSOUTH, LLC,)

) Defendants.))

MEMORANDUM AND ORDER ON PLAINTIFF’S
MOTION FOR RECONSIDERATION OF THE MOTION TO DISMISS THE
COUNTERCLAIM PURSUANT TO THE ANTI-SLAPP STATUTE AND
MOTION TO AMEND

ANGEL KELLEY, D.J. For the following reasons, Plaintiff’s Motion for Reconsideration of the Motion to Dismiss the Counterclaim Pursuant to the Anti-SLAPP Statute [Dkt. 124] is DENIED WITHOUT PREJUDICE. Plaintiff’s oral Motion to Amend to add a claim for promissory estoppel is ALLOWED. The Court will address each Motion in turn.

I. MOTION FOR RECONSIDERATION

Granting a motion for reconsideration is “an extraordinary remedy which should be used

sparingly.” *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006) (citation omitted). The Court may grant a motion for reconsideration only “if the moving party presents newly discovered evidence, if there has been an intervening change in the law, or if the movant can demonstrate that the original decision was based on a manifest error of law or was clearly unjust.” *United States v. Allen*, 573 F.3d 42, 53 (1st Cir. 2009). However, the Court must first address a threshold issue—which is dispositive here—the timeliness of the motion. “With interlocutory orders, whether a motion for reconsideration has been timely filed or not rests solely on whether or not the motion was filed unreasonably late.” *Villanueva-Mendez v. Nieves Vazquez*, 360 F. Supp. 2d 320, 323 (D.P.R. 2005), *aff’d*, 440 F.3d 11 (1st Cir. 2006); *Standard Quimica De Venezuela v. Cent. Hispano Int’l, Inc.*, 189 F.R.D. 202, 205 (D.P.R. 1999) (citations omitted). The Original Complaint in this matter was filed on February 13, 2023. [Dkt. 1]. On April 21, 2023, Defendants filed an Answer and the Counterclaims at issue here. [Dkt. 12]. On May 24, 2023, Plaintiff filed a Motion to Dismiss the Counterclaim Pursuant to the Anti-SLAPP Statute. [Dkt. 16]. The intended early timing of such a Motion underscores its purpose: “In order that such ‘disfavored’ litigation could ‘be resolved quickly with minimum cost to citizens who have participated in matters of public concern,’ the act amended G.L. c. 231, inserting § 59H, to provide a procedural remedy for early dismissal of the disfavored SLAPP suits.” *Duracraft Corp. v. Holmes Prods. Corp.*, 427 Mass. 156, 161-62 (1998); see also *Bristol Asphalt, Co. v. Rochester Bituminous Prods., Inc.*, 493 Mass. 539, 548 (2024) (“The statute creates a procedural vehicle—known as the special motion to dismiss—intended to secure the early dismissal of a meritless SLAPP claim, along with attorney’s fees, before significant discovery has occurred.”). After full briefing, the Court denied the Motion on July 24, 2023. [Dkt. 23]. Approximately seven months after the Court’s denial of the special motion to dismiss, on February 29, 2024, the Supreme Judicial Court of Massachusetts modified the framework by which Motions pursuant to the Anti-SLAPP statute are decided. See generally *Bristol Asphalt*,

493 Mass. 539. An Amended Complaint [Dkt. 32] and Answer [Dkt. 34] were filed in March and April 2024. Plaintiff filed an Answer to the Counterclaim on April 12, 2024, more than a month after the publishing of *Bristol Asphalt*. [Dkt. 35]. The case continued through discovery and dispositive motion practice, with the Court setting trial for December 15, 2025 on July 9, 2025 [Dkt. 79] and resolving the Defendants’ Motion for Partial Summary Judgement on August 20, 2025. [Dkt. 80]. No mention was made of the intervening change in law in either the Joint Pretrial Memorandum [Dkt. 81], filed on October 29, 2025, or in Plaintiff’s Trial Brief [Dkt. 104], filed on November 26, 2025. Plaintiff filed the instant Motion for Reconsideration based on an intervening change in law [Dkt. 124] on December 10, 2025, just five days before trial and one year, nine months, and 12 days following the release of the change in law upon which the Motion relies. With all of this in mind, this Court must answer the question: Is this Motion unreasonably late? The answer is resoundingly, yes. The fundamental purpose of a special motion to dismiss is to allow the early dismissal of chilling counterclaims, dealing with their dismissal on an expedited

basis to preserve the parties' and the Court's resources. Nonetheless, nearly two years after an intervening change in the law, and five days before a trial which has been set for five months, the Plaintiff filed this Motion for Reconsideration. This dilatory motion practice by a party represented by four competent and talented attorneys is unreasonable. Additionally, while there is little impact on the evidence to be presented at trial based on the counterclaims, the distraction based on this additional motion practice just days before trial is certainly prejudicial to the defense. As the Motion for Reconsideration is unreasonably late, the Motion is DENIED WITHOUT PREJUDICE. Notwithstanding this Order, such an issue can still be addressed in an appropriately filed post- trial motion.

II. MOTION TO AMEND

The Motion to Amend, although similarly late, is ALLOWED. While there is little doubt that the Motion to Amend to include a separate claim for promissory estoppel should have been done earlier, there is also little doubt, acknowledged by the Defendants, that this theory of the case has been clear throughout the litigation. To allow the Motion would not require additional discovery or costs, a postponement of trial, or even an alteration in trial tactics or strategy. See *Steir v. Girl Scouts of the USA*, 383 F.3d 7, 12 (1st Cir. 2004) ("Particularly disfavored are motions to amend whose timing prejudices the opposing party by 'requiring a re- opening of discovery with additional costs, a significant postponement of the trial, and a likely major alteration in trial tactics and strategy'") (quoting *Acosta-Mestre v. Hilton Int'l of P.R., Inc.*, 156 F.3d 49, 52 (1st Cir. 1998)). Because of this lack of prejudice, the Court finds it appropriate to allow the addition of the claim for promissory estoppel.

III. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Reconsideration of the Motion to Dismiss the Counterclaim Pursuant to the Anti-SLAPP Statute [Dkt. 124] is DENIED WITHOUT PREJUDICE. Plaintiff's oral Motion to Amend to add a claim for promissory estoppel is ALLOWED. SO ORDERED. Dated: December 11, 2025 /s/ Angel Kelley Hon. Angel Kelley United States District Judge