

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.

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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)