

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Sherry Scalercio-Isenberg v. Select Portfolio Servicing, Inc., et al.

Scalercio-Isenberg · No. 2:22-cv-02705 (BRM) (AME) · Decided February 26, 2026

SUMMARY

The United States District Court for the District of New Jersey denied pro se Plaintiff Sherry Scalercio-Isenberg's second motion for reconsideration, which the Court construed under Local Civil Rule 7.1(i). The Court held that Plaintiff identified no intervening change in law, newly available evidence, clear error, or manifest injustice warranting further reconsideration.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Brian R. Martinotti
JURISDICTION	United States District Court for the District of New Jersey
DECIDED	February 26, 2026
DOCKET	2:22-cv-02705 (BRM) (AME)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for reconsideration of the court's denial of her prior motion to vacate and motion to compel. The district court construed the filing as a second motion for reconsideration under Local Civil Rule 7.1(i) and denied it.
STANDARD OF REVIEW	A motion for reconsideration may be granted only upon an intervening change in controlling law, newly available evidence, or the need to correct a clear error of law or fact or prevent manifest injustice.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

[motion for reconsideration](#)

[civil procedure](#)

PRACTICE AREAS

[civil procedure](#)

QUESTIONS PRESENTED

1. Whether Plaintiff's filing should be construed according to its function as a second motion for reconsideration rather than according to its caption.
2. Whether Plaintiff established an intervening change in controlling law, newly available evidence, clear error, or manifest injustice warranting reconsideration.

HOLDINGS

1. A court evaluates a motion according to its function rather than its caption; Plaintiff's motion was properly construed as a second motion for reconsideration under Local Civil Rule 7.1(i).
2. Reconsideration is warranted only upon an intervening change in controlling law, newly available evidence, or the need to correct a clear error of law or fact or prevent manifest injustice.

KEY QUOTATIONS

“A court may grant a motion for reconsideration if the moving party shows one of the following: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.”

FACTUAL BACKGROUND

Plaintiff sought reconsideration after the court denied her motion to vacate and motion to compel. She filed a second reconsideration motion styled as a motion to compel, and Defendants opposed it. The court found that Plaintiff had shown no recognized basis for further reconsideration.

PROCEDURAL HISTORY

Plaintiff filed a motion to compel the court to follow the rule of law on October 30, 2025. Defendants opposed and characterized the motion as one under Federal Rule of Civil Procedure 60(b)(3), while the court construed it as a second motion for reconsideration of its October 16, 2025 order. The court had denied Plaintiff's first motion for reconsideration on October 24, 2025, and denied the second motion by this memorandum opinion and order.

DISPOSITION

other

CASES CITED

- Turner v. Evers, 726 F.2d 112, 114 (3d Cir. 1984)
- Brown v. Pa. R.R. Co., 282 F.2d 522, 527 (3d Cir. 1960)
- Johnson v. Diamond State Port Corp., 50 F. App'x 554, 560 (3d Cir. 2002)
- Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999)

OPINION

SCALERCIO-ISENBERG

PER CURIAM.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

SHERRY SCALERCIO-ISENBERG,

Case No. 2:22-cv-02705 (BRM) (AME) Plaintiff, v.

SELECT PORTFOLIO SERVICING, INC., et MEMORANDUM OPINION AND ORDER

al., Defendants. Before the Court is pro se Plaintiff Sherry Scalercio-Isenberg's ("Plaintiff") "Motion to Compel the court to follow the rule of law," which was filed on October 30, 2025. (ECF No. 108.) Defendants Select Portfolio Servicing, Inc. ("SPS"), Brett L. Messinger ("Messinger") and Kassia Fialkoff ("Fialkoff," and collectively with Messinger, the "Duane Morris Defendants" and together with SPS, the "Defendants") filed an opposition on November 13, 2025.¹ (ECF No. 109.) Plaintiff filed a reply on November 14, 2025. (ECF No. 110.) Having reviewed and considered the parties' submissions filed in connection with the motion, for the reasons set forth below and for good cause appearing, Plaintiff's motion (ECF No. 108) is DENIED. Initially, the Court construes Plaintiff's motion as second motion for reconsideration, pursuant to Local Civil Rule 7.1(i), of this Court's October 16, 2025 Opinion and Order, denying Plaintiff's motion to vacate and motion to compel. (ECF Nos. 103, 105; see also *Turner v. Evers*, 1 Defendants construe Plaintiff's motion as a motion to vacate pursuant to Federal Rule of Civil Procedure 60(b)(3). (ECF No. 109 at 7.) According to Defendants, the Court should deny the motion because it is untimely and otherwise unsupported by "clear and convincing evidence" (*Id.* (citing *Brown v. Pa. R.R. Co.*, 282 F.2d 522, 527 (3d Cir. 1960).) The Court need not address these arguments as it construes the motion differently and denies the motion on other grounds. See *Turner*, 726 F.2d at 114. 726 F.2d 112, 114 (3d Cir. 1984) ("The focus . . . is on the function of the motion, not its caption.").) "A court may grant a motion for reconsideration if the moving party shows one of the following: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Johnson v. Diamond State Port Corp.*, 50 F. App'x 554, 560 (3d Cir. 2002) (citing *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)); L. Civ. R. 7.1(i). On October 24, 2025, this Court denied Plaintiff's first motion for reconsideration of the October 16, 2025 Opinion and Order. (ECF No. 107 (noting the underlying purpose for Plaintiff's first motion for reconsideration was to impermissibly "relitigate her claims").) Plaintiff has shown no basis for further reconsideration. Accordingly, and for good cause appearing, IT IS on this 26th day of February 2026, ORDERED that Plaintiff's second motion for reconsideration (ECF No. 108) is DENIED. /s/ Brian R. Martinotti

HON. BRIAN R. MARTINOTTI

UNITED STATES DISTRICT COURT

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