

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LINDSEY LEE, ET AL

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NO.: 3:21-cv-00442

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VERSUS

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JUDGE: SDD

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D.R. HORTON, INC. –
GULF COAST,
ET AL

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MAGISTRATE JUDGE: EWD

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**MEMORANDUM IN OPPOSITION TO PLAINTIFFS’ MOTION FOR
RECONSIDERATION FILED BY PRODUCTION BUILDER SERVICES, INC. (D/B/A
CARTER & CLARK)**

MAY IT PLEASE THE COURT:

Defendant, Production Builder Services, Inc. (d/b/a Carter & Clark) (“C&C”), respectfully submits this Memorandum in Opposition to the Motion for Reconsideration (Rec. Doc. 229) filed by Plaintiffs, Lindsey Lee, Wayne Ballard, Jr., Jennifer Ballard, Ronald Roberts, III, Kathryn Roberts, Zachary Russell, Lacey Russell, Luis Hinostroza, Tim Addison, II, Stacy Addison, Jonathan McMorris, and Gilbert Bankston, II (collectively “Plaintiffs”).

I. BACKGROUND AND PROCEDURAL HISTORY.

Plaintiffs’ allegations in their proposed Fourth Amended Complaint and Restated Complaint (“Proposed Fourth Amended Complaint”) arise out of the development of the Acadian Trace Subdivision (“Acadian Trace Subdivision/Subdivision”) and alleged issues relating to the drainage of water in the Subdivision and governance of the Subdivision’s homeowners association.¹ Plaintiffs claim the drainage was altered by the construction and development of the Subdivision, and that false and/or misleading permit applications were submitted to Livingston

¹ See Rec. Doc. 174-2, at p. 13, ¶ 30.

Parish Council (“LPC”).² Based on these allegations, Plaintiffs named the developer, D.R. Horton, Inc. – Gulf Coast (“DRHGC”), several related persons and entities of DRHGC and the homeowners association, LPC, and various subcontractors/subconsultants (including C&C)³ as Defendants in their Proposed Fourth Amended Complaint filed on April 12, 2024, alleging violations of the Racketeering Influenced Corruption Organizations Act, 18 U.S.C. §§ 1961–68 (“RICO”), along with various state law claims, and potential claims for deprivation of constitutional rights.⁴

Plaintiffs had previously named C&C as a defendant, for the first time, asserting the same claims in its Third Amended Complaint filed on March 15, 2022.⁵ In response, C&C filed its Motion to Dismiss on May 18, 2022.⁶ On December 8, 2022, Court issued a ruling and written reasons granting C&C’s Motion to Dismiss on December 8, 2022 (“December 2022 Ruling”).⁷ On January 6, 2023, Plaintiffs filed a Motion for Reconsideration seeking the Court to reconsider and amend its December 2022 Ruling dismissing the claims against C&C and other Defendants.⁸ The Court denied Plaintiffs’ Motion for Reconsideration on May 24, 2023.⁹

Plaintiffs appealed the December 2022 Ruling to the U.S. Fifth Circuit Court of Appeals (“Fifth Circuit”).¹⁰ On December 1, 2023, the Fifth Circuit affirmed the Court’s dismissal of Plaintiffs’ claim but vacated the Court’s judgment dismissing Plaintiffs’ claims with prejudice

² Rec. Doc. 174-2, at pp. 28-29, at ¶¶ 81-88.

³ The developer, DRHGC, hired C&C to prepare plot plans to show the proposed house locations on the individual lots for permitting purposes. C&C did not perform or have responsibility for the drainage design of the Subdivision.

⁴ Rec. Doc. 174-2, at pp. 4-6.

⁵ Rec. Doc. 86.

⁶ Rec. Doc. 120.

⁷ Rec. Doc. 154. The December 2022 Ruling also granted the D.R. Horton Defendants’ Motion to Dismiss.

⁸ Rec. Doc. 160-1.

⁹ Rec. Doc. 165.

¹⁰ Rec. Doc. 166.

(“Fifth Circuit Ruling”).¹¹

On February 7, 2024, the Court issued a new Scheduling Order for the case that included a deadline for Plaintiffs to file amended pleadings on or before April 15, 2024.¹² On April 12, 2024, Plaintiffs filed their Motion for Leave to file their Fourth Amended Complaint (“Motion for Leave”).¹³ C&C filed its Opposition to Plaintiffs’ Motion for Leave on May 3, 2024.¹⁴ Plaintiffs filed their Reply Memorandum in Support of their Motion for Leave (“Reply Memorandum”) on May 13, 2024.¹⁵

On January 23, 2025, the Court issued a Report and Recommendation concluding Plaintiffs were not entitled to another opportunity to amend their RICO claims against Defendants (including C&C) because Plaintiffs lacked statutory standing to assert RICO claims for their alleged damages.¹⁶ Plaintiffs filed objections to the Report and Recommendation,¹⁷ but the Court issued a ruling adopting the Report and Recommendation and entered a judgment denying Plaintiffs’ Motion for Leave and declined to exercise supplemental jurisdiction over Plaintiffs’ state law claims on February 11, 2025 (“February 2025 Ruling”).¹⁸

II. SUMMARY OF THE ARGUMENT.

The Court correctly concluded in its February 2025 Ruling that the allegations in Plaintiffs’ Proposed Fourth Amended Complaint failed to state a RICO claim against C&C (or any other

¹¹ Rec. Doc. 171.

¹² Rec. Doc. 172.

¹³ Rec. Doc. 176.

¹⁴ Rec. Doc. 185. C&C was the only party to file an opposition to Plaintiffs’ Motion for Leave.

¹⁵ Rec. Doc. 191.

¹⁶ Rec. Doc. 220.

¹⁷ Rec. Doc. 221.

¹⁸ Rec. Docs. 226, 227. Since the Court adopted the Report and Recommendation as its opinion (Rec. Doc. 226), references to the February 2025 Ruling includes the Court’s analysis in the Report and Recommendation as adopted by the Court.

Defendant) upon which relief can be granted under well-established precedent requiring Plaintiffs to have statutory standing to assert their RICO claims. Thus, any further amendment of their Complaint would be futile, and the Court was within its discretion to deny Plaintiffs' Motion for Leave. Plaintiffs cannot meet their burden under F.R.C.P. 59(e) of showing there was a manifest error of law or fact or that reconsideration of the February 2025 Ruling is required to prevent injustice. In fact, Plaintiffs Motion for Reconsideration only rehashes legal arguments that either were previously asserted (and rejected by the Court) or could have been asserted in connection with Plaintiffs' Motion for Leave and Reply Memorandum.

Plaintiffs' arguments fail to meet the high standard required for a motion to alter or amend under Rule 59(e) for the following reasons: (1) the Court acknowledged and considered the holding of *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008) in its February 2025 Ruling and found Plaintiffs lacked standing,¹⁹ (2) Plaintiffs' argument that the Court should adopt a more flexible standard for its proximate cause analysis for RICO claims is not in accordance with controlling precedent from the U.S. Fifth Circuit Court of Appeals, and (3) Plaintiffs failed to properly raise their arguments relating to *Bridge* or jurisprudence from other circuits in their Reply Memorandum and/or in their Objections to the Report and Recommendation. Therefore, the Court should not invoke the extraordinary remedy of reconsidering its February 2025 Ruling and should deny Plaintiffs' Motion for Reconsideration.

III. LAW AND ARGUMENT.

A. Standard for Motion to Alter/Amend (Reconsideration) of a Judgment.

Plaintiffs do not articulate which Federal Rule(s) of Civil Procedure on which they bring

¹⁹ Rec. Doc. 220, at pp. 14 n.62, 17 n.68.

their Motion for Reconsideration, but their Motion was filed twenty-two (22) days after the February 2025 Ruling was signed by the Court.²⁰ A motion to reconsider filed within twenty-eight (28) of a judgment is considered a motion to alter or amend a judgment pursuant to F.R.C.P. 59(e) (“Rule 59”). *McGee v. Citi Mortg., Inc.*, 680 F. App'x 287, 290 (5th Cir. 2017); *Knight v. City of Baton Rouge*, No. CV 18-1010-SDD-RLB, 2021 WL 5449018, at *2 (M.D. La. Nov. 22, 2021) (Dick, J.). A motion to alter, amend, or reconsider a judgment pursuant to Rule 59(e) calls into question the correctness of the judgment; therefore, it is not the proper vehicle to rehash evidence or legal theories, or make arguments that could have been offered or raised before entry of the judgment. *E.g., Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004).

Under Rule 59(e), Plaintiffs must establish that the Court committed a manifest error of either fact or law in its judgment denying Plaintiffs’ Motion for Leave, which in effect dismissed Plaintiffs’ RICO claims against C&C. *Marseilles Homeowners Condo. Ass'n Inc. v. Fid. Nat. Ins. Co.*, 542 F.3d 1053, 1058 (5th Cir. 2008); *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003); *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989).²¹ For purposes of Plaintiffs’ Motion for Reconsideration, “manifest error” means the Court committed an error that is plain and indisputable and in complete disregard to controlling law. *Knight*, 2021 WL 5449018, at *2; *Pullins v. Hancock Whitney Bank*, No. CV 19-00006, 2021 WL 1233508, at *1 (M.D. La. Apr. 1, 2021) (Dick, J.). The relief Plaintiffs seek in their Motion for Reconsideration is considered

²⁰ The Federal Rules of Civil Procedure do not expressly provide for a “motion for reconsideration” but such motions are either considered a motion to alter or amend judgment under Rule 59(e) or as a motion for relief from a judgment under Rule 60. *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 328 n.1 (5th Cir. 2004).

²¹ A party may also seek relief under Rule 59(e) if new evidence is discovered after the judgment complained of by the mover or if there is an intervening change in controlling law. *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003). Since Plaintiffs do not allege new evidence or intervening change in law, C&C will only address the grounds of manifest error of fact or law.

an extraordinary remedy that should be used sparingly, and denial is favored. *Indep. Coca-Cola Employees' Union of Lake Charles, No. 1060 v. Coca-Cola Bottling Co. United*, 114 F. App'x 137, 143 (5th Cir. 2004); *S. Constructors Grp., Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir. 1993); *Believe TGH, LLC v. Pointe Coupee Par.*, No. CV 23-408-SDD-RLB, 2024 WL 4224947, at *3 (M.D. La. Sept. 18, 2024) (Dick, J.); *Knight*, 2021 WL 5449018, at *2; *Pullins*, 2021 WL 1233508, at *1.

The practicalities of finality and judicial economy also support a limited application of altering or amending a judgment.²² Courts should not indulge a litigant who lost in motion practice to use a motion to reconsider to reargue or submit additional authority in support of the lost motion. *State of La. v. Sprint Commc'ns Co.*, 899 F. Supp. 282, 284 (M.D. La. 1995). Litigants are expected to make their strongest case when an issue is first presented and considered by the court. *Id.* Recycling and/or repackaging arguments only serves to waste judicial resources. *Id.* A motion for reconsideration is not the procedural avenue to rehash legal arguments previously made or raise arguments that could have been offered prior to the judgment. *Basinkeeper v. Bostick*, 663 F. App'x 291, 295 (5th Cir. 2016); *Templet*, 367 F.3d at 478–79; *Pullins*, 2021 WL 1233508, at *1.

It is Plaintiffs' burden to show the Court committed a manifest error of law or fact, and Plaintiffs have not met their burden of showing the Court should invoke the extraordinary remedy of altering, amending, or reconsidering the February 2025 Ruling.

²² “[Motions for reconsideration] are becoming an intricate part of motion practice by which the losing party to a motion obtains a second bite at the apple—a chance to reargue and sometimes submit additional argument and authority in support of his lost motion.” *State of La. v. Sprint Commc'ns Co.*, 899 F. Supp. 282, 284 (M.D. La. 1995).

B. The Court Correctly Found Plaintiffs Lack Standing to Bring Their RICO Claims.**1. The Court Directly Addresses and Rejects Plaintiffs' Argument in the February 2025 Ruling.**

The crux of Plaintiffs' argument in their Motion for Reconsideration is the Court failed to consider the Supreme Court's decision in *Bridge*, 553 U.S. 639, before making its February 2025 Ruling.²³ However, the Court directly addresses the holding of *Bridge* in its February 2025 Ruling and correctly found that Plaintiffs lacked standing to assert their RICO claims.²⁴

Plaintiffs assert in their Motion for Reconsideration that the Court did not properly consider *Bridge* and its holding that a RICO claim asserting mail fraud as a predicate act can be maintained if the alleged mail fraud was directed at a third party.²⁵ This is not the case, as the Court directly points out that whether the predicate acts (mail and wire fraud) were directly targeted at Plaintiffs is not the controlling question.²⁶ The Court correctly found that the operative question is whether the alleged predicate acts led directly to Plaintiffs' alleged injuries, and that the intended target of the alleged predicate acts being LPC (not Plaintiffs) tends to disprove that a direct relationship exists between the predicate acts and alleged harm.²⁷ As the Court illustrates in its February 2025 Ruling, Plaintiffs claims rely on a series of assumptions and a "domino effect" of causation from the alleged mail fraud to the water intrusion allegedly suffered by Plaintiffs.²⁸ Such attenuated causal chains of uncertain events do not meet the requirements of showing the alleged RICO violations led directly to Plaintiffs' alleged injuries as required to have statutory standing to assert

²³ Rec. Doc. 229-1, at pp. 2-3.

²⁴ Rec. Doc. 220, at pp. 14 n.62, 17 n.68.

²⁵ Rec. Doc. 229-1, at p. 3.

²⁶ Rec. Doc. 220, at p. 14.

²⁷ Rec. Doc. 220, at pp. 14-17.

²⁸ Rec. Doc. 220, at pp. 17-18.

RICO claims. *See Hemi Grp., LLC v. City of New York, N.Y.*, 559 U.S. 1 (2010); *Lewis v. Danos*, 83 F.4th 948, 957 (5th Cir. 2023); *Molina-Aranda v. Black Magic Enters., L.L.C.*, 983 F.3d 779 (5th Cir. 2020); *Jackson v. Nat'l Ass'n for Advancement of Colored People*, 546 F. App'x 438 (5th Cir. 2013).

Plaintiffs' burden is to show the Court committed a manifest error of law or fact by showing the February 2025 Ruling amounts to a complete disregard of controlling law. *Pullins*, 2021 WL 1233508, at *1. Plaintiffs cannot satisfy their burden because the February 2025 Ruling is well-reasoned and based on well-settled jurisprudence regarding the proximate cause requirement to establish RICO standing.

2. Plaintiffs' Invitation for the Court to Adopt a Modified Proximate Cause Analysis for RICO Claims Should be Rejected.

Plaintiffs ask the Court to modify its RICO proximate cause analysis to be more flexible and to take into consideration other factors such as foreseeability and other policy-based factors that courts in other federal circuits may consider more heavily than the Fifth Circuit.²⁹ Notwithstanding Plaintiffs' argument is not properly raised on a motion for reconsideration,³⁰ the Fifth Circuit has squarely rejected the premise that foreseeability is a proper consideration for evaluating whether alleged RICO predicate acts were the proximate cause for Plaintiffs' alleged injuries. *Molina-Aranda*, 983 F.3d at 784. It is directness and not foreseeability that is the standard for determining whether Plaintiffs have standing to assert their RICO claims. *Id.* The Court applied

²⁹ Rec. Doc. 229-1, at pp. 4-5.

³⁰ Plaintiffs' argument for the Court to adopt different RICO proximate cause standards and/or considerations based on cases from other federal circuits should have been made prior to the Court's February 2025 Ruling and not on a motion for reconsideration. *See Basinkeeper*, 663 F. App'x at 295 (citing *Templet*, 367 F.3d at 479).

the correct standard in its February 2025 Ruling. Therefore, Plaintiffs have failed to establish that the February 2025 Ruling was based on a manifest error of law or fact.

C. Plaintiffs Cannot Reargue or Assert New Legal Theories in their Motion for Reconsideration.

Plaintiffs Motion for Reconsideration either rehashes their previous arguments or makes new arguments that should have been made in their previous briefings. Plaintiffs had ample opportunity to set forth their arguments in their Reply Memorandum in Support of their Motion for Leave and even in their Objections to the Report and Recommendation. It is well-settled that a motion for reconsideration under Rule 59(e) is not the avenue to make arguments that should have been properly raised prior to judgment as litigants are expected to present their strongest case when a matter is first considered. *Basinkeeper*, 663 F. App'x at 295 (citing *Templet*, 367 F.3d at 479); *State of La. v. Sprint Commc'ns Co.*, 899 F. Supp. at 284. As another section of this Court has previously warned, motions for reconsideration have become a popular “indoor courthouse sport” and an avenue by which a losing party to a motion tries to reargue the case and submit additional arguments and authorities to save a lost motion. *State of La. v. Sprint Commc'ns Co.*, 899 F. Supp. at 284.

Here, Plaintiffs are seeking to rehash arguments previously raised and to submit to additional arguments to save their Motion for Leave.³¹ These are not valid reasons to support a motion to reconsider pursuant to Rule 59(e). Plaintiffs have not pointed to any controlling authority that shows the Court committed a manifest error in law or fact to warrant altering or amending the

³¹ Plaintiffs are now making at least one argument that is seemingly contrary to the argument made in their Reply Memorandum. In their Reply Memorandum, Plaintiffs argue that it is directness and not foreseeability that is the primary concern for whether proximate cause exists to support a RICO claim. Rec. Doc. 191, at p. 6. Now, Plaintiffs are asking the Court to follow cases from other federal circuits that focus on whether the alleged predicate acts were a “substantial and foreseeable cause” of the alleged injuries. Rec. Doc. 229-1.

February 2025 Ruling. The Court's February 2025 Ruling is in accordance with controlling Supreme Court and Fifth Circuit precedent; thus, Plaintiffs' Motion for Reconsideration should be denied.

D. Plaintiffs' Lack Standing to Assert RICO Claims.

Plaintiffs' final argument is that C&C and other Defendants participated in the alleged RICO scheme, so Plaintiffs claims should be allowed to proceed.³² While C&C vehemently objects to Plaintiffs' characterization of C&C's involvement in the development of the Subdivision,³³ Plaintiffs' argument fails to remedy the critical issue of Plaintiffs' lack of standing to assert their RICO claims. *Molina-Aranda*, 983 F.3d 779 (5th Cir. 2020); *Lewis v. Louisiana State Univ.*, No. CV 21-198-SM-RLB, 2022 WL 2187098, at *1 (M.D. La. June 16, 2022). Without standing, Plaintiffs simply cannot assert RICO claims regardless of how they attempt to characterize the conduct by various Defendants. *Hemi Grp.*, 559 U.S. at 13.³⁴

IV. CONCLUSION.

For the reasons set forth above, Production Builder Services, Inc. (d/b/a Carter & Clark) prays that Plaintiffs' Motion for Reconsideration be denied at Plaintiffs' sole cost and for all other just and equitable relief.

³² Rec. Doc. 229-1, at pp. 7-8.

³³ To the extent required, C&C adopts its arguments raised in its Opposition to Plaintiffs' Motion for Leave. regarding Plaintiffs' failure to plausibly plead the requisite elements of their RICO claim against C&C. *See* Rec. Doc. 185, at pp. 13-15.

³⁴ Plaintiffs cannot escape the proximate cause requirement by making broad allegations or assertions of wrongful conduct in their pleadings and/or memoranda. "Otherwise [the Supreme Court's] RICO proximate cause precedent would become a mere pleading rule." *Hemi Grp.*, 559 U.S. at 13.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing *Memorandum in Opposition to Plaintiffs' Motion for Reconsideration filed by Production Builder Services, Inc. (d/b/a Carter & Clark)* was electronically filed with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record, on this 26th day of March, 2025.

/s/ Seth F. Lawrence

Seth F. Lawrence