

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

LINDSEY LEE, ET. AL

Plaintiffs,

VERSUS

D.R. HORTON, INC.-GULF COAST, ET. AL

Defendants

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NO. 3:21-cv-00442-SDD-EWD

**DEFENDANTS’ MEMORANDUM IN OPPOSITION TO PLAINTIFFS’
MOTION FOR RECONSIDERATION**

NOW INTO COURT, through undersigned counsel, come Defendants D.R. Horton, Inc. – Gulf Coast; D.R. Horton, Inc.; Acadian Trace HOA, Inc.; George Kurz; David Stanton; and Jake Lambert (collectively—the “D.R. Horton Defendants”), who hereby file the following memorandum in opposition to Plaintiffs’ *Motion for Reconsideration* (Rec. Doc. 229).

I. BRIEF PROCEDURAL HISTORY

On February 11, 2025, this Court issued a Judgment of Dismissal (Rec. Doc. 227), dismissing the above-captioned matter. In its Judgment of Dismissal, the Court declined to exercise its supplemental jurisdiction and dismissed the case without prejudice, suspending prescription for thirty days pursuant to 28 U.S.C. § 1367(d) so that Plaintiffs can re-file in state court, should they choose to do so.

Thereafter, on March 5, 2025, Plaintiffs filed a *Motion for Reconsideration* (Rec. Doc. 229), requesting the Court reconsider its February 11, 2025 Ruling and Order, arguing essentially that the Magistrate Judge's Report and Recommendations contain manifest errors of law. Plaintiffs do not cite which Federal Rule of Civil Procedure their *Motion for Reconsideration* is brought pursuant to; however, it is presumed that the *Motion for Reconsideration* is brought

pursuant to Rule 59(e). For the reasons provided in this memorandum in opposition, the D.R. Horton Defendants request this Court deny Plaintiffs' Motion for Reconsideration.

II. LAW AND ARGUMENT

A. Standard for Motion for Reconsideration under Rule 59(e)

While "Motions for Reconsideration" are not formally recognized under Federal Rules of Civil Procedure, courts customarily consider such motions under Rule 60(b) or Rule 59(e). *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991); *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991). When a motion for reconsideration "'calls into question the correctness' of the judgment," the Court considers it under Fed. R. Civ. P. 59(e). *Allen v. Envirogreen Landscape Prof'ls, Inc.*, 721 F. App'x 322, 328 (5th Cir. 2017) (quoting *Templet v. HydroChem Inc.*, 367 F.3d 473, 478 (5th Cir. 2004).

"Rule 59(e) motions serve 'the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence.'" *Id.* (quoting *Templet*, 367 F.3d at 479). 'Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly.'" *Id.* (quoting *Templet*, 367 F.3d at 479). "Accordingly, a motion for reconsideration 'is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment.'" *Id.* (quoting *Templet*, 367 F.3d at 479). The court should deny a motion for reconsideration when the movant rehashes legal theories and arguments that were raised or could have been raised before the entry of the judgment. *Templet*, 367 F.3d 473, 478-79.

"Rule 59(e) relief is appropriate (1) where there has been an intervening change in the controlling law; (2) where the movant presents newly discovered evidence that was previously unavailable; or (3) to correct a manifest error of law or fact." *Clark v. Edwards*, No. CV 21-177-

SDD-RLB, 2022 WL 22736549, at *1 (M.D. La. July 20, 2022) “A court should not grant Rule 59(e) relief on the basis of arguments which could, and should, have been made before the judgment issued, and should not allow a case to be argued under a new legal theory.” *Id.*

B. Plaintiffs’ *Motion for Reconsideration* should be denied because their motion does not include any of bases for the Court to grant relief under Rule 59(e).

The Court should not grant Plaintiffs’ *Motion for Reconsideration* because relief is not appropriate pursuant to Rule 59(e) based on any of the factors the Court considers when deciding a Rule 59(e) motion. Plaintiffs’ *Motion for Reconsideration* is wholly based on new legal arguments it raises regarding the Magistrate Judge’s Report and Recommendation. Plaintiffs’ bases for reconsideration are not based on (1) an intervening change in the controlling law; (2) newly discovered evidence that was previously unavailable; or (3) to correct a manifest error of law or fact. Instead, Plaintiffs’ *Motion for Reconsideration* is based wholly on legal arguments they had the opportunity to present previously and which were readily available to them before the entry of the judgment.

It should be noted that Plaintiffs filed *Objections to Magistrate Judge’s Recommended Ruling on Pending Motions* (Rec. Doc. 221) that the Court would have considered prior to the adoption of the Magistrate Judge’s Report and Recommendation. However, Plaintiffs’ *Motion for Reconsideration* is based entirely on new legal arguments from the Magistrate Judge’s Report and Recommendation that were not made in its *Objections*, specifically the legal arguments related to proximate cause. Plaintiffs are attempting to, in essence, have two bites at the apple after they failed to raise these legal arguments in their *Objections*.

These new legal arguments do not represent a correction to manifest errors of law because, contrary to Plaintiffs’ statement in the *Motion*, the Magistrate Judge’s Report and Recommendation was not based solely on its analysis of proximate cause. The Report and

Recommendation had multiple meritorious bases for the Magistrate Judge to recommend dismissal, which cannot be overcome solely on the new legal arguments provided in the *Motion for Reconsideration*, even if such legal arguments could be properly considered at this time. Further, Plaintiffs' new legal arguments related to proximate cause are flawed and do not abrogate any of the Magistrate Judge's previous findings of law.

Secondly, as Plaintiffs' arguments in their *Motion for Reconsideration* focus solely on legal arguments, they are not introducing any newly discovered, previously unavailable evidence that would entitle them to relief under 59(e). To the extent that Plaintiffs attempt to introduce new factual matter in the *Motion*, it is information that was readily available prior to entry of the judgment, and, accordingly, does not entitle them to relief.

Lastly, all of the specific caselaw cited by Plaintiffs in their *Motion for Reconsideration* was available prior to entry of the judgment in this case and does not represent intervening changes to controlling law. Accordingly, the Plaintiffs' *Motion for Reconsideration* is not a proper vehicle for the Court to consider these new legal arguments now raised by Plaintiffs after the entry of the dismissal. Therefore, the D.R. Horton Defendants respectfully request this Court deny Plaintiffs' *Motion for Reconsideration*.

i. To the extent Plaintiffs attempt to introduce new factual material in their Motion for Reconsideration, such material should not be considered.

Plaintiffs attempt to include improper, new factual material in their *Motion for Reconsideration* which cannot be considered. Specifically, Plaintiffs attempt to improperly incorporate unauthenticated, inadmissible links to videos from a third-party realty group regarding elevations of D.R. Horton homes.¹ Such factual information being presented for the first time in their *Motion for Reconsideration* is not only improper pursuant to the standards for Rule 59(e), but

¹ Rec. Doc. 229-1, p. 7, n. 8.

it also cannot be relied upon by this Court in its consideration of the *Motion for Reconsideration* because it has not been properly authenticated and would be inadmissible as evidence.

III. CONCLUSION

This Court should not reconsider its Order dismissing the claims of Plaintiffs because Plaintiffs do not have a valid basis for reconsideration of the dismissal entered by this Court. The Court justifiably dismissed Plaintiffs' claims, and the Plaintiffs have provided no legitimate reason why the Court should reconsider its ruling pursuant to Rule 59(e). Therefore, the D.R. Horton Defendants respectfully request the Court deny Plaintiffs' *Motion for Reconsideration*.

Respectfully submitted,

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KURZ; DAVID STANTON; AND JAKE

LAMBERT

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March 2025, the foregoing pleading was electronically filed with the Clerk of Court using the CM/ECF system. Notice of this Notice of Removal has been delivered to Plaintiffs' counsel by email and United States Mail, postage prepaid.

/s/ Laura E. Marcantel
Laura E. Marcantel