

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

|                             |                               |
|-----------------------------|-------------------------------|
| SEABOARD STAMFORD           | :                             |
| INVESTOR ASSOC., INC.,      | :                             |
| Plaintiff,                  | :                             |
|                             | :                             |
| -vs-                        | : Civil No. 3:03cv11110 (PCD) |
|                             | :                             |
| THINKDIRECTMARKETING, INC.: | :                             |
| F/K/A DIGITAL ASSET         | :                             |
| MANAGEMENT, INC.            | :                             |
| Defendant.                  | :                             |

**RULING ON PLAINTIFF’S MOTION FOR RECONSIDERATION**

Plaintiff moves for reconsideration of the Ruling on Plaintiff’s Motion for Default Judgment [Doc. No. 18]. For the reasons stated herein, Plaintiff’s motion is **granted**.

**I. Background<sup>1</sup>**

On December 24, 2003, Plaintiff’s motion for default judgment was granted in part and denied in part [Doc. No. 18]. Plaintiff sought \$326,926.80 based on Defendant’s arrears and the contract provision permitting it to seek 36 months rent in the event of default, plus \$23,198.11 prejudgment interest. The Court found the record did not show that Plaintiff acted to mitigate damages, and that the only clear damages Plaintiff suffered arose from Defendant’s failure to pay rent from December 1, 2002 (when the breach started) through April 28, 2003 (when Defendant vacated the property). Accordingly, Plaintiff was awarded \$31,791,65 in damages for arrears in unpaid rent.

**II. Standard**

The standard for granting a motion for reconsideration is strict. Reconsideration “will generally be denied unless the moving party can point to controlling decisions or

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<sup>1</sup> Familiarity with all previous Rulings is presumed.

data that the court overlooked--matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Shrader v. CSX Transp.*, 70 F.3d 255, 257 (2d Cir. 1995), *see also United States v. Sanchez*, 35 F.3d 673, 677 (2d Cir. 1994) (granting reconsideration is appropriate when a “need is shown to correct a clear error of law or to prevent manifest injustice.”). A “motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided.” *Shrader*, 70 F.3d at 257. “A motion for reconsideration cannot be employed as a vehicle for asserting new arguments or for introducing new evidence that could have been adduced during the pendency” of the underlying motion. *LoSacco v. Middletown*, 822 F. Supp. 870, 877 (D. Conn. 1993). “The scope of review on motions for reconsideration is limited to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging gaps of a lost motion with additional matters.” *Id.* (quotation omitted).

### **III. Discussion**

Plaintiff moves for reconsideration, arguing that Defendant bears the burden to prove that Plaintiff has not undertaken reasonable efforts to mitigate damages. Pl. Mem. at 2. Plaintiff contends that not awarding it the entire 36 months of rent, as permitted by the lease, “is manifestly unjust because it places a heavy financial burden on Plaintiff, the injured party, while allowing Defendant to escape full responsibility for its breach.” *Id.* Defendant has not filed a response and apparently does not contest Plaintiff’s motion. Plaintiff argues that reconsideration is appropriate because “Defendant never raised a claim that Plaintiff did not act to mitigate its damages,” Pl. Mem. at 5, apparently

contending that Plaintiff did not have notice that this would be at issue and thus was not given an opportunity to respond.

The default judgment Ruling correctly stated that in a breach of lease action, the injured party is under a duty to mitigate its damages. The injured party also has the burden of proving the damages resulting from the breach. Upon reconsideration, it is found that the breaching party bears the burden of producing evidence to demonstrate that the injured party has failed to use reasonable care to mitigate its damages. *Newington v. General Sanitation Service Co.*, 196 Conn. 81, 86, 491 A.2d 363 (1985). “To claim successfully that the plaintiff failed to mitigate damages, the defendant must show that the injured party failed to take reasonable action to lessen the damages; that the damages were in fact enhanced by such failure; and that the damages which could have been avoided can be measured with reasonable certainty.” *Preston v. Keith*, 217 Conn. 12, 22 (Conn. App. 1991).

Defendant has failed to produce any evidence showing that Plaintiff has failed to mitigate damages.<sup>2</sup> Accordingly, Plaintiff, having offered evidence of its efforts, though unsuccessful, to rent the property, is entitled to the amount of damages initially sought, \$326,926.80 for the 36 months damage provision in the lease.

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<sup>2</sup> As noted, Defendant has failed to respond at all.

#### IV. Conclusion

For the reasons stated herein, Plaintiff's motion for reconsideration [Doc. No. 22] is **granted**. The Ruling on Plaintiff's Motion for Default Judgment [Doc. No. 18] is **vacated** to the extent it limited damages for breach of contract to \$31,791,65. Consistent with this Ruling, Plaintiff is hereby awarded \$326,926.80 based on Defendant's arrears and the contract provision permitting it to seek 36 months rent in the event of default.<sup>3</sup> Plaintiff shall file its motion and memorandum regarding prejudgment interest on or before February 20, 2004.

SO ORDERED.

Dated at New Haven, Connecticut, February \_\_\_\_, 2004.

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Peter C. Dorsey  
United States District Judge

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<sup>3</sup> This award is in addition to the \$4498.04 previously awarded to Plaintiff for attorneys fees and costs [See Doc. No. 18].