UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

John YANUSIS and Joyce Yanusis, Plaintiffs,	:	
v.	:	No. 3:00cv1742(JBA)
LANDRY'S SEAFOOD, INC., d/b/a San Luis Conference Center, Defendant.	:	

Endorsement Order [Docs. #25 & 27]

I. Procedural Posture

This personal injury action, filed in this Court presumably based on diversity of citizenship, was dismissed on June 14, 2001, when plaintiffs' counsel failed to file a response to defendant's motion to dismiss for lack of personal jurisdiction. Judgment for the defendant entered on June 18, 2001, and the case was closed.

Plaintiffs filed a motion [Doc. #27] for reconsideration of the decision dismissing the suit on June 28, 2001, ten days after judgment entered. In their motion, plaintiffs claim that they failed to file an opposition to the dismissal because there was a pending motion for reconsideration of the Court's ruling denying plaintiffs' motion to compel discovery. Plaintiffs believed the Court would not rule on the motion to dismiss for lack of jurisdiction until the Court had ruled on the motion to reconsider its ruling on the discovery requests, and that in any

event, plaintiffs could not have opposed the motion for dismissal for lack of personal jurisdiction without further discovery, which was not possible without a favorable ruling on the motion for reconsideration [Doc. #25]. However, the motion for reconsideration of the discovery order was not filed until June 18, 2001, after the Court granted defendant's motion to dismiss for lack of personal jurisdiction on June 14, 2000, in the absence of opposition. The Court will presume the former was mailed before the latter was received.

Currently, plaintiffs have two pending motions before the Court: the first [Doc. #25] seeks reconsideration of the Court's order denying plaintiffs' motion to compel untimely discovery; the second [Doc. #27] seeks reconsideration of the Court's order dismissing the case, in the absence of opposition to defendant's motion to dismiss, for lack of personal jurisdiction.

II. Motion to Re-Open the Case

While the plaintiffs' motion is styled as a motion for reconsideration of the Court's order dismissing the complaint for lack of personal jurisdiction, plaintiffs actually seek relief from judgment. Their motion is thus deemed a Rule 60(b) motion.

Rule 60(b) provides in pertinent part that, "On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment [for] mistake, inadvertence, surprise or excusable neglect [or] any other reason justifying relief from

the judgment." Fed. R. Civ. P. 60(b). The rule further provides that the motion shall be made in a "reasonable time."

"[N]eglect, for purposes of interpreting 'excusable neglect' in the federal rules, has its normal, expected meaning: inadvertance, carelessness, and mistake." Canfield v. Van Atta Buick/GMC Truck, Inc., 127 F.3d 248 (2nd Cir. 1997) quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 388 (1993).

"A motion under Rule 60(b) . . . is addressed to the sound discretion of the court that entered the judgment, and a determination of such a motion will not be disturbed upon appeal unless there has been a clear abuse of the judicial power." Parker v. Broadcast Music, Inc., 289 F.2d 313 (2nd Cir. 1961). While "the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission," Carcello v. TJX Cos., Inc., 192 F.R.D. 61 (D. Conn. 2000) (internal quotations omitted), the discretion of the Court is not limitless. See Canfield, 127 F.3d at 251 (a party claiming excusable neglect for failure to read and obey an unambiguous rule will ordinarily lose); Greater Baton Rouge Golf Assoc. v. Recreation & Park Com., 507 F.2d 227, 229 (5th Cir. 1975) (district court abused its discretion when it denied Rule 60(b) motion to reinstate case when case had been dismissed for counsel's 28 minute tardiness in arriving to hearing).

"In exercising this discretion, courts should balance the

policy in favor of serving the ends of justice against the policy in favor of finality," Mazzone v. Stamler, 157 F.R.D. 212, 214 (S.D.N.Y. 1994), and in this regard, the length of time between the judgment to be lifted and the date the moving party asked for relief under Rule 60 is highly germane. See Carcello, 192 F.R.D. at 63 (factors to be considered include prejudice to adversary, length of the delay, reason for the error, potential impact on the proceedings, whether the neglect was within the control of the movant, and whether the movant acted in good faith). At least one court has concluded that the most important factor is whether granting the Rule 60 motion will cause any significant prejudice to the defendant. Mazzone, 157 F.R.D. at 214.

Here, plaintiffs' failure to respond to the motion to dismiss was certainly careless. Counsel, failing to respond to a pending motion to dismiss on the assumption that the Court will first rule on a subsequently-filed motion to reconsider, acts at his peril. At the very least, plaintiffs should have moved for leave to postpone response in the absence of jurisdictional discovery, which would not be forthcoming without an order of the Court enlarging the time for discovery because plaintiffs had allowed the deadlines for timely service of their discovery to lapse. Weighing against granting the Rule 60(b) motion, then, is the fact that plaintiffs are wholly at fault for the dismissal in the first instance.

Plaintiffs' lack of diligence, while not to be minimized, is

offset to some degree by other factors weighing in favor of granting the motion. First, the motion was filed only ten days after judgment entered. With so little time elapsed, it is difficult to imagine that the defendant will be prejudiced, and in fact the defendant makes no such showing in its opposition to the motion. Further, so short a time period certainly discounts, at least to some degree, the interest in finality that must be balanced against "serving the ends of justice." Mazzone, 157 F.R.D. at 214. Finally, because the statute of limitations has run on plaintiffs's claim, denial of this motion may effectively end this suit, and plaintiffs will have no further remedy for the harm they allege in their complaint. In this case, denial of the motion would be tantamount to dismissal with prejudice for what can only be described as the inadvertence of counsel. Such a harsh course of action, in the Court's view, would not serve the ends of justice.

III. Motion for Reconsideration

Also before the Court is plaintiffs' motion requesting that the Court reconsider its order denying plaintiffs' motion to compel untimely discovery.

In light of the Court's decision to grant plaintiffs' motion to re-open the case and for substantially the same reasons as set out above, a Supplemental Scheduling Order will be issued setting

new deadlines for discovery, amended pleadings[1] and opposition and reply to the motion to dismiss. The Court will therefore deny the motion for reconsideration as moot. Any future motion to compel shall be promptly filed after compliance with the requirements D. Conn. L. Civ. R. 9.

III. Conclusion

For the foregoing reasons, plaintiffs' motion to re-open the case [Doc. #27] is GRANTED, and the Court's Endorsement Order of June 14, 2001 [Doc. #24] granting defendant's motion to dismiss is VACATED. Defendant's motion to dismiss is restored to pending-motion status. The Judgment for the defendant [Doc. #26] is SET ASIDE, and the Clerk is directed to re-open this case.

Plaintiffs' motion for reconsideration of the Court's order denying plaintiffs' motion to compel untimely discovery requests [Doc. #25] is DENIED AS MOOT.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 7th day of September, 2001.

[1]As the defendant correctly notes, plaintiffs' complaint continues to lack a factual basis for jurisdiction under 28 U.S.C. § 1332, as neither diversity of citizenship nor the requisite amount in controversy is shown on the face of the pleadings.