

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHNATHAN ERLER, et al.,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:19-CV-2658-AT
HASBRO, INC., and WIZARDS OF	:	
THE COAST LLC,	:	
	:	
Defendants.	:	

ORDER

This matter is before the Court on Plaintiffs’ Motion for Reconsideration [Doc. 60]. Plaintiffs ask the Court to reconsider its December 11, 2020 decision (Doc. 58) dismissing Plaintiffs’ Second Amended Complaint with prejudice.

In that Order, the Court held that Rhode Island law applied to Plaintiffs’ contract claims and Georgia law applied to Plaintiffs’ tort claim. (*Id.* at 11-12, 24-25.) The Court determined that under the relevant law, Plaintiffs did not plead sufficient facts to support that enforceable contracts were ever formed between Plaintiffs and Defendants and also did not sufficiently plead breach of any alleged contracts. (*Id.* at 20-21). With respect to Plaintiffs’ claim for negligence, the Court found that Plaintiffs failed to state a claim for negligent misrepresentation against Defendants and therefore the economic loss rule barred their negligence claim. (*Id.* at 29-30.) The Court further noted that damages for negligent misrepresentation

are measured by an “out-of-pocket” standard, not a “benefit-of-the-bargain” standard, *see BDO Seidman, LLP v. Mindis Acquisition Corp.*, 276 Ga. 311, 312-313(1) (2003), and that Plaintiffs had alleged no “out-of-pocket” losses, as they acknowledged that they received full refunds. (Doc. 58 at 29.)

Following the Court’s issuance of its Order, Plaintiffs filed the Motion for Reconsideration (Doc. 60) now before the Court. The basis for Plaintiffs’ Motion is twofold. First, Plaintiffs seek to submit “additional briefing on the specific Rhode Island and Georgia law that applies in this case” since the Parties were “previously uncertain about which state’s law applied.” (Doc. 60 at 1.) Second, Plaintiffs wish to supply additional briefing on certain issues (such as the eBay terms of service) because, according to Plaintiffs, the Court ruled in a manner neither party explicitly requested. (*Id.*)

Under Local Rule 7.2(E), “[m]otions for reconsideration shall not be filed as a matter of routine practice,” but only when “absolutely necessary.” LR. 7.2(E), NDGa; *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003); *Pres. Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Eng’rs*, 916 F. Supp. 1557 (N.D. Ga. 1995) (O’Kelley, J.). Reconsideration should only be granted where there is: (1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact. *See Smith v. Ocwen Fin.*, 488 F. App’x 426, 428 (11th Cir. 2012); *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003); *Jersawitz v. People TV*, 71 F. Supp.

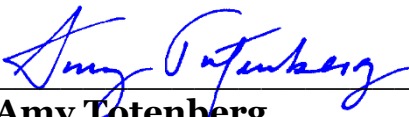
2d 1330 (N.D. Ga. 1999) (Moye, J.); *Paper Recycling, Inc. v. Amoco Oil Co.*, 856 F. Supp. 671, 678 (N.D. Ga. 1993) (Hall, J.).

Parties may not use a motion for reconsideration to show the court how it “could have done it better,” to present the court with arguments already heard and dismissed, to repackage familiar arguments to test whether the court will change its mind, or to offer new legal theories or evidence that could have been presented in the original briefs. *Bryan v. Murphy*, 246 F. Supp. 2d at 1259; *Pres. Endangered Areas of Cobb's History, Inc.*, 916 F. Supp. at 1560; *Brogdon ex rel. Cline v. Nat'l Healthcare Corp.*, 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000) (Murphy, H.L., J.); *Adler v. Wallace Computer Servs., Inc.*, 202 F.R.D. 666, 675 (N.D. Ga. 2001) (Story, J.) (citing *O'Neal v. Kennamer*, 958 F.2d 1044, 1047 (11th Cir. 1992)). If a party presents a motion for reconsideration under any of these circumstances, the motion must be denied. *Bryan v. Murphy*, 246 F. Supp. 2d at 1259; *Brogdon ex rel. Cline*, 103 F. Supp. 2d at 1338.

The Court has reviewed Plaintiffs’ arguments for reconsideration, the responsive briefing, and the Court’s December 11, 2020 Order and finds that reconsideration is not warranted here, as Plaintiffs’ Motion does not satisfy the limited grounds on which reconsideration is appropriate. Plaintiffs have not cited to any newly discovered evidence, changes in the controlling law, or even argued that their Motion is intended to correct a clear error of fact or law. *Smith v. Ocwen Fin.*, 488 F. App’x 426, 428 (11th Cir. 2012). Beyond that, the reasons Plaintiffs supply as a basis for their Motion involve issues that have been briefed and

addressed by the Parties and the Court. The question of what law applied to Plaintiffs' claims and the effect of this determination was thoroughly encompassed by the Parties' briefing and by way of the multiple appendices filed in connection with this question. Indeed, Plaintiffs argued that Georgia law applied to their negligence claim (Doc. 34 at 6) and that is in fact the law the Court applied to this claim. Plaintiffs' second request, to provide additional briefing on certain portions of the eBay terms of service, also involves issues previously before the Court. The User Agreement was attached to the operative Motion to Dismiss (Doc. 34-7), was discussed by the Parties in briefing, and was thoroughly reviewed by the Court in its Order. In sum, Plaintiffs' Motion for Reconsideration is a repackaging of previously made arguments in an attempt to convince the Court to change its mind. Under these circumstances, "the motion must be denied." *Bryan v. Murphy*, 246 F. Supp. 2d at 1259. Consequently, the Court **DENIES** Plaintiffs' Motion for Reconsideration [Doc. 60].

IT IS SO ORDERED this 4th day of March 2021.



Amy Totenberg
United States District Judge