NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
NEWARK, NJ 07101
973-645-5903

May 24, 2021

Joshua L. Mallin, Esq.
Dennis T. D'Antonio, Esq.
Weg & Myers, P.C.
52 Duane Street, 2nd Floor
New York, NY 10007
Counsel for Plaintiffs

Philip Rosenbach, Esq.
Berman Rosenbach, LLC
10 Madison Avenue
Morristown, NJ 07960
Counsel for Plaintiffs

Susan M. Kennedy, Esq.
Michael Menapace, Esq.
Wiggin and Dana LLP
50 South 16th Street
Two Liberty Place, Suite 2925
Philadelphia, PA 19102
Counsel for Defendant

LETTER OPINION FILED WITH THE CLERK OF THE COURT

Re: Manhattan Partners, LLC, et al. v. American Guarantee & Liability Ins. Co.
Civil Action No. 20-14342 (SDW) (LDW)

Counsel:

Before this Court is Plaintiffs' Motion to Vacate this Court's March 17, 2021 Opinion and Order ("March 17th Decision") which granted Defendant's motion to dismiss Plaintiffs' Complaint. This Court having considered the parties' submissions, and having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, and for the reasons discussed below, **DENIES** Plaintiffs' Motion.

DISCUSSION

A.

Plaintiffs' motion is brought pursuant to Federal Rule of Civil Procedure 59, which allows a party to move for a new trial on "all or some of the issues" provided such motion is filed within twenty-eight days after the entry of judgment. Fed. R. Civ. P. 59. In this circuit, courts "have construed such motions for rehearing as motions for reconsideration." *Shokirjoniy v. City of Clinton Twp.*, Civ. No. 18-8904, 2021 WL 689154, at *1 (D.N.J. Feb. 23, 2021); *see also Gittens v Pavlack*, Civ. No. 20-2880, 2021 WL 320715, at * n.2 (3d Cir. Feb. 1, 2021) (affirming treatment of motion for rehearing as a motion for reconsideration). This Court will do the same.

Although the Federal Rules of Civil Procedure "do not expressly authorize motions for reconsideration, Local Civil Rule 7.1(i) provides for such review." *Sch. Specialty, Inc. v. Ferrentino*, Civ. No. 14-4507, 2015 WL 4602995, at *2-3 (D.N.J. July 30, 2015). A party moving for reconsideration must set "forth concisely the matter or controlling decisions which the party believes the . . . Judge has overlooked." L. Civ. R. 7.1(i). A motion for reconsideration is "an extremely limited procedural vehicle," *Ferrentino*, 2015 WL 4602995 at *2 (internal citations omitted), which is to be granted "sparingly." *A.K. Stamping Co., Inc. v. Instrument Specialties Co., Inc.*, 106 F. Supp. 2d 627, 662 (D.N.J. 2000). Motions to reconsider are only proper where the moving party shows "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [reached its original decision]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). Mere disagreement with a court's decision is not an appropriate basis upon which to bring a motion for reconsideration as such disagreement should "be raised through the appellate process." *U.S. v. Compaction Sys. Corp.*, 88 F. Supp. 2d 339, 345 (D.N.J. 1999).

B.

This Court assumes the parties' familiarity with the factual and procedural history of this matter, and refers them to the March 17th Decision for a full recitation of the relevant facts. (D.E. 17, 18.) The March 17th Decision identified and applied the proper legal standards for a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiffs do not identify any intervening change in the relevant law or new evidence that was unavailable at the time this Court entered its decision. Consequently, Plaintiffs' motion rests solely on the contention that this Court's decision contains an error of fact or law that, if left uncorrected, would result in manifest injustice. (*See generally* D.E. 19-4.) Specifically, Plaintiffs argue that this Court's decision is flawed because 1) this Court improperly engaged in fact-finding in determining that Plaintiffs' properties had not suffered "physical loss or damage;" and 2) wrongfully considered arguments raised by Defendant for the first time in its reply brief regarding the application of a policy endorsement. (*Id.* at 1.) Both arguments are without merit.

On a motion to dismiss, this Court is required to review the pleadings for sufficiency. In determining that Plaintiffs' allegations failed to set forth facts that would trigger coverage under the relevant commercial insurance policy, this Court did not engage in inappropriate fact-finding,

but rather limited its analysis to a review of the adequacy of Plaintiffs' pleadings and found them wanting. Specifically, this Court held that "Plaintiffs have not alleged any facts that support a showing that their properties were physically damaged. Plaintiffs' general statements that the COVID-19 virus was on surfaces and in the air at their properties is insufficient to show property loss or damage" as required under the relevant Policy. (D.E. 17 at 3.) As to the consideration of Defendant's argument regarding the policy endorsement, the reference to that argument is set forth as an alternative basis for this Court's decision; even if that analysis were removed, dismissal of the Complaint was still warranted. (*See* D.E. 17 at 3 n.3.) Therefore, Plaintiffs' motion merely encourages this Court to "analyze the same facts and cases it already considered" to come to a different conclusion. *Tehan v. Disability Mgmt. Servs.*, 11 F. Supp. 2d 542, 549 (D.N.J. 2000). Asking this Court to "rethink" its holding is not an appropriate basis upon which to seek reconsideration. *See Oritani Sav. & Loan Ass'n v. Fid. & Deposit Co. of Md.*, 744 F. Supp. 1311, 1314 (D.N.J. 1990). Accordingly, Plaintiffs' motion will be denied.

CONCLUSION

For the reasons set forth above, Plaintiffs' Motion (D.E. 19) is **DENIED**. An appropriate order follows.

s/ *Susan D. Wigenton*
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

Orig: Clerk
cc: Leda D. Wettre, U.S.M.J.
Parties