

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 23-01267-MWF (ADSx)

Date: March 25, 2025

Title: William Ollerton v. National Steel and Shipbuilding Company et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:

Rita Sanchez

Court Reporter:

Not Reported

Attorneys Present for Plaintiffs:

None Present

Attorneys Present for Defendant:

None Present

Proceedings (In Chambers): ORDER GRANTING IN PART DEFENDANT’S MOTION FOR SUMMARY JUDGMENT [148]

Before the Court is Defendant National Steel and Shipbuilding Company’s Motion for Summary Judgment (the “Motion”), filed February 14, 2025. (Docket No. 148). Plaintiffs Mary and James Ollerton filed their Opposition on February 24, 2025. (Docket No. 153). Defendant filed a Reply on March 3, 2025. (Docket No. 156).

The Motion was noticed to be heard on **March 17, 2025**. The Court read and considered the papers on the Motion and deemed the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. The hearing was therefore **VACATED** and removed from the Court’s calendar.

For the reasons discussed below, the Motion is **GRANTED in part**. The parties agree that there is no genuine dispute of material fact regarding pecuniary damages for Plaintiffs’ wrongful death claims, and the Court will not allow a jury to hear those claims despite Defendant’s failure to meet and confer. Defendant’s other arguments fail because they do not meet the high standard for reconsideration, which is what the Motion truly concerns.

I. BACKGROUND

The Court previously summarized the central facts of this action in its Order Denying Plaintiff’s Motion for Remand (the “Remand Order” (Docket No. 63)) and Order Granting Plaintiff’s Motion to Substitute Parties and for Leave to Amend (the

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“Substitution Order” (Docket No. 95)). The Court therefore incorporates by reference the Background Section of the Remand Order and Substitution Order.

II. DISCUSSION

Though termed a Motion for Summary Judgment, the Motion is clearly a thinly disguised motion for reconsideration. The Motion brings three arguments: that Plaintiffs lack standing to pursue a general maritime law claim (Motion at 2-10); that Plaintiffs have provided no facts supporting recovery for the wrongful death cause of action (*id.* at 10-11); and that general maritime law does not recognize survival damages (*id.* at 11-14).

The third argument was already decided by the Court, as discussed below. The Court begins with the first and second arguments. The standing argument was addressed at length in the Order Granting in Part and Denying in Part Defendant’s Motion to Dismiss (the “Prior Order”). (Docket No. 129 at 4-6). At that time, the Court noted that Defendant was merely reiterating “many of the same arguments that the Court addressed in its Substitution Order.” (*Id.* at 4). Defendant provides no compelling reason for the Court to deviate from its Prior Order under the high standard for reconsideration, discussed below.

Plaintiffs agree that they have put forward no facts to support recovery of pecuniary damages under the wrongful death cause of action and would have stipulated to dismiss the cause of action. However, Plaintiffs now state that they will not do so because Defendant filed to comply with Local Rule 7-3. (*See* Opposition at 7 (“Plaintiffs would have been willing to stipulate to the dismissal of their wrongful death claim had [Defendant] met and conferred with Plaintiffs prior to bringing this motion in compliance with this Court’s Local Rule 7-3.”)).

While the Court takes seriously that Defendant should have complied with Local Rule 7-3, it is also the case that other than this brief argument, the entirety of the Motion is a re-litigation of the same arguments on which the Court has already ruled. The parties were therefore likely at impasse, and conferring would not have resulted in

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dismissal, regardless of Plaintiffs’ representations. More to the point, the Court is flatly unwilling to waste the jury’s time in hearing a claim on which *both parties agree* there is no dispute of material fact.

Accordingly, the Motion is **GRANTED** as to Plaintiffs’ wrongful death claims. Judgment on these claims will be entered at the conclusion of the action.

However, summary judgment is inappropriate to the extent Mary Ollerton brings this case as a survival action. Defendant seeks reconsideration of the Court’s Prior Order, though it does not say so in so many words. Defendant seeks to dismiss Mary Ollerton’s survival action only because it disagrees with the Prior Order—throughout the argument regarding the survival action, there are no issues of fact raised, as one would expect in a summary judgment motion. (*See* Motion at 11-14). Defendant attempts to relitigate this argument because, it says, though “[s]ome . . . of the arguments [Defendant] advances in this submission are responsive to earlier rulings of the Court, issued at stages of the case governed by standards of review different from those applied at summary judgment,” Defendant’s “arguments on those few issues are meant as tailored responses to the Court’s prior rulings.” (*Id.* at 1).

The legal standard in a motion to dismiss and a motion for summary judgment are the same to the extent that the litigated matters involve purely legal issues, like those discussed here. A motion to dismiss may be granted because a plaintiff lacks a cognizable legal theory, and a motion for summary judgment may be granted where there is no dispute of *material* fact (that is, if a plaintiff cannot establish liability as a matter of law, no dispute of fact can be material). *See, e.g., Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (“A district court’s dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is proper if there is a ‘lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.’”) (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“[T]he requirement [on a motion for summary judgment] is that there be no *genuine* issue of *material* fact.”) (emphasis in original).

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Here, Defendant simply takes issue with the way the Court applied *Evich v. Connelly*, 759 F.2d 1432, 1434 (9th Cir. 1985), and related cases in the Prior Order. (Motion at 11-14). This was the second time Defendant attempted the same argument (*see* Prior Order at 5), and Defendant attempts to litigate similar arguments again here. This is a quintessential example of a motion for reconsideration.

A motion for reconsideration “should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (citation omitted). The movant bears the burden of proving that reconsideration is proper. *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

“Courts in this district have interpreted Local Rule 7-18 to be coextensive with Rules 59(e) and 60(b).” *Gish v. Newsom*, No. EDCV 20-755-JGB (KKx), 2020 WL 6054912, at *2 (C.D. Cal. Oct. 9, 2020) (citation omitted)). Under Local Rule 7-18, a motion for reconsideration may be made only on the grounds of: (a) a material difference in fact or law from that presented to the Court that, in the exercise of reasonable diligence, could not have been known to the party moving for reconsideration at the time the Order was entered; (b) the emergence of new material facts or a change of law occurring after the Order was entered; or (c) a manifest showing of a failure to consider material facts presented to the Court before the Order was entered. L.R. 7-18.

“No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.” *Id.* “Unhappiness with the outcome is not included within the rule; unless the moving party shows that one of the stated grounds for reconsideration exists, the Court will not grant a reconsideration.” *Gish*, 2020 WL 6054912, at *2 (citation omitted) (denying a motion for reconsideration where the plaintiffs failed to present new evidence or show a change in law).

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Defendant fails to identify newly discovered evidence, clear error, or an intervening change of authority that warrants relief. The purported errors identified by Defendant are to be decided before the Ninth Circuit, not pursuant to a Rule 59(e) motion, a Local Rule 7-18 motion, or a motion for summary judgment.

Accordingly, the Motion is **DENIED** as to Mary Ollerton's survival claims.

IT IS SO ORDERED.