UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

Plaintiff,

v.

NASSAU COUNTY, et al.

Defendants.
----------X
ALICE WOODSON WHITE, et. al.,

Plaintiffs,

v.

NASSAU COUNTY POLICE DEPARTMENT, et al.,

Defendants.
----------X

**NOTICE OF APPEAL**

CIVIL ACTION NO.: 77 Civ 1881

CIVIL ACTION NO.: 76 CV -1869

Notice is hereby given that Kathleen Brennan, Susan J. Giannone, Esther Lidstrom, Jean Marcovecchio, Michele Meyer, Lorraine McIntyre, Ellen Stein, Barbara Stemmle, Doreen Triola and Kathleen Vedder, Putative Plaintiffs - USA Decree Beneficiaries in the above-captioned action, and Mary Ann Durkin, Plaintiff in the above-captioned action hereby appeal to the United States Court of Appeals for the Second Circuit from an Order, entered August 13, 2004, denying Plaintiffs' motion for reconsideration of the Court's July 20, 2004 Order denying their motion to compel compliance with the Consent Decrees and ordering that these cases be marked closed.

Dated: September 7, 2004
Jericho, New York

SLAVIN, ANGIULO & HOROWITZ, LLP

By: /S/

MICHELE GAPINSKI (MG-7583)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

Plaintiff,

ORDER
77-CV-1881(JS)

-against-

NASSAU COUNTY, et al.,

Defendants.
----------X
ALICE WOODSON WHITE, et al.,

Plaintiffs,

76-CV-1869(JS)

-against-

NASSAU COUNTY POLICE DEPARTMENT,
et al.,

Defendants.
----------X

Appearances:

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By: John M. Gadzichowski, Esq.

SEYBERT, District Judge:

Currently pending before the Court is the Individual Plaintiffs' motion for reconsideration of this Court's July 20, 2004 Order, denying their motion to compel compliance with the

Consent Decrees and ordering that these cases be marked closed. For the reasons set forth herein, the motion is DENIED.

Motions for reconsideration are generally "'denied unless the moving party can point to controlling decisions or data that the court overlooked . . . .'" United Parcel Serv. of America, Inc. v. The NET, Inc., 185 F. Supp. 2d 274, 279 (E.D.N.Y. 2002) (quoting Shrader v. CSX Transp., Inc., 70 F.3d 255, 256-57 (2d Cir. 1995)). A motion for reconsideration is not a proper tool to repackage and relitigate arguments and issues already considered by the Court in deciding the original motion, see United States v. Gross, No. 98-CR-0159, 2002 WL 32096592, at *4 (E.D.N.Y. Dec. 5, 2002) ("A party may not use a motion to reconsider as an opportunity to reargue the same points raised previously."), nor is it proper to raise new arguments and issues in a motion for reconsideration. See Lehmuller v. Incorporated Village of Sag Harbor, 982 F. Supp. 132, 135 (E.D.N.Y. 1997).

Furthermore, "a motion for reconsideration 'is not a substitute for appeal and may be granted only where the Court has overlooked matters or controlling decisions which might have materially influenced the earlier decision.'" Wechsler v. Hunt Health Sys., Ltd., 186 F. Supp. 2d 402, 410 (S.D.N.Y. 2002) (quoting Morales v. Quintiles Transnational Corp., 25 F. Supp. 2d 369, 372 (S.D.N.Y. 1998). Hence, the standard for a motion

for reconsideration is a demanding one that should be "narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the Court." Id. (quoting Dellefave v. Access Temps., Inc., No. 99-CV-6098, 2001 WL 286771, at *1 (S.D.N.Y. Mar. 22, 2001)).

A complete recitation of the procedural and factual background of this case can be found in this Court's Order, dated July 20, 2004, and will not be restated here. In response to the Second Circuit's mandate that this Court reconsider the issues of laches and ripeness and further develop a factual record, this Court ordered the parties to submit additional written argument on those issues. Thereafter, the parties submitted legal briefs, accompanied by various declarations, affirmations and affidavits. After reviewing the submissions in their entirety, as well as revisiting the transcript of the October 11, 2002 oral argument, the Court, convinced that the factual record was developed enough to render a decision on the issue of laches and ripeness, issued the July 20, 2004 Order. Thereafter, the Individual Plaintiffs filed a motion to reconsider that Order, stating that they had not had an adequate opportunity to develop the factual record and that, therefore, the July 20, 2004 Order was premature and failed to comply with the mandate of the Second Circuit. The Court held oral argument on this motion on July 29, 2004 and, having reviewed all of the

materials submitted to the Court relating to these issues, as well as the oral arguments held on October 11, 2002 and July 29, 2004, the Court again finds that it has an adequate factual record upon which to decide the issues of ripeness and laches and, therefore, DENIES the motion for reconsideration.

The defense of laches bars a plaintiff's equitable claim "where he is 'guilty of unreasonable and inexcusable delay that has resulted in prejudice to the defendant.'" Ivani Contracting Corp. v. New York, 103 F.3d 257, 259 (2d Cir. 1997) (quoting Goodman v. McDonnell Douglas Corp., 606 F.2d 800, 804 (8th Cir. 1979)). In determining whether laches appropriately applies in this case, the Court of Appeals directed this Court to "consider factors such as whether (and when) [the Individual Plaintiffs] knew of Nassau County's alleged misconduct, whether [they] inexcusably delayed in taking action, and whether Nassau County was prejudiced by any delay." Brennan v. Nassau County, 352 F.3d 60, 64 (2d Cir. 2003) (citing Ikelionwu v. United States, 150 F.3d 233, 237 (2d Cir. 1988)). The Court considered these factors, in light of all of the evidence in the record, and determined that the equitable doctrine of laches bars the Individual Plaintiffs' claims.

Notice and Delay

There is ample evidence in the record to support this Court's conclusion that the Individual Plaintiffs' had notice of

the Defendant's alleged misconduct for over fifteen years and yet delayed in bringing the motion to compel. Moreover, there is no evidence in the record to suggest that the delay was excusable. In fact, the evidence in the record suggests that the Individual Plaintiffs had been making informal complaints, and seeking legal assistance, for years, and simply neglected to bring the issue before a court. See, e.g., Durkin Aff. ¶ 17 (stating that in 1982 or early 1983 Durkin contacted the Personal Accounting Bureau requesting that her records be corrected to reflect sick, vacation and personal days for her period of involuntary separation); Durkin Aff. ¶ 19 (stating that in August 1983, Durkin had her attorney write a letter to counsel for Defendants regarding (1) not being reinstated to Tier 1, and (2) her accumulated sick, vacation, and personal leave days for the years of involuntary separation); Durkin Aff. ¶ 22 (stating that in 1985, Durkin was reinstated to Tier 1 but she contacted officers of the PBA to inquire about her accrued time); Green Dec. ¶¶ 21-22 (stating that PDCN 230 cards were available for each officer since the early 1990s, that these cards reflect the vacation and personal time available to the officer and any carried over from the previous year, and that it was the "practice of officers to consult [their PDCN 230 card] in order to ascertain the amount of leave time available. . . ."); Pl-Movant's Mem. of Law in Resp. to the Court's Dec. 19,

2003 Order, p. 12 ("Within a year after they reported to the Police Academy, beneficiaries of the USA Consent Decree requested that the County comply with its obligations under the Consent Decree."); Green Dec. ¶ 25 & Ex. P (in 1985, a letter was written to counsel for the USA Beneficiaries, specifically addressing the concerns of P.O. Cavanaugh and addressing the general terms of the consent decrees, and stating Nassau County's position that there would be no further credit for accrued leave or retirement benefits); Green Dec. ¶ 17 and Ex. I (in November 1984 the New York State Employee's Retirement System notified the USA Beneficiaries that they had an effective date of membership for pension of September 28, 1984).

Relying on all of the evidence already in the record, the Court concludes that the Individual Plaintiffs' have had notice of the Defendant's alleged misconduct since the 1980s and failed to bring this motion for over fifteen years, without any offered excuse. Further, the Individual Plaintiffs have failed to establish any specific and particularized need for discovery relating to these issues. The Court must note that with issues of notice and delay, the information relevant is predominantly, if not exclusively, within the control of the Individual Plaintiffs and, therefore, if there is evidence to disprove notice and delay, it will not be gathered through discovery and should already have been produced to the Court.

Prejudice

"A defendant has been prejudiced by a delay when the assertion of a claim available for some time would be inequitable in light of the delay in bringing that claim. . . . Specifically, prejudice ensues when a defendant has changed his position in a way that would not have occurred if the plaintiff had not delayed." Conopco, Inc. v. Campbell Soup Co., 95 F.3d 187, 192 (2d Cir. 1996) (internal quotations omitted). Moreover, a significant period of delay is inherently prejudicial because there is a "decreased ability of the defendants to vindicate themselves" resulting from "fading memories or stale evidence." Stone v. Williams, 873 F.2d 620, 625 (2d Cir. 1989). Although there is no evidence here that the Defendant has changed its position in any way as a result of the Individual Plaintiffs' delay, the inherent prejudice that comes with the passage of time is unquestionably present here. Aside from the logical inference that the Court draws, given the inherently prejudicial nature of the passage of such long periods of time, the Court finds evidence in the record to support its conclusion that the Defendant has indeed been prejudiced here. See, e.g., Tr. of Oct. 11, 2002 oral argument 32: 17-20 (Gadzichowski states "I don't have records from - - most of the records that are involved in this piece of litigation, because it is so old."); Anderson Dec. (stating that

she searched for material relevant to this case, but that "the documents contained no information relevant to matters described in Paragraph 2 [any material pertaining to the settlement negotiations which resulted in the USA Consent Decree, the fairness hearing regarding the White Decree, and releases and waivers by the beneficiaries]"); but see Tole Aff. ¶¶ 9-11 (stating that she was assigned to the Recruitment Section of the Affirmative Action office at the relevant times and that she recalls "almost exactly" conversations that she had with Deputy Inspector Gordon Stevens about claims for retroactive benefits); Tole Aff. ¶¶ 15-16 (stating that there are documents relevant to this case in storage).

Although there is evidence that some relevant documents and testimony are still available in this case, there is also evidence that important documents are missing. The Court finds that the evidence of missing documents, coupled with the inference that arises given the passage of such a long period of time, is sufficient to support its finding that the Defendants have been prejudiced by the Individual Plaintiffs' delay in bringing the motion to compel.

Conclusion

"The determination of whether laches bars a plaintiff from equitable relief is entirely within the discretion of a trial court, and as such, will only be disturbed upon a showing

of an abuse of discretion." Conopco, 95 f.3d at 193 (internal citations omitted). Having fully reviewed all of the evidence and arguments submitted in this case, the Court finds, in exercising its discretion, that there is ample evidence to support the finding that laches properly applies to bar the Individual Plaintiffs from pursuing the motion to compel. Moreover, the Individual Plaintiffs have not produced any material to establish that the Court overlooked controlling decisions or data or to persuade the Court that further discovery is necessary to the resolution of these matters. As such, the motion for reconsideration is DENIED and the Court hereby reaffirms it's July 20, 2004 Order DENYING the motion to compel compliance with the Consent Decrees. This case shall remain CLOSED.

SO ORDERED

/s/_____
Joanna Seybert, U.S.D.J.

Dated: Central Islip, New York
August 13, 2004