

MINUTE ENTRY
FELDMAN, J.
May 27, 2004

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2004 MAY 27 PM 2:40

LORLETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FELICIANO LEJANO AND MELINDA LEJANO	*	CIVIL ACTION
VERSUS	*	NO. 00-2990
K.S. BANDAK, ASSURANCEFORENINGEN GARD, AND GARD(U.K.)LTD.	*	SECTION "F"

Before the Court is plaintiffs' motion for reconsideration or alternatively for interlocutory appeal. For the reasons that follow, the motion for reconsideration is DENIED and the motion for interlocutory appeal is GRANTED.

On April 28, 2004, the Court issued a Minute Entry denying plaintiffs' motion to re-open this case and lift the administrative stay pending arbitration. The plaintiffs now move for reconsideration of that Minute Entry or alternatively to have the issue certified for interlocutory appeal under 28 U.S.C. § 1292(b).

I. Motion for Reconsideration

Because the present motion for reconsideration was filed within ten days of entry of judgment and questions the

DATE OF ENTRY
JUN 1 - 2004

42

correctness of the Court's ruling, the Court treats it as a motion under Federal Rule of Civil Procedure 59(e). See, e.g., U.S. v. Deutsch, 981 F.2d 299 (7th Cir. 1992) (substantive motion served within ten days is treated as a motion under 59(e)); U.S. v. One Dodge Pickup, 959 F.2d 37 (5th Cir. 1992) (motion that calls into question the correctness of the court's ruling is treated as a motion under Rule 59(e)).

Because of interest in finality, motions for reconsideration may only be granted if the moving party shows there was a mistake of law or fact or presents newly discovered evidence that could not have been discovered previously.

Deutsch v. Burlington Northern R. Co., 983 F.2d 741 (7th Cir. 1993). Moreover, Rule 59 motions should not be used to relitigate old matters, raise new arguments, or submit evidence that could have been presented earlier in the proceedings. See Simon v. United States, 891 F.2d 1154, 1159 (5th Cir.1990).

The plaintiffs' arguments in this motion are the same as the arguments that they asserted in their motion to re-open and lift stay.¹ There has been no clarification of issues or new

¹ The plaintiffs' again argue that the Court's ruling in Vinod Kumar Dahiya v. Talmidge International, Ltd., et al, Civil Action No. 02-2135 (October 11, 2002), should apply to this case. The Court disagrees. Although the Court lacks jurisdiction to vacate its earlier ruling granting remand in Dahiya, after further review of the Supreme Court's ruling in

evidence that persuades the Court to vacate its earlier judgment. Thus, the Court DENIES plaintiffs' motion for reconsideration on the motion to re-open and lift stay.

II. Interlocutory Appeal

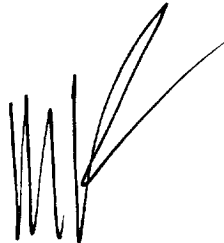
Alternatively, the plaintiffs seek an interlocutory appeal of the Court's denial of the motion to re-open and lift stay. The certification of interlocutory orders for appeal is governed by 28 U.S.C. § 1292(b). To certify an issue for interlocutory appeal, it must involve: (1) a controlling question of law, (2) substantial ground for a difference of opinion, and (3) a question whose immediate appeal from the order may materially advance the ultimate termination of the litigation. Aparicio v. Swan Lake, 643 F.2d 1109, 1110 n. (5th Cir. 1981). Section 1292(b) "is meant to be applied in relatively few situations and should not be read as a significant incursion on the traditional federal policy against piecemeal appeals." Tolson v. United States, 732 F.2d 998,1002 (D.C. Cir. 1984).

The Court grants the motion for interlocutory appeal. The

M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972) and its reasoning in Southland Corp. v. Keating, 465 U.S. 1, 10 (1984), the Court finds that its ruling in Dahiya was incorrect.

issue of whether Louisiana law invalidates arbitration agreements in a seaman's employment contract is currently under appeal in the case Lim v. Offshore Specialty Fabricators, Inc., which is virtually identical to the case before the Court.

Accordingly, plaintiffs' motion for reconsideration is DENIED. The motion for certification under 28 U.S.C. § 1292 is GRANTED.

A handwritten signature in black ink, consisting of several vertical strokes followed by a large, sweeping flourish that extends upwards and to the right.