UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNIFE RIGHTS, INC., et al.,

Plaintiffs,

-v-

CYRUS VANCE, JR., et al.,

Defendants.

11 Civ. 3918 (KBF)

MEMORANDUM DECISION & ORDER

KATHERINE B. FORREST, District Judge:

Before the Court is plaintiffs Knife Rights, Inc., John Copeland, Pedro Perez, Knife Rights Foundation, Inc. and Native Leather, Ltd.'s motion for reconsideration of the Court's September 25, 2013 Memorandum Decision & Order ("Decision," ECF No. 80) pursuant to Local Rule 6.3. (ECF No. 82.) In that Decision, the Court dismissed plaintiffs' complaint because they had no standing to challenge defendants' prohibition on the possession of switchblade and gravity knives. (See Decision 1, 11.) For the following reasons, plaintiff's motion for reconsideration is DENIED.

On June 9, 2011, over two years ago, plaintiffs filed their initial complaint. (ECF No. 1.) On December 16, 2011, defendants filed a motion for judgment on the pleadings, in which they argued, inter alia, that plaintiffs lacked standing to challenge the laws at issue here. (ECF No. 33 at 8–11.) After several months of motion practice, lasting from May 23 to September 24, 2012, plaintiffs filed an

amended complaint. (See ECF Nos. 47–61.) That amended complaint failed to cure plaintiffs' lack of standing, which this Court found fatal to their claims. As the Court noted in its Decision, no plaintiff in this case alleged a "concrete, particularized, and actual or imminent" injury that would be "redressable by a favorable ruling." (Decision 11 (citing Horne v. Flores, 557 U.S. 433, 445 (2009)).) Accordingly, the Court dismissed plaintiffs' complaint. (Id.)

Plaintiffs filed the instant motion for reconsideration on October 7, 2013. (ECF No. 82.) In order to fully consider the motion, the Court directed plaintiffs to submit a proposed amended complaint (ECF No. 85), which they did on October 28. (Proposed Am. Compl., ECF No. 88.)

"Reconsideration of a court's previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." Global View Ltd. Venture Capital v. Great Cent. Basin Exploration, L.L.C., 288 F. Supp. 2d 482, 483 (S.D.N.Y. 2003) (citations and internal quotation marks omitted). "The standard of granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995) (citations omitted). Furthermore, "a motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided." Id. This stringent standard is designed "to ensure finality and to prevent the practice of a losing party examining

a decision and then plugging the gaps of the lost motion with additional matters." Range Road Music, Inc. v. Music Sales Corp., 90 F. Supp. 2d 390, 392 (S.D.N.Y. 2000) (citations and internal quotation marks omitted).

Here, plaintiffs have failed to satisfy the demanding standard governing a grant of reconsideration. Plaintiffs do not "point to controlling decisions or data that the [Court] overlooked." Shrader, 70 F.3d at 257. Rather, their sole argument is that the Court denied their request to amend their already-amended complaint. (See Mem. of L. in Supp. of Pls.' Mot. for Reconsideration ("Pls.' Mot.") 1, ECF No. 83.) Furthermore, plaintiffs explicitly move to amend their complaint in order to address the standing deficiencies that the Court described in its Decision. (Reply in Supp. of Pls.' Mot. for Reconsideration ("Pls.' Reply") 3–5, ECF No. 87.) Their motion thus evinces an intent to "plug[] the gaps of [their] lost motion" by inserting new allegations related to standing—exactly the type of situation for which reconsideration is not designed. See Range Road Music, 90 F. Supp. at 392; see also Virgin Atl. Airways, Ltd. v. National Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992) ("The major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.") (citation and internal quotation marks omitted).

Even if plaintiffs' motion to amend the complaint were an appropriate basis on which to move to reconsider the Decision, the Court must nonetheless deny plaintiffs' motion. As the Court noted on October 29 and 30, 2013, discovery in this case has long been closed. (See ECF Nos. 89, 91.) Accordingly, the Court instructed

the parties to indicate whether plaintiffs' proposed second amended complaint contained new factual material as to whether additional discovery would be required (ECF No. 89), which the parties did on November 8, 2013. (ECF Nos. 92, 93.) Plaintiff also filed a motion for leave to respond to defendants' statement ("Pls.' Mot. to Resp.", ECF No. 94), which the Court has reviewed and denies as moot, as set forth below.

The Court may deny leave to amend a complaint pursuant to Rule 15(a) where amendment would cause delay combined with prejudice to the nonmoving party. See, e.g., Magnuson v. Newman, No. 10 Civ. 6211 (JMF), 2013 WL 5942338, at *2 (S.D.N.Y. Nov. 6, 2013). Furthermore, "[c]ourts have typically found amendments to be prejudicial in circumstances where discovery has been completed." Id. (citation and internal quotation marks omitted); see also Krumme v. WestPoint Stevens Inc., 143 F.3d 71, 87 (2d Cir. 1998) (denying leave to amend where "the proposed amendments [were] based on facts [previously] known to Defendant"). Finally, permitting a proposed amendment is "especially prejudicial" in a situation in which discovery has already been completed and one party has already filed a motion for summary judgment. Ansam Assocs., Inc. v. Cola Petroleum, Ltd., 760 F.2d 424, 446 (2d Cir. 1985).

The parties here dispute exactly the extent to which the proposed second amended complaint alters the underlying legal theories and the need for further discovery. (See ECF Nos. 92–94.) No matter: plaintiffs' second amended complaint alters the case sufficiently to cause prejudice to defendants.

According to plaintiffs, the proposed complaint "does not contain any new factual materials as to which no discovery was taken," because it "narrows" rather than shifts their claims: plaintiffs now omit allegations regarding the prohibition on "switchblade" knives and instead focus on the "gravity" knife ban that defendants actually enforced against plaintiffs. (Pls.' Statement Regarding Further Needed Discovery 1, ECF No. 92.) In their submissions, plaintiffs argue that the proposed second amended complaint merely provides additional details to bolster their claims, and that discovery has already been taken as to each of the broad topics on which they have provided additional detail. (Id. at 1–2.)

However, plaintiffs do not dispute defendants' argument that at least some new discovery would be required to address certain allegations in the second amended complaint. For example, while the amended complaint alluded generally to plaintiff Copeland and Perez's inability to carry their desired knives, the proposed second amended complaint makes new allegations describing plaintiffs' need for a specific type of knife. (Compare, e.g., Am. Compl. ¶¶ 12, 28, 36, ECF No. 61, with Proposed Am. Compl. ¶¶ 56, 61.) Accordingly, defendants would need to serve additional interrogatories and requests to admit upon the plaintiffs as well as to depose Copeland and Perez, who have not yet been deposed in this matter. (Defs.' Letter 2, ECF No. 93.) Plaintiffs' motion to respond to defendants' statement does not dispute that proposition. (See generally Pls.' Mot to Resp.)

Furthermore, the changes to plaintiffs' claims, even where they do not make entirely new allegations, are nonetheless dramatic enough to cause prejudice to

defendants. For example, the proposed second amended complaint alters its focus from the improper enforcement of New York Penal Law § 265.01 against "common folding knives" to the enforcement of the law against "locking-blade folding knives." (Compare, e.g., Am. Compl. ¶¶ 3–6, 23, 32, 39, with Proposed Am. Compl. ¶¶ 4, 5, 23, 57, 62, 83.) Plaintiffs argue that this change merely narrows their claim such that the case no longer concerns switchblades, and that discovery has already occurred with respect to the "basic issue" in both complaints: whether the Penal Law is void for vagueness. (Pls.' Mot to Resp. 2.) Plaintiffs miss the point. "While the element of a locking blade mechanism was peripherally addressed in the deposition of plaintiffs' knife expert, it was not examined as it would have been had the 'core allegation' been against [locking-blade folding knives], as it is in the Proposed Complaint." (Defs.' Letter 2 (emphasis added).) That is sufficient to show prejudice. See, e.g., iMedicor, Inc. v. Access Pharms., Inc., 290 F.R.D. 50, 53 (S.D.N.Y. 2013) (denying a motion to amend because the defendant there "would have pursued different and additional discovery if it knew that plaintiff's proposed additional claims were part of the complaint").

The Court need conduct no further analysis here. Discovery has long been closed. See Magnuson, 2013 WL 5942338, at *2. Not only have defendants filed a summary judgment motion, but the Court has also granted it. See Ansam Assocs., 760 F.2d at 446. By inserting allegations specific to standing—the basis on which the Court previously granted summary judgment against plaintiffs—plaintiffs here have sought to "plug[] the gaps of [their] lost motion." Range Road Music, 90 F.

Supp. 2d at 392. Granting a leave to amend is inappropriate under these circumstances.

For these reasons, plaintiffs' motion for reconsideration (ECF No 82) is DENIED. Because plaintiffs' motion for leave to respond to defendants' statement (ECF No. 94) would not alter that result, that motion is DENIED as moot.

The Clerk of Court is directed to close the motions at ECF Nos. 82 and 94.

SO ORDERED.

Dated: New York, New York
November 20, 2013

KATHERINE B. FORREST
United States District Judge