IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE COMPANY,	:	
Plaintiff,	:	**CIVIL ACTION**
v.	:	
STARLIGHT BALLROOM DANCE CLUB, INC. and PHILIP CHAN,	:	
Defendants.	:	**No. 04-3393**

MEMORANDUM AND ORDER

Schiller, J. **December 21, 2004**

By Order dated November 16, 2004 ("the November 16 Order"), this Court denied Defendants' motion to open the default judgment entered against them on September 27, 2004. Defendants now seek reconsideration of the November 16 Order. For the following reasons, Defendants' motion is denied.

I. STANDARD OF REVIEW

Motions for reconsideration should be granted "sparingly," *Cont'l Case Co. v. Diversified Indus., Inc.*, 884 F. Supp. 937, 943 (E.D. Pa. 1995), and only when the moving party establishes one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not previously available; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (citations omitted). A motion for reconsideration "is not to be used merely as an opportunity to reargue issues that the court has already analyzed and determined." *The Limited,*

Inc. v. Cigna Ins. Co., 228 F. Supp. 2d 574, 582 (E.D. Pa. 2001) (citation omitted).

II. DISCUSSION

Nationwide brought this action seeking a declaratory judgment that the insurance policy ("the Policy") it issued to Defendants was void for misrepresentation. According to Nationwide, Defendants never notified it that the Starlight club was also used for night-time dance parties, at which alcohol was served. Nationwide claimed that since it insured only a ballroom dance program, Defendants' night-time uses of the Starlight club, if known to Nationwide, would have changed its risk calculation and caused it not to have issued the Policy on the same terms. (Frey Aff. ¶ 5.) In their motion to set aside the default judgment, Defendants admitted that they held night-time dance parties, made no allegations that they had informed Nationwide of these parties, and made no allegation that these misrepresentations were immaterial to the Policy's issuance. Therefore, balancing the factors set forth by the Third Circuit for determining when to set aside a default judgment, *see Resolution Trust Corp. v. Forest Grove*, 33 F.3d 284, 288 (3d Cir. 1994), the Court denied Defendants' motion in part because Defendants had not alleged a prima facie case that they had a meritorious defense to Nationwide's action. *See Emcasco Ins. Co. v. Sambrick*, 834 F.2d 71, 74 (3d Cir. 1987) (requiring, for showing of meritorious defense, that allegations of movant's "proffered answer, if established at trial, [should] constitute a complete defense to the action"); *see also $55,518.05 in U.S. Currency*, 728 F.2d at 195 (showing of a meritorious defense requires allegation of "specific facts beyond simple denials or conclusionary statements").

In their present motion for reconsideration, Defendants, for the first time, raise the possibility that Zhaohua Lee Deng, Defendants' insurance broker, is actually an agent either of Nationwide or

of K&K Insurance, Nationwide's claim administrator. Defendants assert that they informed Deng of the night-time dance parties and of their service of alcohol. Although not explicitly stated, Defendants appear to argue that if Deng is an agent of Nationwide, then Deng's knowledge could be imputed to Nationwide. *See, e.g.*, *Mercy Catholic Med. Ctr. v. Thompson*, 380 F.3d 142, 160 (3d Cir. 2004) (stating that generally, "a party is charged with knowledge of what its agents know") (citation omitted); *Higgins v. Shenango Pottery Co.*, 256 F.2d 504, 509 (3d Cir. 1958) (citing same rule and noting that "[i]n Pennsylvania this rule is limited to 'knowledge acquired in the course of the business in which the agent was employed'") (quotation omitted); *see also* RESTATEMENT (SECOND) OF AGENCY § 272 (stating that principal's liability is "affected by the knowledge of an agent concerning a matter as to which he acts within his power to bind the principal or upon which it is his duty to give the principal information").

To refute Defendants' contentions, Nationwide has now submitted three pieces of evidence that, it asserts, resolve the question of Deng's affiliation. First, Nationwide sent an independent insurance adjuster to Deng's office on December 3, 2004. The adjuster met with Deng, and Deng stated that "I am an insurance broker and agent. I do business as Deng's Insurance Services. That is a sole proprietorship. I am not an agent of Nationwide or K&K Insurance Group." (Bergmann Aff. Ex. E.) Second, Nationwide has submitted an affidavit from Todd Bixler, the Executive Vice President and Chief Operating Officer of K&K Insurance. Bixler states that Deng is not an agent of, or affiliated with, K&K. (Bixler Aff. ¶ 4.) Third, Nationwide has submitted an affidavit from Mark Forkner, the Director of Business Development for Nationwide Health Plans-Special Risks. Forkner affirms that he has "personal knowledge, based on Nationwide's records, as to who is a Nationwide agent," and that "Mr. Lee Deng is not an agent of Nationwide, has no agency

relationship whatsoever with Nationwide, and is not affiliated with Nationwide in any way." (Forkner Aff. ¶¶ 1, 2, 4.)

Regardless of the proffered evidence, however, the general rule of Pennsylvania law is that when an insured enlists an insurance broker to procure insurance without specifying an insurer, the broker is an agent of the insured, not the insurer. The Pennsylvania Supreme Court has held that "[w]here a person desiring to have his property insured applies not to any particular company or its known agent, but to an insurance broker, permitting him to choose which company shall become the insurer, a long line of decisions has declared the broker to be the agent of the insured; not of the insurer." *Taylor v. Crowe*, 282 A.2d 682, 683 (Pa. 1971); *see also Kairys v. Aetna Cas. & Sur. Co.*, 461 A.2d 269, 275 (Pa. Super. Ct. 1983) (concluding that broker was not agent of insurer because broker was not an "authorized representative" of insurer and because insured did not request any particular company to provide the insurance); *MIC Prop. & Cas. Ins. Corp. v. Crawford*, Civ. A. No. 01-0714, 2001 U.S. Dist. LEXIS 24212, at *8 (E.D. Pa. 2001) (holding that broker was agent of insured where insured directed broker "to obtain insurance without specifying a particular insurer"). In this case, Defendants stated in their motion to open the default judgment that "Mr. Chan procured all of his insurance both business and person[al] through the Deng Agency and they were fully cognizant of the facts of his business and personal circumstances." (Defs.' Mot. to Open Default Judgment ¶ 16.) Defendants have never alleged that they instructed Deng to purchase insurance specifically from Nationwide; rather, Defendants informed Deng that they needed insurance and left it up to him to determine from whom the insurance would be purchased. (*Id.*) Accordingly, it is clear under Pennsylvania law that Deng acted as Defendants' agent, not Nationwide's. *See, e.g.*, *Rich Maid Kitchens, Inc. v. Pa. Lumbermens Mut. Ins. Co.*, 641 F. Supp. 297, 305 (E.D. Pa. 1986)

(finding broker to be agent of insured, not insurer, where broker had a personal relationship with insured "for many years and has handled most of their insurance business for many years," insured never requested that broker place the insurance with any specific company, and broker was not authorized agent for insurer).[1] Because Defendants' allegations could only establish that Deng acted as Defendants' agent, not Nationwide's, any information that Deng had regarding Defendants' night-time dance parties cannot be imputed to Nationwide under an agency theory. Therefore, Defendants have again failed to meet the standard for asserting a meritorious defense to Nationwide's declaratory judgment action.

Defendants also attempt to argue that Nationwide was not prejudiced by the default and that Defendants' culpable conduct did not cause the default. These matters, however, have already been decided by this Court, and Defendants do not argue that there has been an intervening change in the controlling law, present any new evidence regarding these issues, or claim that this Court made a clear error of law or fact. *Max's Seafood Cafe*, 176 F.3d at 677. As previously noted, a motion for reconsideration is not an opportunity for the moving party to reargue issues already analyzed by this Court. *Glendon Energy Co. v. Borough of Glendon*, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993) (holding that "a motion for reconsideration addresses only factual and legal matters that the Court may have overlooked . . . . It is improper on a motion for reconsideration to 'ask the Court to rethink

[1] This general rule can be overcome if the insurer has authorized the broker to act as its agent. *See, e.g.*, *Joyner v. Harleysville Ins. Co.*, 574 A.2d 664, 668 (Pa. Super. Ct. 1990) (stating that "for a broker to be found to be an agent of the insurer there must be some evidence which could be inferred as an authorization by the company to the broker"); *Sands v. Granite Mut. Ins. Co.*, 331 A.2d 711, 714-16 (Pa. Super. Ct. 1974) (holding that broker was agent of insurer where he was held out to be the "authorized representative" of the insurer). In the instant case, Defendants have never alleged that Nationwide authorized Deng to act as its agent, and furthermore, Nationwide expressly denies that possibility. (Forkner Aff. ¶¶ 1, 2, 4.)

what [it] had already thought through.'") (quotation omitted).

III. CONCLUSION

For the reasons set forth above, Defendants' motion is denied. An appropriate Order follows.

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ORDER

AND NOW, this **21st** day of **December, 2004**, upon consideration of Defendants' Motion to Reconsider this Court's Order Dated November 16, 2004, Plaintiff's response thereto, and for the foregoing reasons, it is hereby **ORDERED** that Defendants' Motion for Reconsideration (Document No. 13) is **DENIED**.

BY THE COURT:

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Berle M. Schiller, J.