

Appell v. Giaccone, et al. CV-96-060-M 01/26/98  
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Leonard Appell

v.

Civil No. 97-60-M

Nicholas Giaccone, Christopher O'Connor,  
and Town of Hanover, New Hampshire

**O R D E R**

The Town of Hanover moves the court to reconsider part of its order dated December 11, 1997, dismissing claims against the individual defendants but denying the motion to dismiss as to claims against Hanover based on allegations of malicious prosecution. In its prior order, the court noted that Hanover had cited no authority to support its argument that prosecutorial immunity barred plaintiff's respondeat superior claim; that the court found no New Hampshire law on point; and that decisions in other states seemed in conflict. The court also pointed out that Hanover had not interposed state law municipal immunity as a defense. Hanover's motion for reconsideration attempts to fill the gaps in its original motion to dismiss.

Motions to reconsider generally are aimed at reconsideration of issues previously raised and argued in a party's pleadings and are not available to raise new issues or arguments for initial consideration. See Jorge Rivera Surillo v. Falconer Glass Indus., 37 F.3d 25, 29 (1st Cir. 1994); see also Crosby Yacht Yard, Inc. v. Yacht "Chardonnay", 164 F.R.D. 135, 136-37 (D. Mass. 1996). When plaintiff is proceeding pro se, as here,

consideration of dispositive arguments in the context of a motion to reconsider may cause confusion about the consequences of the motion. In fact, plaintiff has not filed an objection to Hanover's motion.

The issues raised and legal argument presented by Hanover in its motion to reconsider may well be meritorious. If granted, the motion would be dispositive as to plaintiff's state law claims. Dispositive arguments would be more appropriately raised in a motion to dismiss or for summary judgment. Accordingly, Hanover's motion for reconsideration (document no. 18) is denied **without prejudice to refiling as a dispositive motion.**

**SO ORDERED.**

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Steven J. McAuliffe  
United States District Judge

January 26, 1998

cc: Leonard Appell  
Charles P. Bauer, Esq.