

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Roderick Webber, <i>Pro Se</i> Plaintiff, v. Edward Deck, et al. Defendants	Case No. 1:18-cv-00931-LM (Chief Judge Landya McCafferty)
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DEFENDANTS TRUMP ORGANIZATION, LLC AND THE TRUMP ORGANIZATION, INC.’S OPPOSITION TO PLAINTIFF’S RULE 59(e) MOTION TO RECONSIDER ORDER

Defendants The Trump Organization, Inc. and Trump Organization, LLC (together, “Trump Organization Defendants”), submit this Opposition to Plaintiff Roderick Webber’s Motion to Reconsider Order (“Motion”). As set forth below, the Court should deny Plaintiff’s motion because he has failed to demonstrate the Court committed a manifest error.

I. Standard of Review

To succeed on his Rule 59 motion to reconsider, Webber must meet a high bar to (1) establish that the Court committed a manifest error of law; or (2) present the Court newly discovered evidence. *Jorge Rivera Surillo & Co. v. Falconer Glass Indus.*, 37 F.3d 25, 29 (1st Cir. 1994). The Court’s review is further limited to *the reconsideration* of issues previously before the Court. *Id.* It should not consider arguments raised for the first time in a motion to reconsider that could have been raised before. *Id.*

II. Argument

The Court must deny Webber’s motion for three reasons. First, he has not demonstrated that the Court made a manifest error. Second, Webber raises new arguments based on existing

evidence that he could have and should have made in his objection to the motion to dismiss.

Third, Webber's new arguments fail on their merits.

A. The Court did not commit a manifest error of law by excluding information in appendixes.

Webber's argument that the Court should have considered all of the material listed in his 31-pages of Appendixes fails. Webber bore the burden to make a *prima facie* showing that the Court had jurisdiction over the Trump Organization Defendants. *Sawtelle v. Farrell*, 70 F.3d 1381, 1387 (1st Cir. 1995). That burden required him to identify *specific* facts to support the Court's exercise of jurisdiction—he could not rest solely on his pleadings. *Forest-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138, 145 (1st Cir. 1995). Webber's assertion that the Court should have sifted through numerous vague descriptions of internet sources, news articles, and YouTube videos, without explicitly identifying the sources with dates, authors, or hyperlinks ignores this burden.

The First Circuit has repeatedly observed that “[o]verburdened trial judges cannot be expected to be mind readers.” *McCoy v. Mass. Inst. of Tech.*, 950 F.2d 13, 22 (1st Cir. 1991). If Webber could make a *prima facie* showing of personal jurisdiction, he should have done so by explicitly identifying those facts in objection to the motion to dismiss. He did not. Accordingly, the Court did not make a manifest error of law, and Webber's Motion should be denied.

B. The Court should not consider Webber's new arguments.

Webber raised for the first time in his Motion two new arguments. First, he asserts that a C-SPAN video cited in another defendant's Answer shows Candidate Trump promoting the Trump Organizations during the No Labels Event, thus establishing personal jurisdiction of the Trump Organization Defendants. *See* Motion, ECF No. 157 at 13. Second, Webber argues that personal jurisdiction exists over the Trump Organization Defendants because of the alleged

intermingling of funds between the Trump Organization Defendants and the Trump Campaign.

Id.

Webber could have raised these arguments in objection to the Trump Organization Defendants' Motion to Dismiss. These arguments do not rely on newly discovered evidence, but on information readily available to Webber when the Trump Organization Defendants made their motion. Because Webber failed to raise these arguments in his objection, he has waived them, and the Court should not consider them now. *Quality Cleaning Prods. R.C. v. SCA Tissue N. Am., LLC*, 794 F.3d 200, 208 (1st Cir. 2015) ("a Rule 59(e) motion does not provide a vehicle for a party to... introduce new evidence or advance arguments that could and should have been presented to the district court prior to judgment.").

C. Webber's arguments fail on their merits.

Even if the Court considers Webber's waived arguments, Webber has still failed to establish personal jurisdiction over the Trump Organization Defendants. First, Candidate Trump's alleged references to his the Trump Organization Defendants during his speech at the No Labels event do not satisfy the minimum contacts analysis for specific personal jurisdiction. Candidate Trump's discussion of his business experiences and successes served to promote himself as a candidate for President of the United States. They did not promote the Trump Organization Defendants. The Trump Organization Defendants could not have expected to be haled into court in New Hampshire on this basis. *See Phillips v. Prairie Eye Ctr.*, 530 F.3d 22, 28 (1st Cir. 2008).

Second, Webber's generalized reliance on the FEC records does not overcome his repeated, specific allegations that Defendant Deck was employed by and acting on behalf of the Trump Campaign. The alleged payments between the Trump Campaign and the Trump

Organization Defendants do not establish the alter-ego theory to which Webber alludes. *See e.g., United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1095 (1st Cir. 1992) (“Successful invocation of the alter ego doctrine requires a showing that businesses, although separately incorporated, have been operated in so imbricated a manner as to justify a reasonable perception that they were one and the same.”).

III. Conclusion

For the reasons state above, the Court must deny Webber’s Motion to Reconsider.

Respectfully submitted,

**THE TRUMP ORGANIZATION, INC. and
TRUMP ORGANIZATION, LLC**

By Their Attorneys,

SHEEHAN PHINNEY BASS & GREEN, P.A.

Dated: February 3, 2020

By: /s/ Peter S. Cowan

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2020, I served the foregoing on the *Pro Se* Plaintiff and Defendants’ Counsel of Record via the Court’s ECF system.

/s/ Peter S. Cowan

Peter S. Cowan