

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND**

In re: JOCK WEST
Debtor

BK No: 10-14653
Chapter 7

M2MULTIHULL, LLC,
Plaintiff

A.P. No. 11-01021

v.

Not For Publication

JOCK WEST, SHOWTIME, LLC, and
SHOWTIME of NEWPORT, LLC,
Defendants.

**MEMORANDUM AND ORDER DENYING
MOTION TO RECONSIDER**
(this relates to Doc. #270 and #260)

Plaintiff M2Multihull, LLC asks the Court to reconsider its order entered on September 10, 2013 (the “Order”), which denied Plaintiff’s motion for leave to file a third amended complaint, and Defendant Jock West (“West”) objects. The Court previously explained in its Order that there simply is no pending complaint to amend. When the Court dismissed Plaintiff’s second amended complaint and entered judgment in favor of West, the complaint effectively ceased to exist – it was, in the terminology of the First Circuit, a *dead letter*. See *Fisher v. Kadant, Inc.*, 589 F.3d 505, 509 (1st Cir. 2009).

Plaintiff argues that the Court should reconsider its Order because Plaintiff filed its motion to amend before final judgment was entered. This argument is so obviously misplaced that it underscores Plaintiff’s lack of understanding of the procedural posture of this adversary proceeding after the Court entered judgment in favor of West.¹ The following recitation of the

¹ A default judgment against Defendants Showtime, LLC and Showtime of Newport, LLC was entered on February 1, 2012.

relevant chronology of this adversary proceeding will make this crystal clear:

- February 28, 2012 – Plaintiff filed its second amended complaint objecting to the discharge of West (“Second Amended Complaint”). *See* Doc. #197.

- May 11, 2012 – West moved to dismiss the Second Amended Complaint. *See* Doc. #200.

- June 8, 2012 – Plaintiff objected to the motion to dismiss. *See* Doc. #204.

- August 16, 2012 – The Court held a hearing on the motion to dismiss. That same day, the Court entered an order granting the motion to dismiss, *and the Court entered judgment in favor of West*. *See* Doc. ## 227 and 228 (the “Dismissal Order and Judgment”).

- August 29, 2012 – Plaintiff filed a notice of appeal, averring in that notice that it was appealing “the Order and Judgment . . . entered in this adversary proceeding on the 16th day of August, 2012.” *See* Doc. #233. That same day, Plaintiff filed an election to proceed with its appeal before the United States District Court for the District of Rhode Island. *See* Doc. #234.

- February 26, 2013 – While its appeal was pending in District Court, Plaintiff filed in this Court its motion seeking leave to file a third amended complaint. *See* Doc. #249. Nowhere in its motion did Plaintiff reference the pending appeal.

- February 27, 2013 – West objected to Plaintiff’s motion to amend, arguing that because judgment had been entered and the appeal had been taken Plaintiff’s motion was not well-grounded in law, was frivolous, and was cause for imposition of sanctions. *See* Doc. #252.

- April 2, 2013 – The Court entered an order denying Plaintiff’s motion to amend without prejudice for lack of jurisdiction in light of the pending appeal of the Dismissal Order and Judgment. *See* Doc. #255.

- July 15, 2013 – The District Court entered an order affirming this Court’s Dismissal Order and Judgment. *See* Doc. #265. Plaintiff did not appeal from the District Court’s order.

- July 31, 2013 – Plaintiff filed a renewed motion for leave to file a third amended complaint (“Renewed Motion to Amend”), attached as Exhibit B the District Court’s order affirming this Court’s Dismissal Order and Judgment, and argued that based on the District Court’s order “jurisdiction has once again been vested in this Court.” *See* Doc. #257.

- August 19, 2013 – West objected to the Renewed Motion to Amend, reiterating that because the Second Amended Complaint was dismissed and judgment was entered against Plaintiff, the Renewed Motion to Amend was not well-grounded in law, was frivolous, and was cause for imposition of sanctions. *See* Doc. #258.

- August 30, 2013 – West filed a motion seeking sanctions against Plaintiff’s counsel, pressing its contention that sanctions are warranted relative to Plaintiff’s Renewed Motion to Amend. *See* Doc. #259. Plaintiff filed an objection to that motion. *See* Doc. #262.

- September 10, 2013 – The Court entered the Order denying Plaintiff’s Renewed Motion to Amend. *See* Doc. #260.

- September 17, 2013 – This Court docketed in this adversary proceeding the July 15, 2013, District Court order affirming this Court’s Dismissal Order and Judgment. *See* Doc. #265.

- September 20, 2013 – Plaintiff filed the instant motion asking the Court to reconsider its denial of the Renewed Motion to Amend (“Motion to Reconsider”). *See* Doc. #270.

- September 23, 2013 – West objected to the Motion to Reconsider. *See* Doc. #271.

In the Motion to Reconsider, Plaintiff asserts that “in view of the recent filing of a Final Judgment (DE 265)” in the District Court appeal, it should now be permitted the opportunity to file a third amended complaint because Plaintiff filed its Renewed Motion to Amend before final judgment was entered. This Court’s Dismissal Order and Judgment was entered in this adversary proceeding on August 16, 2012, and Plaintiff’s Renewed Motion to Amend was filed July 31,


2013. The docket entry (Doc. #265) to which Plaintiff refers in its Motion to Reconsider is merely this Court's entry into the record in this adversary proceeding of the District Court's order entered in that Court on July 15, 2013, and subsequently transmitted to this Court, affirming this Court's August 16, 2012 Dismissal Order and Judgment. The date of the docketing in this adversary proceeding of the order of the District Court is irrelevant to the issue of whether Plaintiff, following disposition of its appeal against Plaintiff and in favor of West, may now yet again amend the complaint underlying this adversary proceeding. Rather, it is the Dismissal Order and Judgment entered by this Court that is controlling. Only if the District Court had vacated the Dismissal Order and Judgment would Plaintiff's Second Amended Complaint have been resurrected.

Plaintiff elected its remedy to appeal the Dismissal Order and Judgment, and it lost that appeal, from which no further appeal has been filed by Plaintiff. Plaintiff cannot now endeavor to correct any deficiencies in the Second Amended Complaint resulting in its dismissal by seeking to amend the complaint once more. Plain and simple, the appeal having been resolved against Plaintiff, there remains no pendent complaint to amend. It is clear that because Plaintiff's Renewed Motion to Amend was filed after the entry of judgment, this Court lacks jurisdiction to grant Plaintiff leave to amend a complaint that no longer exists. *See Fisher*, 589 F.3d at 509 (“[O]nce judgment has entered, the case is a dead letter, and the [trial] court is without power to allow an amendment to the complaint because there is no complaint left to amend.”).

Defendant West's Objection to Motion for Reconsideration is SUSTAINED and Plaintiff's Motion to Reconsider Denial of Motion to Amend is DENIED.

Dated: this 11th day of October, 2013.

By the Court,

 10/11/2013

Diane Finkle
Diane Finkle
U.S. Bankruptcy Judge