

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Gordon P. Gallagher

Civil Action No. 24-cv-0653-GPG-STV

ASCENT CLASSICAL ACADEMIES,

Plaintiff,

v.

ASCENT CLASSICAL ACADEMY CHARTER SCHOOLS, INC. and
LANDS' END, INC. a/k/a LANDS END DIRECT MERCHANTS, INC.,

Defendants.

ORDER

Before the Court is Plaintiff's Rule 59(e) Motion for Reconsideration of Order [ECF No. 76] Granting Motion to Dismiss Three Federal Claims (D. 83).

Under Federal Rule of Civil Procedure 59(e), a litigant may file a motion to alter or amend a judgment within 28 days after the entry of judgment. A motion for reconsideration is treated as a motion to alter or amend the judgment under Rule 59(e) when filed within the time period prescribed by Rule 59(e). *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (citation omitted). Relief is available for a motion to reconsider under Rule 59(e) where (1) there has been an intervening change in the controlling law; (2) new evidence was previously unavailable; or (3) there is a need to correct clear error or prevent manifest injustice. *Id.*

First, Plaintiff argues that the "Court committed clear error in its interpretation of the management agreement between the parties by relying on extrinsic evidence" (D. 83 at 1). Notably, Plaintiff presents no argument regarding the alternative basis for the Court's

interpretation of the Agreements based on the “limited termination provisions requiring no change in the schools’ identification” suggesting “that the parties intended the schools to be able to identify themselves in the same ways after the end of the contract” as they did before (D. 81 at 7). Because this provides an alternative basis for the Court’s decision, Plaintiff’s arguments would do nothing to disturb the Court’s conclusion even if they were correct.

The Court disagrees that it relied on evidence of the sort barred by the parol evidence rule (*see* D. 83 at 6). In interpreting a contract, it is the Court’s role to determine the meaning of the words and how they are being used “based only upon the information contained within its four corners.” *Neves v. Potter*, 769 P.2d 1047, 1054 (Colo. 1989). Yet, in interpreting the plain and generally accepted meaning of the words used, courts are permitted to consider information to determine that meaning from usage and guides to usage, such as dictionaries. *Hecla Min. Co. v. New Hampshire Ins. Co.*, 811 P.2d 1083, 1091 (Colo. 1991). The Court’s observations rely on dictionary definitions and word usage clues from within the Agreements themselves without straying into parol evidence (D. 81 at 6).¹ The Agreements set out the names and indicate how they can be used, including indicating that they are the names for institutions, which is therefore not an extrinsic fact.² In determining the meaning of the contract, the Court can therefore look to this specific context, as it has done.

¹ Notably, “the parol evidence rule is subject to a great number of well-recognized exceptions.” *Am. Crystal Sugar Co. v. Nicholas*, 124 F.2d 477, 480 (10th Cir. 1941) (citations omitted). “One is that parol evidence may be received, not to contradict or vary the terms of the written contract, but to explain how it is to be carried out.” *Id.* None of the information that Plaintiff references in its Motion does more than inform how the Agreement was to be carried out.

² The evidence that Plaintiff cites regarding the University of Texas being known as Texas supports the Court’s conclusions because it affirms the generally known principle that “[u]nvaried reproduction of a full legal name is not and has never been how school names are used” as the Court stated (D. 81 at 6). *See* Fed. R. Evid. 201(b)(1) and (e).

Second, Plaintiff argues that “the Court committed clear error by giving [the schools] an unfettered license to use an ‘identified name,’ rather than analyzing the specific trade names and trademarks—legal terms of art that the Parties used in the Agreement” (D. at 83 at 1). This argument is contrary to the Court’s Order, which does not grant or imply that Defendants have a license (D. 81 at 5–7). The Agreements provide a covenant not to sue or something closely analogous, which is different from a license. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 99–100 (2013). In a “covenant not to sue, the plaintiff has voluntarily relinquished her claims against the tortfeasor, presumably in exchange for something of value.” *Garcia v. Est. of Arribas*, 363 F. Supp. 2d 1309, 1317 (D. Kan. 2005). As the Court found, Plaintiff’s “trademark claims unambiguously run contrary to the rights guaranteed to [the schools] in the contracts by seeking to prevent the schools’ ability to use their names freely” (D. 81 at 6). And Plaintiff’s “argument that it maintains any right to prevent the schools from using the identified names or portions thereof as school names through the assertion of intellectual property rights or otherwise is untenable” (*id.*). Regardless of whatever rights Plaintiff and Defendants have, which the Court did not and need not address, the Court merely found Plaintiff cannot sue Defendants for using the names as alleged. What the Agreements provide the schools is a “right to continue to use their names without harassment” by Plaintiff “even after contract termination” (D. 81 at 7).

Finally, Plaintiff argues that the grant of a license “would cause a manifestly unjust” result (D. 81 at 1) and “has all but stripped [Plaintiff’s] ownership of its trademarks and awarded them to” the schools (*id.* at 18). This argument is apropos of nothing because, as indicated above, the Court has done nothing to alter the Parties’ ownership rights.

Accordingly, it is ORDERED that Plaintiff's Rule 59(e) Motion for Reconsideration of Order [ECF No. 76] Granting Motion to Dismiss Three Federal Claims (D. 83) is DENIED. It is further ORDERED that Plaintiff's Unopposed Motion to Exceed Page Limit (D. 84) is GRANTED.

DATED April 2, 2025.

BY THE COURT:

A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line and a small flourish.

Gordon P. Gallagher
United States District Judge