

STATE OF VERMONT

SUPERIOR COURT
Lamoille Unit

CIVIL DIVISION
Docket No. 22-CV-1922

STOWE AVIATION, LLC and,
STOWE AIRPORT INVESTMENT, LP
Plaintiffs

v.

STATE OF VERMONT AGENCY OF
COMMERCE AND COMMUNITY DEVELOPMENT,
Defendant

DECISION: Post-judgment Motion (Motion #20)

Stowe Aviation, LLC and Stowe Airport Investment, LP (“SA”) have moved for leave to file a second amended complaint, which the State of Vermont Agency of Commerce and Community Development (“ACCD”) opposes. This motion comes after the court granted ACCD’s motion to dismiss SA’s first amended complaint for failure to state a claim for which relief could be granted and dismissed the case. For the reasons stated below, the court denies SA’s motion.

SA initially moved for leave to file a second amended complaint pursuant to V.R.C.P. 15 on May 11, 2023. However, when the court granted ACCD’s motion to dismiss SA’s first amended complaint on May 3, the dismissal was a final order that disposed of all claims pursuant to V.R.C.P. 41(b)(3). Thus, the case was closed. Because the case was closed when SA filed their motion for leave, there was no operative complaint to amend. See *Childs v. Valente*, Case No. 2007-333, 2008 WL 2793869, at *2 (Vt., Apr. 1, 2008) (unpub. mem.) (“once a final judgment has been entered and the case dismissed with prejudice, there is essentially nothing left for the court to act on in response to a motion to amend”). When ACCD pointed this out in its opposition, SA filed a reply in which it sought the same relief in reliance on V.Rs.C.P. 59(e) and 60.

The court concludes that SA does not qualify for the relief sought in Rule 59 or Rule 60. SA is correct that the court has broad discretion to alter or amend a judgment pursuant to Rule 59(e). Reply at 3–4. However, “[t]he narrow purpose of Rule 59(e) is to allow the superior court to fix its mistakes immediately following the entry of judgment.” *Gregory v. Poulin Auto Sales, Inc.*, 2012 VT 28, ¶ 19, 191 Vt. 611 (citing *N. Sec. Ins. Co. v. Mitec Elecs., Ltd.*, 2008 VT 96, ¶ 41, 184 Vt. 303). The Vermont Supreme Court recently reaffirmed this principle in *Sutton v. Purzycki*, 2022 VT 56, ¶ 67, when it wrote: “Rule 59(e) motions to alter or amend judgment allow ‘the trial court to revise its initial judgment if necessary to relieve a party against the unjust operation of a record resulting from the mistake or inadvertence of the court and not the fault or neglect of a party.’” (quoting *N. Sec. Ins. Co.*, 2008 VT 96, ¶ 41); see also *Drumheller v. Drumheller*, 2009 VT 23, ¶ 35, 185 Vt. 417 (Rule 59(e) gives court opportunity to amend decree due to its own mistake or inadvertence). Rule 59(e) does not entitle SA to raise arguments it could have raised before the court entered judgment against it. *In re SP Land Co., LLC*, 2011 VT 104, ¶ 19, 190 Vt.

418. SA fails to point to any mistake the court made in granting ACCD's motion to dismiss SA's amended complaint, and the court finds that it was correct in dismissing SA's amended complaint.¹

SA also contends that it is entitled to relief pursuant to Rule 60(a) or 60(b). In support of its request for relief under Rule 60(a), SA writes that the court made a "clerical mistake" when it failed to dismiss SA's amended complaint without prejudice. Reply at 6. It is SA, however, that erred in failing to request that the court dismiss its amended complaint without prejudice in the event the court granted ACCD's motion. It is not the court's job to provide to a party *sua sponte* relief from the terms of a clear rule in the Vermont Rules of Civil Procedure; it is the job of each party to request relief affirmatively. The court did not make a 'clerical' mistake when it dismissed SA's amended complaint without leave to amend. Moreover, for the court to exercise discretion to excuse a party from the effect of a clear court rule that is applicable to all parties would compromise the integrity and reliability of the rules governing the administration of cases.

Alternatively, and as a last resort, SA argues that it is entitled to relief pursuant to Rule 60(b)(6) based on "any other reason justifying relief from the operation of the judgment." Rule 60(b)(6) is a "general catch-all provision" that is 'designed to give the court the flexibility to see that the rule serves the ends of justice.'" *Penland v. Warren*, 2018 VT 70, ¶ 7, 208 Vt. 15 (quoting Reporter's Notes, V.R.C.P. 60). SA relies for this argument on *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4, 184 Vt. 1. Reply at 6. That case, however, concerned the application of Rule 15(a), which addresses a party's obtaining leave from court to amend a complaint while a case is open. As noted above, Rule 15(a) has no application here because the case was closed before SA moved for leave to file a second amended complaint. In *Penland*, the Court noted that "[a]lthough the rule 'is to be liberally construed to prevent hardship or injustice,' its reach is limited. . . The rule 'does not protect a party from tactical decisions which in retrospect may seem ill advised'. . ." *Penland*, 2018 VT 70, ¶ 7 (citations omitted).

"Rule 60(b)(6) is intended to accomplish justice in extraordinary situations that warrant the reopening of final judgments after a substantial period of time.'" *Hill v. Springfield Hosp.*, 2023 VT 23, ¶ 21 (quoting *Riehle v. Tudhope*, 171 Vt. 626, 627 (2000) (mem.)). When a Rule 60(b) motion is made within the timeframe permitted for filing a Rule 59(e) motion, "the motion is treated as a Rule 59(e) motion." *Gregory*, 2012 VT 28, ¶ 17 n.3 (citing Reporter's Notes, V.R.C.P. 59). SA filed the pending motion eight days after the court granted ACCD's motion to dismiss. Therefore, SA's motion should be decided pursuant to Rule 59(e) rather than Rule 60(b)(6). As discussed above, SA is not entitled to relief pursuant to Rule 59(e).

The court further concludes that granting SA leave to file a second amended complaint now, after the case was closed, neither serves the ends of justice nor prevents hardship or injustice. SA had two opportunities to state a claim for relief resulting from ACCD's transfer of the MOU to DFR, VRC's cancellation of the MOU, and/or the suspension of its lender's financing. See Reply at 5. SA failed to do this when it had the opportunity, and it is not entitled to the extraordinary relief afforded by Rule 60(b)(6) to fix its errors at this late date.

¹ In opposing ACCD's motion to dismiss, SA did not ask the court to permit it to further amend its complaint to cure any deficiencies in the event the court were to grant ACCD's motion to dismiss. If it had, the court would have had before it a request to make any dismissal be without prejudice to file an amended complaint. The court could have done so, and the case would not have been closed at that point, but there was no such request.

Order

For the reasons stated above, the court denies SA's post-judgment motion requesting leave to file a second amended complaint. Motion #20 is *denied*.

Electronically signed September 12, 2023 pursuant to V.R.E.F. 9 (d).

A handwritten signature in black ink that reads "Mary Miles Teachout". The signature is written in a cursive, slightly slanted style.

Mary Miles Teachout

Superior Judge (Ret.), Specially Assigned