

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

NEPSK, INC., d/b/a HOULTON CABLE,
a Delaware Corporation,
Plaintiff

v.

Civil No. 00-130-B-C

TOWN OF HOULTON,
a Maine Municipal Corporation,
Defendant

ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION

Before the Court for action is Plaintiff's Motion for Reconsideration (Docket No. 7) seeking reconsideration of the Court's Order entered on December 7, 2000, granting Defendant Town Of Houlton's Motion for Judgment on the Pleadings (Docket No. 6) pursuant to Local Rule 7(b), Plaintiff having filed no objection to said motion as of that date.

Plaintiff argues that the subject motion ought not have been granted under Local Rule 7(b) without the Court making a determination on the merits of the motion. In short, the argument seeks to strip away the default consequences of Local Rule 7(b) when an opposing party fails to file a timely objection to a motion under Fed. R. Civ. P. 12(c). To support this argument, Plaintiff asserts that the Court's burden of decision in ruling on a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) is identical to its burden in ruling on a motion for summary judgment under Fed. R. Civ. P. 56 and invokes the rationale of this Court's opinion in *McDermott v.*

Lehman, 594 F. Supp. 1315 (D. Me. 1984), which established in this district the procedural basis for disposing of a motion for summary judgment where no timely objection thereto is filed.

Plaintiff's argument fails to take into account crucial distinctions in the two rules in question. Rule 12(c) simply provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." FED. R. CIV. P. 12(c). The rule itself poses no standard or regime by which the Court shall decide the issues generated by the motion. No specific determination is required by the rule to be made by the Court in ruling on the motion.

Rule 56(c), the provision involved in the *McDermott* case, is part of a larger rule and deals specifically with establishing the proceedings required by the rule of the court in ruling on the motion. It specifically states:

The judgment sought [under the rule] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

FED. R. CIV. P. 56(c) (emphasis added). Another part of Rule 56 providing "[I]f the adverse party does not . . . respond, summary judgment, if appropriate, shall be entered against the adverse party." FED. R. CIV. P. 56(e).

Hence, the language of the rule itself requires that the Court make its own determination as to whether there is a genuine issue of material fact. The clear intent of the language of the rule requires such a determination even where the motion is unopposed. The language of Rule 12(c) does not require the Court to pursue any particular course or method of decision where a motion under that rule is unopposed.

All of this is expatiated in detail in the *McDermott* opinion in an exercise in reconciling the specific requirements of Rule 56(c), as articulated above, with the consequences of a default in the pleading obligations of the adverse party. The Court made the linchpin of its rationale there that

a court must review the materials presented by the moving party to determine whether the standard for summary judgment is met even if the non-moving party fails entirely to file materials in opposition.

McDermott, 594 F. Supp. at 1320. The Court noted that the moving party under Rule 56 bears "the burden of showing undisputed facts that entitle it to summary judgment as a matter of law" and notes that the opposing party "has no obligation to respond" until "this initial burden is met." *Id.* The Court points out that the Advisory Note to Rule 56 requires a determination by the court even in circumstances of default in response.

Rule 12(c), on the other hand, makes no such requirement, express or implied, and the language of the rule imposes no obligation in circumstances of default to determine if the granting of the motion is "appropriate," as does Rule 56. No advisory note to Rule 12(c) makes consideration of the merits a requirement where there is no opposition to the motion. There is simply no reason contained in the rule or its intendment to prevent an otherwise appropriate and enforceable rule of default, *i.e.* Local Rule 7(b), from operating on a motion under Rule 12(c) without consideration by the court of its merits. Under Rule 12(c), it is the opposition to the motion that requires the court to consider its merits.

Accordingly, the Motion for Reconsideration is hereby **GRANTED** and on such

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