

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

NEXTFOOD INC.,

Plaintiff,

vs.

Case No. 09-CV-2148 EFM/KMH

TOM STEWART,

Defendant/Third Party Plaintiff,

and

RESTAURANT PURCHASING
SERVICES, INC., d/b/a
RESTAURANTLINK.

Third Party Defendant/Counterclaimant.

MEMORANDUM AND ORDER

In an Order issued February 2, 2010, the Court ruled on the parties' motions for summary judgment. Defendant Tom Stewart has since filed a motion for reconsideration (Doc. 76), asking the Court to reconsider its finding that Stewart had failed to raise a genuine issue of fact as to whether Plaintiff Nextfood Inc., impermissibly used or disclosed his confidential information in violation of paragraph five of the parties' agreement. In support of his motion, Stewart cites the fact that Richard King is the sole owner of Nextfood Inc. and is also an owner, director, and possibly officer of Nextfood Health Services, a company that is in competition with Stewart.

Pursuant to District of Kansas Rule 7.3, a party may seek reconsideration of an earlier order. A motion seeking reconsideration "shall be based on (1) an intervening change in controlling law,

(2) the availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice.”¹ Whether to grant a motion for reconsideration is within the court’s discretion.²

The Court finds that Stewart’s motion fails to meet the applicable standard, as it does not point to an intervening change in controlling law, new evidence, or a clear error. Again, all that Stewart has provided to the Court is his unsupported speculation that Richard King must have impermissibly used or disclosed his confidential information in violation of paragraph five of the parties’ agreement. Stewart blames his inartful drafting for the Court’s earlier order, but his deficiency is not in drafting but in substantial evidence. Because he has failed once more to present evidence in substantiation of his accusation, the Court denies his request.

IT IS THEREFORE ORDERED that Tom Stewart’s motion for reconsideration (Doc. 76) is hereby DENIED.

IT IS SO ORDERED.

Dated this 10th day of February, 2011.



ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE

¹D. Kan. Rule 7.3(b).

²*Nat’l Labor Relations Bd. v. Midwest Heating & Air Conditioning, Inc.*, 2008 WL 4330022, at * 1 (D. Kan. Sept. 16, 2008).