

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

CCR INTERNATIONAL, INC.,  
CCR Development Group, Inc., and  
José Fuertes, and Banco Cooperativo de Puerto Rico

Plaintiffs,

v.

THE ELIAS GROUP, LLC,

Defendant.

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: No.: 15-6563(PAE-NFK)  
: Civil Action  
: No.: 16-6280(PAE-NFK)  
: Civil Action  
: No.: 17-6697 (PAE-NFK)  
: Civil Action  
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**MOTION FOR RECONSIDERATION**

**TO THE HONORABLE COURT:**

Plaintiff CCR International, Inc. ("CCR International"), by and through its respective attorneys, very respectfully states and prays as follows:

1. The appearing party requested that this Court amend its judgment on August 2, 2021. Docket 268.
2. On August 3, 2021, this Court ordered Defendant to reply to the motion to amend by August 5, 2021. Docket 269. Defendant complied. Docket 271. On August 6, 2021, this Court denied the motion. Docket 272.
3. The local rules of the Southern District of New York provide that if a party is going to file a reply, it should be done within seven days of the opposition to the initial motion. This Judge’s rules do not provide anything to the contrary.
4. If CCR International, Inc. had been afforded the opportunity to file a reply, it would have corrected the statement by Elias Group, LLC that “At no point in the pleadings or other

filings did plaintiff allege that defendant owed it any portion of the initial payment of \$300,000.00.”

5. In Docket 188, the Consolidated Complaint filed by the Coco Rico parties and Banco Cooperativo de Puerto Rico in compliance with this Court’s order at Docket 114, the Coco Rico parties alleged:

26. On January 30, 2013, CCR International entered into an Assignment Agreement with Elias Group assigning its rights under the 2008 Agreement to Elias Group. **Exhibit 2**, "2013 Assignment Agreement."

27. In exchange, CCR International was to receive a payment of up to \$300,000.00 for assigning the Seller's Note, \$5,000,000 plus payment of the remaining debt owed by CCR Development Group, then believed to total \$9 million. *Id.* at p. 2, §1.02(a); p.4, §1.02 (c) (iii); p.4, §1.02 (c) (iii)(2).

Docket 188 at page 5. Plaintiffs expressly asked the Court to incorporate the terms of the exhibits to the Consolidated Complaint pursuant to Federal Rule of Civil Procedure 10(c). *Id.* at ¶ 115.

6. At ¶112 of the Consolidated Complaint, Plaintiffs alleged that:

112. Elias Group was and continues to be in default since it is in breach of the agreements and the terms and conditions of the 2008 Asset Purchase Agreement, the 2013 Option Agreement, 2013 Assignment Agreement, the 2015 Asset Purchase Agreement, 2015 Independent Contractor’s Agreement, and the Note, the latter of which was issued by the Elias Group and duly assigned to BanCoop.

*Id.* at 19.

7. “Summary judgment is only appropriate if the movant shows that there is no genuine dispute as to any material fact *and* the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). Elias has not shown that it is entitled to judgment as a matter of law that it paid the \$300,000 it agreed to pay under the Assignment Agreement. In fact, Elias stipulated that it paid only \$150,000.
8. In its order denying the Rule 60a motion, this Court faulted CCR International for not pointing to “anywhere that it sought relief on the claim that Elias owed it \$150,000, or any order in which the Court awarded it relief on that claim.” Docket 272 at 2.
9. CCR International indeed sought relief on the claim that Elias breached the Assignment Agreement, citing to that agreement as an exhibit to the Consolidated Complaint at ¶¶ 26 and 27.
10. Moreover, the Joint Stipulation of Undisputed Material Facts as to the Motion for Summary Judgment states that Elias paid \$150,000 of the monies owed under the Assignment Agreement. Docket 242-1, ¶46. In its Memorandum of Law in Support of Summary Judgment, Elias never argues that it paid the \$300,000 that the Assignment Agreement requires be paid. Docket 242-2, at pages 8-14. (Where Elias makes its argument that it obtained the \$9,000,000 debt pursuant to the Assignment Agreement.)
11. Plaintiffs’ Rule 60a Motion did not make a new substantive pleading. The operative pleading before the Court, the Consolidated Complaint, states the Assignment Agreement provided for a \$300,000 payment. Docket 188 at ¶¶ 26, 27, 112. This Court repeated that allegation in its Order granting Elias Summary Judgment. Docket 251 at 6. The Court found that the Assignment Agreement *required* a payment of \$150,000 after Elias completed due diligence. *Id.*

12. The parties executed the Asset Purchase Agreement. Docket 251 at 9. The inference, therefore, is that the parties completed due diligence. *Cf. Sullivan-Mestecky v. Verizon Communications, Inc.* 961 F.3d 91 (2<sup>nd</sup> Cir. 2021)(all inference are to be decided in favor of the non-movant).
13. “A party may move for summary judgment, identifying each claim or defense – or the part of each claim and defense – on which summary judgment is sought...” Rule 56 of the Federal Rules of Summary Judgment. Elias concludes its motion stating that “[t]here is no basis to find that Elias Group owes CCR money on a debt that is owed to Elias Group,…” But Elias did not ask the Court to grant it summary judgment on the claims that Elias agreed to pay \$300,000 for the assignment and breached that agreement.
14. Elias piously states in its conclusion that the CCR parties are not entitled to a better or different agreement than that which they negotiated. Neither is Elias. Elias never disputed that it agreed to pay \$300,000 for the assignment of the \$900,000 debt.<sup>1</sup> Indeed, Elias stipulated that it had only paid \$150,000 of the \$300,000 agreed. Docket 242-1 at ¶46.
15. This Court so ruled. It should amend its judgment to find that Elias Group, LLC owes CCR International, Inc. \$150,000. We have to understand that the Court’s intent was to enforce the agreements before the Court, the violation of which Plaintiffs alleged from day one. We ask this Court to implement that intent. *Rezzonico v. H.&R. Block*, 182 F.3d 144, 151 (2<sup>nd</sup> Cir. 1999)

WHEREFORE, CCR International, Inc. respectfully requests this Honorable Court to reconsider its decision not amend its judgment pursuant to Federal Rule of Civil Procedure 60(a) to order

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<sup>1</sup> As this litigation shows, the CCR parties never understood it that way, but that was the Court’s ruling, and Plaintiffs have decided not to appeal.

Elias Group, LLC to pay CCR International, Inc. \$150,000 and enter any other appropriate relief under law and equity.

Dated: August 12, 2021

Respectfully Submitted,

/s/Jane A. Becker

jb-6155

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