

defendant Miron's Motion for Summary Judgment was granted in part and denied in part, and plaintiff's Motion for Partial Summary Judgment was denied. Murray v. Town of Stratford, 2014 WL 558872 (D. Conn. Feb. 11, 2014). Jury selection and a jury trial were scheduled for August 11, 2014 (see Dkt. #114), and on July 25, 2014, this Magistrate Judge filed a twenty-nine page Ruling on Multiple Motions in Limine ["July 2014 Ruling"], 2014 WL 3700982 (D. Conn. July 25, 2014).

A final pre-trial conference was held on July 29, 2014, at which time counsel advised the Court that they were just recently made aware that defendant Miron had a bankruptcy matter pending in the United States Bankruptcy Court in Bridgeport. See In re James R. Miron, No. 13-50950. (See Dkts. ##159-60). Six days later, this Magistrate Judge issued an Order Administratively Closing File Pending Further Action in Bankruptcy Court (Dkt. #160), pending notification from counsel that the U.S. Bankruptcy Court had lifted the automatic stay or had otherwise granted permission for this litigation to continue. The case was closed the same day.

On August 8, 2014, four days after this case closed, plaintiff filed her first Motion for Reconsideration of the July 2014 Ruling. (Dkt. #161; see Dkts. ##162-63). On November 13, 2014, following a telephone conference call with this Court (see Dkts. ##164-65), plaintiff filed a Notice of the United States Bankruptcy Court Order reopening this case and granting relief from the automatic stay. (Dkt. #165). On the same day, this case was reopened and was referred to United States Magistrate Judge William I. Garfinkel for the purpose of holding a settlement conference, which conference has been scheduled for March 6, 2015. (Dkts. ##166-67, 173-74).

On November 14, 2014, plaintiff re-filed her Motion for Reconsideration of the July

2014 Ruling, and brief in support (Dkt. #169);¹ plaintiff's first Motion for Reconsideration was thereby denied without prejudice as moot. (Dkt. #170). On December 5, 2014, defendant Miron filed his brief in opposition (Dkt. #175), and two weeks later, plaintiff filed her reply brief. (Dkt. #176).

Additionally, on December 19, 2014, plaintiff filed the pending Motion for Leave to Amend her Complaint. (Dkt. #177).² On January 9, 2015, defendant Miron filed his brief in opposition (Dkt. #178), and two weeks later, plaintiff filed her reply brief. (Dkt. #179).

For the reasons set forth below, plaintiff's Motion for Reconsideration (Dkt. #169) and plaintiff's Motion for Leave to Amend her Complaint (Dkt. #177) are denied.

I. JULY 2014 RULING

In the July 2014 Ruling, this Court held, inter alia, that plaintiff is precluded from "arguing, presenting and/or introducing evidence regarding any claim of constructive discharge[,]" as such claim was not included in this case. 2014 WL 3700982, at *7-8. The absence of plaintiff's claim for constructive discharge, in turn, precludes plaintiff from "arguing, presenting and/or introducing evidence regarding front pay[,]" because her claim for front pay was premised solely on her claim that she was constructively discharged. Id. at *8. Similarly, in the July 2014 Ruling, the Court also held that plaintiff may not claim damages for emotional distress as "[a]t no time [in the course of this case has plaintiff]

¹Attached to plaintiff's Motion are the following exhibits: copy of defendant Miron's Voluntary Petition, filed in the United States Bankruptcy Court on June 18, 2013; copy of Discharge of Debtor, dated October 1, 2013; and copies of case law.

²Attached to plaintiff's Motion is the proposed Second Amended Complaint (Dkt. #177-1), and the following exhibits: copy of the RFP, Town of Stratford, Police & Fire Positions, Executive Search Services (Exh. A); copy of the job postings for the positions of Fire Chief and Deputy Fire Chief (Exh. B); copy of plaintiff's resume (Exh. C); copy of Curtis Maffett's Reference Summary (Exh. D); and copy of plaintiff's correspondence, resume, and application for the position of Deputy Fire Chief (Exh. E).

assert[ed] a claim for emotional distress[.]" Id. Plaintiff was ordered to submit an Amended Damages Analysis for her compensatory damages, itemizing the "difference in pay and benefits between her position as an Assistant Fire Chief, and the position to which she claimed she was denied, the position of Deputy Fire Chief." Id. at *8, n.11.

II. PENDING MOTIONS

A. MOTION FOR RECONSIDERATION

Plaintiff asks this Court to reconsider the conclusion precluding plaintiff's claims of constructive discharge and emotional distress; plaintiff argues that there is no issue of prejudice to defendant Miron because the case is no longer in the procedural posture that it was in at the time the Court issued the July 2014 Ruling, when a jury trial was scheduled to commence "in a mere two weeks[,]" and "there [was] no likelihood of a continuance[.]" 2014 WL 3700982, at *11. (Dkt. #169, Brief at 3-4). Rather, as stated by plaintiff, "the tides have turned[,]" in that thirteen days before the start of the jury trial, defendant Miron disclosed, for the first time, that he had filed for bankruptcy and had been discharged in 2013. (Dkt. #169, at 4).³ Accordingly, plaintiff contends that because defendant Miron's actions amount to fraud, misrepresentation, or misconduct under FED. R. CIV. P. 60(b)(3), the Court should reconsider its ruling to effectuate equity and justice, or in the alternative, defendant's wrongful conduct is a sufficient reason to permit reconsideration of the Court's

³As plaintiff explains, defendant Miron filed for Chapter 7 bankruptcy relief on June 18, 2013. (See Dkt. #169, Exhs.). Defendant Miron, who is an attorney admitted to practice law in Connecticut and who actively practices in federal and state courts, disclosed a lawsuit against him by his former employer, Trantolo & Trantolo, but failed to disclose that this lawsuit was pending against him, and that he had filed for bankruptcy protection and had been discharged. (Dkt. #169, Brief at 4-5 & Exhs.).

ruling under Rule 60(b)(6). (Dkt. #169, Brief at 7-10, 15-16; see also Dkt. #176, at 3-5).⁴

Defendant objects to plaintiff's Motion for Reconsideration on grounds that the evidence of emotional distress and constructive discharge, and front pay damages related thereto, were precluded because the claims were never made by plaintiff, not because the trial was about to commence. (Dkt. #175, at 1-2). Moreover, defendant contends that by filing her Motion for Leave to Amend her Complaint, plaintiff has constructively admitted that her Motion for Reconsideration is inappropriate. (Dkt. #178, at 1).

1. STANDARDS FOR RECONSIDERATION

A party moving for reconsideration of a Court's ruling must set "forth concisely the matters or controlling decision which [the movant] believes the Court overlooked in the initial decision or order." D. Conn. L. Civ. R. 7(c)1. "The major grounds justifying reconsideration are 'an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" Virgin Atl. Airways Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir.), quoting 18B C. Wright, A. Miller & E Cooper, Federal Practice & Procedure § 4478 (additional citation omitted), cert. denied, 506 U.S. 820 (1992). As the Second Circuit has explained, the standard is "strict," and reconsideration should only be granted if "the moving party can point to controlling decisions or data that the court overlooked – matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d

⁴Additionally, plaintiff seeks leave to amend her Complaint to add constructive discharge as another basis for retaliation pursuant to FED. R. CIV. P. 15(c)(1)(B), to amend her Complaint to add a claim for emotional distress damages, and to amend her Damages Analysis to reflect her new Complaint. (Id. at 10-14; see Dkt. #177); see Section II.B. infra. Plaintiff also asserts that "since several of the original claims have been dismissed, including those allegations concerning racial discrimination, gender discrimination, and gender-plus discrimination," the Second Amended Complaint "will remove factual allegations and claims related to the dismissed claims." (Dkt. #177, at 1-2).

Cir. 1995)(citations omitted). Accordingly, if the moving party "seeks solely to relitigate an issue already decided[,]" the motion for reconsideration should be denied, and the court should adhere to its prior decision. Id.

Plaintiff also contends that defendant's prior actions amounted to fraud, misrepresentation, or misconduct under FED. R. CIV. P. 60(b)(3), thereby entitling plaintiff to reconsideration of this Court's July 2014 Ruling. (Dkt. #169, Brief at 7-10). Rule 60(b)(3) permits courts to grant relief from a final judgment or order when an opposing party engages in "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct[.]" "A motion for relief from judgment is generally not favored and is properly granted only upon a showing of exceptional circumstances." U.S. v. Int'l Bhd. of Teamsters, 247 F.3d 370, 391 (2d Cir. 2001)(citations omitted); accord Marrero Pichardo v. Ashcroft, 374 F.3d 46, 55 (2d Cir. 2004)(citation omitted). "Generally, courts require that the evidence in support of [a Rule 60(b) motion] . . . be highly convincing, that a party show good cause for the failure to act sooner, and that no undue hardship be imposed on other parties." Kotlicky v. U.S. Fid. & Guar. Co., 817 F.2d 6, 9 (2d Cir. 1987)(internal quotations & citations omitted). To prevail on a Rule 60(b)(3) motion, the movant "must show that the conduct complained of prevented [her] from fully and fairly presenting [her] case." State St. Bank & Trust Co. v. Inversiones Errazuriz Limitada, 374 F.3d 158, 176 (2d Cir. 2004)(citations & internal quotations omitted).

2. DISCUSSION

In the July 2014 Ruling, the Court ruled on seven pending Motions in Limine, six of which were filed by defendant. See 2014 WL 3700982, at *1. In defendant's Second Motion in Limine, defendant sought to exclude: (1) evidence as to any claim of constructive

discharge; (2) any claim for future damages; and (3) any claim for compensatory damages (Dkt. #124); see also 2014 WL 3700982, at *7, as "[n]owhere in either [the Fifth or Sixth Count—the Counts remaining in this case—] does plaintiff seek damages for emotional distress[,]" and plaintiff has not alleged a claim of constructive discharge. (Dkt. #149); see also 2014 WL 3700982, at *7. In response, plaintiff contended, inter alia, that she is asserting constructive discharge in her First Amendment retaliation claim. (Dkt. #141); see also 2014 WL 3700982, at *7. This Court granted defendant's Second Motion in Limine, holding that plaintiff "cannot now seek damages on . . . claim[s] not including in this case." 2014 WL 3700982, at *8. Specifically, as explained in the July 2014 Ruling, defendant's motion to preclude evidence of constructive discharge, and thereby evidence of front pay, and to preclude evidence of emotional distress damages, was granted because such claims were simply not alleged in this case. (Id.). The fact that the disclosure of defendant Miron's bankruptcy filing from 2013 did not occur until thirteen days before the scheduled start of the jury trial does not alter the basis for this Magistrate Judge's conclusion in the July 2014 Ruling. The misconduct on defendant's part in failing to disclose his bankruptcy filing and his discharge in 2013 did not interfere with plaintiff's ability to have asserted these claims for damages in her Complaint, filed on April 20, 2011, or in her Amended Complaint, filed on September 19, 2011. Accordingly, plaintiff's Motion for Reconsideration is denied.

B. MOTION FOR LEAVE TO AMEND COMPLAINT

A party may amend a pleading that relates back to the original pleading pursuant to Federal Rule of Civil Procedure 15(c)(1)(B).⁵ For the new claim to relate back, the "basic

⁵Federal Rule of Civil Procedure 15(c)(1) reads: "An amendment to a pleading relates back to the date of the original pleading when: (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading."

claim must have arisen out of the conduct set forth in the original pleading." Ridge Seneca Plaza, LLC v. BP Prods. N. Am. Inc., 545 F. App'x 44, 47 (2d. Cir. 2013)(citations omitted).

"The fact that an amendment changes the legal theory on which the action initially was brought is of no consequence if the factual situation upon which the action depends remains the same and has been brought to defendant's attention by the original pleading." 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1497 (3d ed. 2010)(footnote omitted).

"The purpose of Rule 15 is to provide maximum opportunity for each claim to be decided on its merits rather than on procedural technicalities. For a newly added action to relate back, the basic claim must have arisen out of the conduct set forth in the original pleading." Slayton v. Am. Express Co., 460 F.3d 215, 228 (2d Cir. 2006)(internal quotations, citations & alterations omitted). "Where the amended complaint does not allege a new claim but renders prior allegations more definite and precise, relation back occurs." Id. (citation omitted). The Second Circuit has held that a "revised pleading will relate back to the original pleading, even where the revised pleading contains legal theories not included in the original[,]" so long as "the amended pleading is based on the same series of transactions or occurrences alleged in the original pleading[.]" White v. White Rose Food, 128 F.3d 110, 116 (2d Cir. 1997); see also Travelers Ins. Co. v. 633 Third Assocs., 14 F.3d 114, 125 (2d Cir. 1994); Mercier v. Greenwich Academy, Inc., No. 3:13 CV 4(JCH), 2013 WL 3874511, at *6 (D. Conn. July 25, 2013). Thus, "the central inquiry" is whether plaintiff provided "adequate

"The Court of Appeals has repeatedly noted that the trial court has broad discretion in ruling on a motion to amend." Duling v. Gristede's Operating Corp., 265 F.R.D. 91, 96 (S.D.N.Y. 2010)(multiple citations omitted); see Concerned Citizens of Belle Haven v. Belle Haven Club, No. Civ. 3:99 CV 1467(AHN), 2002 WL 32124959, at *3 (D. Conn. Oct. 25, 2002); Messier v. Southbury Training School, No. 3:94 CV 1706 (EBB), 1999 WL 20907, at *3 (D. Conn. Jan. 5, 1999)(citations omitted).

notice" to defendant "of the matters raised in the amended pleading[.]" Slayton, 460 F.3d at 228 (citation omitted).

Plaintiff seeks to add constructive discharge as an additional incident of her claim of First Amendment retaliation, which would entitle her to allege front pay damages from the time of her resignation from the Stratford Fire Department in June 2010. (Dkt. #177, at 3). Plaintiff claims that the facts concerning plaintiff's constructive discharge claim "would be nearly identical to those pled in her Amended Complaint from September 2011 and described in her Damages Analysis[.]" thereby providing defendant with adequate notice of these basic facts since as far back as the pre-litigation phase of this case, when plaintiff filed her initial Statement of Claim with the Connecticut Commission on Human Rights and Opportunities. (See id.). Additionally, plaintiff claims there is no prejudice to defendant because at this stage of the case, in light of the intervening procedural complexity brought about by defendant's belated disclosure of his bankruptcy filing, there is no trial date set. (Id. at 4).

In her Amended Complaint, which was filed more than a year after she left the employ of the Stratford Fire Department, plaintiff's claims relate to the time period up to and including the hiring of the new Deputy Chief. Specifically, in Counts Five and Six, the two remaining counts in this case, plaintiff alleges that defendant Miron retaliated against her "by denying her promotion to Deputy Fire Chief[.]" (Amended Complaint ¶¶ 77, 82), and consequently, she "has suffered and will continue to suffer damage[s] . . . including loss of wages and benefits and long-term economic detriment due to loss of seniority, loss of status in her profession and lost career options." (Id. ¶¶ 78, 83).⁶

⁶Consequently, she sought "compensatory damages, reasonable attorneys' fees, costs, pre and post judgment interest and such further and additional relief as this court finds just and reasonable." (Amended Complaint, ¶¶ 60, 79, 84).

In her proposed Second Amended Complaint,⁷ plaintiff alleges that

In 2010, Murray was forced into resignation due to defendant's deliberate attempts to make Murray's working conditions intolerably unpleasant. Therefore, defendants constructively discharged Murray from her employment in that they:

- a. permitted Maffett to undermine Murray's cold weather related experience and institutional knowledge;
- b. created a culture that destabilized the management of [the Stratford Fire Department] and undercut the responsibilities of Murray, as an Assistant Chief and department veteran; [and]
- c. permitted Maffett to exclude Murray from the day-to-day operations of the [Stratford Fire Department] and constantly undermine her position as Assistant Chief.

(Dkt. #177-1, ¶ 48). Accordingly, plaintiff seeks damages:

caused by defendant's illegal conduct including loss of wages, including back pay and front pay from the date of her involuntary resignation, employment-related, including healthcare and pension contribution benefits, emotional distress stemming from defendant's retaliatory treatment and constructive discharge, and long-term economic detriment due to lost seniority, loss of status in her profession and lost career options.

(Id. ¶¶ 53, 58).

Contrary to plaintiff's assertion that defendant was on notice of the claims she seeks

⁷In her proposed Second Amended Complaint, plaintiff repeatedly asserts allegations against "defendants" and/or the Town of Stratford. However, the only remaining claims in this case are against defendant Miron, both in his official and individual capacities.

Additionally, in plaintiff's proposed Second Amended Complaint, plaintiff alleges in paragraphs 16-24 that she was entitled to be promoted from within as such was the pattern and practice of Stratford Fire Department. (Dkt. #177-1, ¶¶ 16-24; see also id. ¶¶ 46, 47(C)). In the July 2014 Ruling, this Court held that "evidence of a hiring pattern and practice is not relevant[]" to the claims remaining in this case. 2014 WL 3700982, at *6. Accordingly, defendant's First Motion in Limine (Dkt. #120) was granted thereby precluding plaintiff from referencing, arguing, or presenting evidence of a pattern and practice of promoting from within to the positions of Fire Chief and Deputy Fire Chief in the Stratford Fire Department. Id..

to add, the facts, as alleged in the proposed Second Amended Complaint, involve activity occurring after the incident at issue in the current Amended Complaint, namely, after plaintiff was denied the promotion to Deputy Fire Chief. (See Dkt. #177, at 3). While plaintiff claims that the facts concerning plaintiff's constructive discharge claim "would be nearly identical to those pled in her Amended Complaint from September 2011[,]"(see id.), these claims are separate and distinct, despite their connection to plaintiff's underlying First Amendment retaliation claim. See Ridge Seneca Plaza, 545 F. App'x at 47 (claims related to later transactions did not relate back despite the connection to the incident alleged in the initial complaint). As the Second Circuit has explained, "even where an amended complaint tracks the legal theory of the first complaint," as in this case wherein plaintiff alleges continued First Amendment retaliation leading to constructive discharge, "claims that are based on an 'entirely distinct set' of factual allegations[,]" namely, the factual allegations surrounding actions by defendant after plaintiff was denied the promotion to Deputy Fire Chief, "will not relate back." Slayton, 460 F.3d at 228 (citation omitted). The claims relate to later involvement by defendant and Maffett, would be established by different evidence, and as such, would require additional discovery into the year between when plaintiff was denied the promotion and when plaintiff left the employ of the Stratford Fire Department.

Additionally, although plaintiff "welcomes" defendant to notice her limited deposition to inquire into the basis and reasoning for her departure from her employment with the Stratford Fire Department (see Dkt. #169, Brief at 14 & n.18; Dkt. #177, at 4), it was only last summer when plaintiff began to dispute defendant Miron's representations that she voluntarily retired from the Stratford Fire Department in June 2010 (see Dkt. #124, at 5), and instead started to assert that she was subjected to continued retaliation that led to

constructive discharge. (See Dkt. #141, at 4-5; Exh. A, Plaintiff's Aff't, ¶ 25). In her filings with the Court, plaintiff repeatedly has alleged that her claim for retaliation was grounded in the failure to promote plaintiff to the position of Deputy Chief, and not that such retaliation continued after the Deputy Chief position was filled, ultimately leading to her constructive discharge. Specifically, plaintiff testified at her deposition that there were no other claims of discrimination beyond the date she was not hired as the Deputy Chief (Dkt. #124, Exh. A, Plaintiff's Depo. at 145); and in the parties' Rule 26(f) Planning Report, plaintiff stated her claim for retaliation for the exercise of her free speech manifested in the denial of the promotion to the position of Deputy Fire Chief (Dkt. #13, at 4).⁸ Thus, at no prior time was defendant on notice that plaintiff's claims extended to conduct occurring after August 2009.

Similarly, the prejudice to defendant in allowing plaintiff leave to amend her complaint to add a claim for emotional distress is significant. Defendant was never on notice of plaintiff's emotional distress claim as such claim was never pled, emotional distress damages were never included in plaintiff's disclosure of damages, and plaintiff did not even mention "emotional distress" in her affidavit filed in opposition to defendant's Motion in Limine to Exclude Evidence as to Damages. (Dkt. #175, at 4-5; see Dkt. #141, Aff't; see also Dkt. #124, Exh. B (Plaintiff's Damages Analysis, dated September 29, 2011)). As defendant argues, "[h]ad a claim for emotional distress been asserted, . . . defendant could have sought an independent evaluation of plaintiff's mental and emotional state[.]" but now, the case stands "more than five . . . years after she was not promoted, and four-and-a-half . . . years from when . . . plaintiff admitted she voluntarily retired[.]" (Dkt. #175, at 3)(footnote

⁸It was not until July 2014, in her affidavit attached to her brief in opposition to defendant's Second Motion in Limine, that plaintiff claimed, for the first time in this case, that the adverse action she suffered in defendant's failure to promote her to Deputy Chief ultimately led to a constructive discharge in mid-June 2010. (Dkt. #141, Exh. A, Plaintiff's Aff't ¶ 25).

omitted).⁹

III. CONCLUSION

For the reasons stated above, plaintiff's Motion for Reconsideration (Dkt. #169) and plaintiff's Motion for Leave to Amend her Complaint (Dkt. #177) are denied.

On or before February 23, 2015, plaintiff shall produce her damages calculation, and all underlying documents, in compliance with FED. R. CIV. P. 26(a)(1)(A)(iii), and consistent with the July 2014 Ruling, and plaintiff shall file an Amended Complaint reflecting the remaining claims in this case.

Dated this 12th day of February, 2015, at New Haven, Connecticut.

/s/ Joan G. Margolis, USMJ
Joan Glazer Margolis
United States Magistrate Judge

⁹Additionally, defendant is correct that plaintiff's claim for emotional distress is barred by the three year general tort statute of limitations in Conn. Gen. Stat. § 52-577. (Id. at 5). The position of Deputy Fire Chief was filled in August 2009; accordingly, plaintiff would have had to allege emotional distress before August 2012.