

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 9 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ED HULL,

Plaintiff-Appellant,

v.

SPOT INVESTMENTS, LP, a California
limited partnership,

Defendant-Appellee,

and

DOES, 1-10,

Defendant.

No. 23-55333

D.C. No.8:21-cv-01082-JLS-ADS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted February 7, 2024**
Pasadena, California

Before: BUMATAY and MENDOZA, Circuit Judges, and MOSKOWITZ, ***

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Barry Ted Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

District Judge.

Plaintiff Ed Hull appeals the district court's orders awarding Defendant Spot Investments, LP ("Spot"), \$22,884.61 in attorney's fees and costs under Federal Rule of Civil Procedure 37(c)(2) and denying Hull's motion for relief or reconsideration. We have jurisdiction under 28 U.S.C. § 1291, review the orders for abuse of discretion, *United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1166 (9th Cir. 2017); *Zamani v. Carnes*, 491 F.3d 990, 994 (9th Cir. 2007); *Marchand v. Mercy Medical Ctr.*, 22 F.3d 933, 936 (9th Cir. 1994), and affirm. Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

Hull raised arguments in his motion for reconsideration that he could have, but did not, present to the district court before it decided Spot's motion for attorney's fees and cost of proof sanctions. We decline to disturb the district court's orders based on such arguments. *See Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 859 (9th Cir. 2022) ("Reconsideration motions may not be used to raise new arguments or introduce new evidence if, with reasonable diligence, the arguments and evidence could have been presented during consideration of the original ruling."); *see also Greisen v. Hanken*, 925 F.3d 1097, 1115 (9th Cir. 2019) ("[A]n appellate court will not consider issues not *properly* raised before the district court." (quoting *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999))).

Hull’s contention that he properly denied Spot’s request for admission that Hull’s injunctive relief claim was moot, because he needed to confirm whether the property was fully remediated, is inconsistent with Federal Rules of Civil Procedure 36 and 37. Rule 36 allows a party to “assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.” Fed. R. Civ. P. 36(a)(4). And Rule 37 provides that where, as here, “a party fails to admit what is requested under Rule 36 and [] the requesting party later proves . . . the matter true,” the court must award the moving party “reasonable expenses, including attorney’s fees, incurred in making that proof” unless an enumerated exception applies. Fed. R. Civ. P. 37(c)(2). The district court did not abuse its discretion when it found that Hull did not meet an exception in Rule 37(c)(2). And the district court properly found that its grant of Spot’s motion was not based on material misrepresentations.

Hull has not shown that the district court erred. And because Hull does not challenge the amount the district court awarded, we will affirm. We reject Spot’s contention that the appeal is frivolous and thus reject its request for attorney’s fees on appeal.

AFFIRMED.