Secharmidal v. Tmekei, 6 ROP Intrm. 83 (1997)

SHIPRIT SECHARMIDAL,
Appellant,

v.

HIROSHI TMEKEI,
Appellee.

CIVIL APPEAL NO. 34-95
Civil Action No. 190-92

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: March 3, 1997

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Thomas J. Lannen

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice

MICHELSEN, Justice:

This appeal involves whether the trial court correctly denied Appellant's Rule 60(b) Motion for Relief from Judgment. For the reasons set out below, we AFFIRM the decision of the trial court.

The subject of this action is Tochi Daicho Lot No. 1059. On April 24, 1990, the appellant, Shiprit Secharmidal, entered into a contract with non-party Surangel Whipps, giving Whipps the option to purchase the lot from him. However, in 1992, the ownership of the lot was contested, as both Secharmidal and the appellee, Hiroshi Tmekei, filed claims of ownership to the lot before the ⊥84 Land Claims Hearing Office (LCHO). After a hearing held on March 3, 1992, the LCHO determined that the lot belonged to Secharmidal, and Tmekei appealed the decision to the trial court, thereby commencing the action below.

Prior to any decision in that action, the parties entered into a stipulated agreement whereby Lot 1059 was awarded to Tmekei. The stipulated agreement was accompanied by a document entitled "Withdrawal of Claim" that Secharmidal signed and presented to the Court. In this document, Secharmidal asserted that discussions with family and friends had led him to conclude that Lot 1059 had been sold to Tmekei's family many years before and therefore he was allowing judgment to be entered in Tmekei's favor. Based on the stipulated agreement and the withdrawal of claim, Chief Justice Ngiraklsong entered a stipulated judgment on July 6,

1992, reversing the LCHO determination and awarding ownership of Lot 1059 to appellee.

On April 13, 1994, Secharmidal filed a "Motion To Set Aside Stipulation And Judgment" pursuant to Rule 60(b). The motion revealed the existence of a heretofore undisclosed deal. The appellant asserted that he consented to withdrawing his claim to Lot 1059 in exchange for a payment of $50,000 from the appellee; this arrangement hinged upon appellee's further promise to relieve appellant of his contractual obligation to Whipps. Secharmidal submits that he withdrew his claim in order to get the money, rather than for the reasons presented to the Court in the stipulated agreement papers. Finally, he claims that the appellee has never paid him the $50,000 consideration.

In urging the trial court to set aside its judgment, appellant relied upon ROP Rules of Civil Procedure 60(b)(4) (void judgment), 60(b)(5) (inequity in prospective application of judgment), 60(b)(6) (the "catch-all" provision), and the Court's power to set aside a judgment for "fraud upon the Court." The trial court denied these motions, and this appeal followed.

On appeal, Secharmidal does not challenge the trial court's denial of its 60(b)(4) and 60(b)(5) motions. Rather, he asserts that the trial court committed reversible error in not granting his motion premised upon ROP R. Civ. Pro. 60(b)(6), or upon the Court's power to strike down a judgment where there has been a "fraud on the Court." We shall address both of these contentions.

⊥85 ANALYSIS

I. Standard of Review

An appellate court reviewing the denial of a Rule 60(b) motion can only review the trial court's Order denying that motion. *Browder v. Director, Department of Corrections of Illinois*, 98 S.Ct. 556, 560 at n.7 (1978). [1] Thus, the substance of the 1992 judgment by the trial court is beyond the purview of this Court's consideration. The standard of review for the trial court's order denying a request for relief from judgment is whether the trial court abused its discretion. *Sugiyama v. Ngirasui*, 4 ROP Intrm. 177, 181 (1994).

II. Relief Under Rule 60(b)(6)

As a threshhold matter, this Court notes that motions brought under Rule 60(b) "shall be made within a reasonable time." This time constraint arises from the view that Rule 60(b) "is based upon competing notions of fairness and finality." *Mid Pacific Constr. Co. v. Senda*, 7 FSM Intrm. 129, 136 (Pon. 1995.) The longer that a party delays bringing such a motion, the less likely that the court considers it fair to set aside the judgment, until ultimately "after an extended period of time, the interests of justice and finality become aligned." *Id.* Under the first three sections of the Rule [60(b)(1) - 60(b)(3)], that time can be no later than one year. While Rule

[1] ROP R. Civ. Pro. 60(b) is derived from United States Fed. R. Civ. P. 60(b). It is therefore appropriate for this Court to look to United States case law construing Rule 60(b) for guidance. *Gibbons v. Government of Republic of Palau*, 1 ROP Intrm. 547MM, 547PP (1988).

60(b)(6) does not contain this one year ceiling, a motion pursuant to it must still be brought within a reasonable period of time. The present motion was brought nearly two years after the stipulated judgment was entered in Civil Action 190-92. However, as the appellant has failed to argue that this delay was unreasonable, we will proceed to the merits of the appellant's assignments of error.

The trial court stated that relief under Rule 60(b)(6) should not be granted absent "exceptional and compelling circumstances." Decision and Order at 3, *citing* 7 James W. Moore, *Moore's Federal Practice* § 60.27 [1] & [2]; *Ackermann v. United States* , 71 S.Ct. 209 (1950). The court found that such circumstances are not present here. In addition, the court determined that appellant's motion would fit more precisely within the relief provided for by Rule 60(b)(3) (fraud of an adverse party) but that appellant could not ⊥86 rely upon Rule 60(b)(3) because that rule's one year limitation had expired. Thus, the court denied appellant's motion on the grounds that if a judgment is challenged for one of the five reasons specifically enumerated within Rule 60(b)(1) - (5), the petitioner cannot rely upon the catch-all provision of Rule 60(b)(6). 7 James W. Moore, *Moore's Federal Practice* § 60.27 [1](1991), *Klapprott v. United States* , 69 S.Ct. 384 (1949).

Appellant argues that the trial court erred in its interpretation of *Klapprott*. Specifically, he contends that "Rule 60(b)(6) covers reasons already covered by clauses (1) through (5)." (Appellant's Opening Brief at 19). Appellant cites language in *Klapprott* to the effect that a motion under 60(b) can be analyzed under the savings clause as well as the other enumerated clauses. As to this issue, the appellant's brief states:

> Further, the Court said Petitioner's prayer to set aside default judgment "should not be considered only under the excusable neglect, but also under the 'other reason' clause of 60(b)."

Appellant's Opening Brief at 18, quoting *Klapprott* at 390. This is an accurate quote from the *Klapprott* court, yet it is out of context. The *Klapprott* court found that there were circumstances present which amounted to much more than "excusable neglect," and that it should analyze these circumstances under the savings clause of Rule 60(b)(6). If there is any doubt as to the correct interpretation of *Klapprott*, the court dispels it with the following statement:

> In simple English, the language of the "other reason" clause, for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.

Klapprott at 390 (emphasis added). Thus, we find that the trial court committed no error in its holding that Rule 60(b)(6) cannot be utilized to remedy a fraud committed by an adverse party.

Appellant also submits that the appellee effectively breached a settlement agreement, and that such conduct does fall within the purview of Rule 60(b)(6). The appellant contends that the $50,000 oral contract that he had with Tmekei was the settlement agreement and that Tmekei's

failure to pay the money was a breach of that agreement. A number of courts have held that a breach of a ⊥87 settlement agreement requires the court to grant relief under Rule 60(b)(6):

> As a legal matter, it is well accepted that the material breach of a settlement agreement which has been incorporated into the judgment of a court entitles the non-breaching party to relief from judgment under Rule 60(b)(6).

United States v. Baus, 834 F.2d 1114, 1124 (1st Cir. 1987) (emphasis added); *see also, Keeling v. Sheet Metal Workers Int'l Assn.*, 937 F.2d 408, 410 (9th Cir. 1991); *Fairfax Countywide Citizens Assn. v. Fairfax County*, 571 F.2d 1299, 1302-03 (4th Cir. 1978); *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368 (6th Cir. 1976); *Kelley v. Greer*, 334 F.2d 434 (3d Cir. 1964). However, the case at hand can be distinguished upon the basis that the agreement that was breached was private in nature and undisclosed to the Court.[2]

The requirement that a settlement agreement be an incorporated part of the judgment, in order to entitle the non-breaching party to Rule 60(b) relief, emanates from the axiom that Rule 60(b) relief should only be granted "where, without such relief, an extreme and unexpected hardship would occur." *Lasky v. Continental Products Corp.*, 804 F.2d 250, 256 (3d Cir. 1986). Had the parties in this case incorporated the terms of the agreement into the stipulated judgment, it would have evidenced an intent to have the court supervise and enforce the performance of that agreement. In that situation, the court would be compelled to vacate the judgment to avoid causing an unexpected hardship to the non-breaching party. In cases where the agreement is wholly private, such as the case at hand, there is no risk of an unexpected hardship because the appellant did not harbor the expectation that the Court would supervise and enforce the performance of the agreement. *See Sawka v. Healtheast, Inc.*, 989 F.2d 138, 141 n.3 (3d Cir. 1993). Here, the appellant retains the remedy that he contemplated when he made the agreement -- the right to file a separate action on the contract which the appellee allegedly breached. Therefore, we must affirm the trial court's denial of Rule 60(b)(6) relief on these ⊥88 grounds.

III. Fraud on the Court

Appellant places himself in the awkward posture of arguing that the misrepresentations he made in a signed document filed in this case amount to a fraud on the court, entitling him to relief. The trial court held that the conduct involved here does not amount to a fraud on the court. We agree.

Rule 60(b) explicitly provides that it does not limit the power of the court to "set aside a judgment for fraud upon the court." Appellant argues that this case should qualify for fraud on the court because appellee's attorney drafted the fraudulent document which the court relied on in issuing its stipulated judgment. In support, the appellants rely on *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 64 S.Ct. 997 (1944). In *Hazel-Atlas*, an attorney concocted a scheme to fraudulently persuade the patent office into granting his client a patent. To achieve this, the attorney wrote an article praising the invention at issue, and had an expert sign it as though he

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[2] The agreement consisted of appellant's promise to withdraw his claim in exchange for appellee's promise to pay him $50,000. The "Stipulation for Entry of Judgment" in the record is merely a recitation of facts that does not include the $50,000 payment.

were the disinterested author. Primarily on the strength of this article, the patent was granted and was later held valid by the Court of Appeals for the Third Circuit in a suit for infringement. The fraud was discovered by the adverse party and was relied upon in its motion to vacate the judgment under Rule 60(b)(6). In granting the relief, the Supreme Court found that the facts demonstrated a "deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals." *Id.* at 1001.

The appellants urge us to find that the present situation is analogous to that in *Hazel-Atlas*. On this issue, the trial court held that "nothing provided by Secharmidal comes close to establishing the type of fraud committed directly on the court in *Hazel-Atlas*." (Trial Court Decision And Order, at 4). We concur with the trial court's assessment. In *Hazel-Atlas*, the fraud was aimed directly at affecting the substance of the court's judgment. This is simply not the case here. What the appellant claims to be fraudulent are the false and misleading statements contained in the recitation of facts presented to the court, along with the stipulated agreement to withdraw the claim. Presumably, the court agreed to the stipulation because it believed that the appellant intended to withdraw his claim -- a fact that both sides concede. Regardless of the veracity of the statement of facts, the court properly and accurately effected the intent of the parties to the agreement. Thus, there was no fraud on the court, because the ⊥89 substance of the stipulated judgment was never influenced.[3]

Moreover, other authorities provide a more precise outline for what constitutes a "fraud on the Court." For example, in *Broyhill Furniture v. Craftmaster Furniture* , 12 F.3d 1080 (Fed. Cir. 1993), the Court explained:

> Fraud upon the Court is thus "typically confined to the most egregious cases such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged."

Id. at 1086. Further, the Tenth Circuit stated in *Amstar Corp. v. Envirotech Corp.*, 823 F.2d 1538 (10th Cir. 1987), that fraud on the Court:

> is not fraud between the parties or fraudulent documents, false statements or perjury, . . . but where the impartial functions of the court have been directly corrupted.

Id. at 1550 (emphasis added). The conduct involved here is the presentation to the Court of a document that allegedly contains a fraudulent recitation of facts. This action neither adversely affected the integrity of the Court, nor impaired its ability to function impartially and effectively.

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[3] Indeed, it appears that the false recitation of facts was aimed not at the court, but at non-party Surangel Whipps. There is a hint that the parties were acting collusively in order to strengthen their position against Whipps. Whipps unsuccessfully moved to intervene below, apparently for the purpose of making his own motion to set aside the judgment, and according to the trial court's decision, is challenging the judgment in a separate action. Whether he would have a better claim to relief than does Secharmidal is not now before us.

Indeed, the interests of finality would not be served by vacating a judgment for this reason. Therefore, we agree with the trial court's holding that there was no fraud committed on the Court in this case.

CONCLUSION

For the reasons set out above, the decision of the trial court is AFFIRMED.