

NONPRECEDENTIAL

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

CARLOS CUENCAS,)	
)	
Plaintiff)	
)	
v.)	
)	CIVIL NO. 1996/0026
AMERADA HESS CORP., M/V "SAINT)	
LUCIA," SWANSEA CORP., S.G.S.)	
REDWOOD, and SHELL)	
INTERNATIONAL TRADING &)	
SHIPPING CO., LTD.,)	
)	
Defendants)	
_____)	

APPEARANCES:

Glenda Cameron, Esq.
Law Offices of Lee J. Rohn
1101 King St., Suite 2
Christiansted, St. Croix, Virgin Islands 00820
Attorney for the Plaintiff

Rachel Witty, Esq.
Bryant, Barnes & Moss, LLP
1134 King St., 2nd Floor
Christiansted, St. Croix, Virgin Islands 00820
Attorney for the Defendants

MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court upon Plaintiff Carlos Cuencas' Motion for Relief from Order pursuant to Fed. R. Civ. P. 60(b), by which Plaintiff seeks to reopen the above-captioned, closed case. For the reasons discussed herein, Plaintiff's motion will be denied.

I. Background

Plaintiff filed this case on February 21, 1996. On April 17, 1997, the Court granted a motion to dismiss filed by Defendant Amerada Hess Corporation (“Amerada Hess” or “Defendant”) for failure of service of process. Thereafter, on June 10, 1998, Magistrate Judge Jeffrey L. Resnick entered an order finding there to be no remaining issues for adjudication and closing the case. On October 29, 2001, Plaintiff filed the instant motion pursuant to Fed. R. Civ. P. 60(b)¹ for relief from the Court’s order of April 17, 1997 granting Defendant’s motion to dismiss.² Plaintiff sets forth two grounds for relief from the order: (1) that dismissal was improper because Plaintiff had corrected service at the time of the Court’s order dismissing Defendant; and (2) that counsel for Plaintiff did not receive a copy of either the April 17, 1997 order dismissing Defendant or the June 10, 1998 order closing the case file and, thus, was unaware that an objection to such orders was necessary.

The April 17, 1997 order in favor of Amerada Hess found that service of process upon the company was ineffective because Plaintiff served counsel for Hess Oil, a separate but related corporation, rather than serving Amerada Hess. By opposition dated June 3, 1996 to the motion to dismiss, Plaintiff admitted serving Hess Oil rather than Amerada Hess. Plaintiff stated:

¹ Plaintiff originally brought the instant Motion for Relief from Order pursuant to Fed. R. Civ. P. 60(a), which provides for the correction of “clerical mistakes” in judgments arising from “oversight or omission.” Later, at the hearing on the matter, Plaintiff’s counsel acknowledged that the motion challenged the Court’s analysis rather than a clerical mistake and therefore was properly brought pursuant to Rule 60(b)(6) rather than 60(a).

² Prior to filing the instant Motion for Relief from Order, on October 3, 2001 Plaintiff filed with the Magistrate Judge a motion to reopen the matter. By order dated October 4, 2001, Magistrate Judge Resnick indicated that his order closing file of June 10, 1998 was simply ministerial and further to this Court’s April 17, 1997 order dismissing Defendant Amerada Hess. The Magistrate granted Plaintiff’s request to reopen the case for the limited purpose of allowing Plaintiff to file the instant motion.

Plaintiff admits that, due to an oversight, Hess Oil was served with process in this case, and not Amerada Hess. However, this does not mean that this lawsuit should be dismissed.

(Pl. Opp. to Def. Mot. to Dism. at 10.) Plaintiff appended to that text a footnote, which read:

Plaintiff is currently in the process of re-serving the Complaint upon the proper entity, and shall provide proof of that service to the Court in the immediate future.

(Pl. Opp. to Def. Mot. to Dism. at 11, n.9.) Plaintiff proceeded to argue that despite the failure of service, because Amerada Hess had received “actual notice” via the individual who received the erroneous service papers sent to Hess Oil on St. Thomas, the case should not be dismissed for lack of service. Then, on June 17, 1996, Plaintiff filed an original certified mail receipt card showing a second service of Summons and Complaint, this time upon the resident corporate agent for Amerada Hess.

In granting Amerada Hess’ motion to dismiss, the Court noted that “Plaintiff does not dispute its failure to effect service.” (Order of April 17, 1997 at 1.) The Court continued:

Plaintiff makes no attempt to demonstrate good cause for his failure to effectuate service. Instead, plaintiff contends that the Court should exercise its discretion and grant plaintiff additional time to serve defendant because “the facts do indicate that Amerada Hess did receive actual notice [so that] justice would best be served if the Plaintiff is permitted to simply properly re-serve the Defendant.”

(Order of April 17, 1997 at 1-2 (quoting Pl. Opp. at 11).) The Court concluded:

The Court finds plaintiff’s argument regarding notice insufficient to support an extension.

....

Because defendant Amerada Hess has not been served with process in compliance with the Federal Rules of Civil Procedure, and because plaintiff has demonstrated neither good cause nor grounds

for an extension of time in which to effect service, it is hereby
ORDERED that defendant's Motion to Dismiss is GRANTED.
The Action is DISMISSED WITHOUT PREJUDICE

(Order of April 17, 1997 at 2.)

This Court must now determine whether to allow Plaintiff relief from the Court's order entered more than four years prior to the filing of Plaintiff's instant motion.

II. Analysis

Rule 60(b) of the Federal Rules of Civil Procedure, which provides for relief from judgments or orders, states in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

Fed. R. Civ. P. 60(b) (emphasis added). Plaintiff in this case relies on subsection 60(b)(6), the provision allowing for relief for "any other reason justifying relief from the operation of the judgment."

A motion made under Rule 60(b)(6) must be made within a "reasonable time." Fed. R. Civ. P. 60(b)(6). "What constitutes [a] 'reasonable time' depends upon the facts of each case,

taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and [the consideration of] prejudice [if any] to other parties.’ ” Dietsch v. U.S., 2 F. Supp.2d 627, 633 (D.N.J. 1998) (quoting Devon v. Vaughn, 1995 WL 295431, *2 (E.D. Pa. Apr. 27, 1995) and Kagan v. Caterpillar Tractor, 795 F.2d 601, 610 (7th Cir.1986)). Further, 60(b)(6) relief “is available only in cases evidencing extraordinary circumstances.” Morris v. Horn, 187 F.3d 333, 341 (3rd Cir. 1999) (quoting Martinez-McBean v. Government of Virgin Islands, 562 F.2d 908, 911 (3rd Cir. 1977)). There must be “sufficient evidence of circumstances so exceptional that our overriding interest in the finality and repose of judgments may properly be overcome.” Martinez-McBean, 562 F.2d at 913 (quoting Mayberry v. Maroney, 558 F.2d 1159, 1164 (3rd Cir. 1977)).

This Court cannot find that Plaintiff has met the requirements of reasonable time and extraordinary circumstances in this case. First, as to timeliness, Plaintiff’s motion was made more than four years after the order in question was entered, and more than three years after the case was closed. Without compelling justification, such a long delay is not reasonable under the rule. See Moolenaar v. Government of Virgin Islands, 822 F.2d 1342, 1348 (3rd Cir. 1987) (finding 60(b)(6) motion brought almost two years after the district court’s initial judgment to be untimely); Martinez-McBean v. Government of Virgin Islands, 562 F.2d 908, 913, n.7 (3rd Cir. 1977) (reversing grant of 60(b)(6) motion and expressing doubts that reasonable time requirement was met when district court granted motion two and a half years after the disputed order was entered); Dietsch v. United States, 2 F. Supp.2d 627, 633 (D.N.J. 1998) (finding that 60(b) motion filed more than two years after contested order was not within a reasonable time); United

States v. Real Property Located at 1323 South 10th Street, Philadelphia, 1998 WL 470161, *2 (E.D. Pa. Aug. 11, 1998) (finding four year delay unreasonable). In explaining the delay in filing the 60(b) motion in the instant case, Plaintiff's counsel simply states that she would have pointed out the Court's error in granting the motion to dismiss much sooner had she been notified by the Court of its April 17, 1997 order or of the closure of the case. Such an explanation does not demonstrate circumstances sufficiently extraordinary to find the time period "reasonable" or to warrant relief under Rule 60(b)(6).³

Furthermore, if Plaintiff's argument is one of "excusable neglect" in failing for more than four years to keep apprised of the case and bring timely objections, such argument must fall under subsection (b)(1) of Rule 60 and would thus be subject to that subsection's one-year time limitation. See Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 393 (1993) (Subsections 60(b)(6) and 60(b)(1) "are mutually exclusive, and thus a party who failed to take timely action due to "excusable neglect" may not seek relief more than a year after the judgment by resorting to subsection (6) If a party is partly to blame for the delay, relief must be sought within one year under subsection (1) and the party's neglect must be excusable.").

Finally, where it is Plaintiff's argument that the Court erred in granting Defendant's motion to dismiss, it is evident that Plaintiff's proper recourse would have been to file the

³ The Court notes that according to the signature of initials by the Deputy Clerk on the original copy of the Court's April 17, 1997 order, both Plaintiff's attorney, Lee Rohn, and Defendant's attorney, Andrew Simpson, were issued copies of the order. Likewise, the Magistrate's order closing file of June 10, 1998 was initialed by the Deputy Clerk as distributed to both attorneys on that date.

Plaintiff's counsel supports by affidavit her assertion that she received no notice of either the Court's April 17, 1997 order granting Amerada Hess' motion to dismiss or the Magistrate's June 10, 1998 order closing file. Plaintiff's counsel does not assert that during the period of delay she attempted without success to remain apprised of the case, or that the failure to receive notice was the fault of the Court Clerk.

appropriate objection or appeal at the time of the dismissal. Subsequent to the Court's order, Plaintiff was entitled to seek reconsideration pursuant to Rule 7.4 of the Local Rules of Civil Procedure, to appeal the matter pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, or to make a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e). The time for any such filing has long expired. See L.R.Ci. 7.4 (motion for reconsideration is to be brought within 10 days of order); Fed. R. App. P. 4(a)(1) (appeal must be made within 30 days after judgment or order); Fed. R. Civ. P. 59(e) (motion to amend shall be filed no later than 10 days from date of order). Plaintiff may not now use a Rule 60(b) motion as a substitute for an appeal or to circumvent the time limitation for reconsideration. See Morris v. Horn, 187 F.3d 333, 341 (3rd Cir. 1999) (citing Martinez-McBean, 562 F.2d at 911 (“[I]t is improper to grant relief under Rule 60(b)(6) if the aggrieved party could have reasonably sought the same relief by means of appeal.”)) Accordingly, the Court cannot grant relief from its order entered four years ago simply because Plaintiff has now stated that he disagrees with the Court's ruling.

III. Conclusion

In accordance with the foregoing analysis, Plaintiff's Motion for Relief from Order is denied. An appropriate Order is attached.

ENTER:

Dated: June ____, 2002

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:
Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Lee Rohn, Esq.
Glenda Cameron, Esq.
Britain Bryant, Esq.
Rachel Witty, Esq.
Honorable Jeffrey L. Resnick, U.S. Magistrate Judge