

In the United States Court of Federal Claims

No. 99-933C

(Filed: April 26, 2011)

(NOT TO BE PUBLISHED)

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)
CARL B. ADAMS,)
)
Plaintiff,)
)
v.)
)
UNITED STATES,)
)
Defendant.)
)

Carl B. Adams, *pro se*, Houston, TX.

Stacey K. Grigsby, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With her on the brief were Tony West, Assistant Attorney General, Civil Division, Jeanne E. Davidson, Director, and Donald E. Kinner, Assistant Director, Commercial Litigation Branch, United States Department of Justice, Washington, D. C.

ORDER

LETTOW, Judge.

Pending before the court is a motion by plaintiff for relief from the judgment entered in this case on June 19, 2000, *see Adams v. United States*, 46 Fed. Cl. 834 (2000), *aff'd*, 243 F.3d 560 (Fed. Cir. 2000) (table), *cert. denied*, 533 U.S. 971 (2001). Plaintiff, Carl B. Adams, contends that the judgment was infected by “[f]raud and circumvention in obtaining [the] judgment” and implies that he “was prevented [from] presenting the merits of his case.” Pl.’s Mot. at 2. The government resists reopening the judgment, noting that Mr. Adams filed his motion more than ten years after the judgment was entered and contending that the motion is untimely and devoid of merit. Def.’s Opp’n at 3, 5-6.

BACKGROUND

Mr. Adams’ amended complaint was dismissed for lack of subject matter jurisdiction. *Adams*, 46 Fed. Cl. at 838, 841. He had alleged that the Department of Veterans Affairs failed

to pay approximately \$356.00 in educational benefits for an architectural drafting correspondence course he had begun but discontinued, giving rise to a claim for \$39 million in lost earnings as an architect. *Id.* at 836-37. Mr. Adams' claim was dismissed on the ground that it was time-barred by 28 U.S.C. § 2501, the six-year statute of limitations applicable to suits brought under the Tucker Act. *See id.* at 838-41. This dismissal was summarily affirmed by the court of appeals, which concluded that "no substantial question exists regarding the outcome." *See Adams*, 243 F.3d 560 (table, text in Westlaw).

By his motion filed on January 5, 2011, Mr. Adams avers that in 2000 he had alleged adequate reasons to show that the statute of limitations had been tolled on his claim, that his claims consequently were timely, and that the court's decision dismissing his claim had ignored his allegations and arguments regarding tolling. Pl.'s Mot. at 2-5 & Ex. C.

ANALYSIS

Rule 60 of the Rules of the Court of Federal Claims ("RCFC") governs motions for relief from a final judgment. Subdivision (b) of that Rule provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under RCFC 59(b);
- (3) *fraud* (whether previously called intrinsic or extrinsic), *misrepresentation*, or *misconduct by an opposing party*;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

RCFC 60(b) (emphasis added). Mr. Adams' claim of fraud as a ground for relief from the judgment falls within RCFC 60(b)(3).

The timing of motions for relief from judgment is specified in RCFC 60(c)(1), which requires that "[a] motion under RCFC 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after entry of the judgment or order or the date of the proceeding." The one-year limitations period on submitting motions for relief from judgment based upon the first three grounds listed in RCFC 60(b) is "absolute," *Warren v. Garvin*, 219 F.3d 111, 114 (2d Cir. 2000), constituting a jurisdictional requirement that "may not be extended in any event." *Wesco Prods. Co. v. Alloy Auto. Co.*, 880 F.2d 981, 985 (7th Cir. 1989) (citing

Ackerman v. United States, 340 U.S. 193, 197 (1950)).¹ Because the final judgment in this case was entered ten years and six months before Mr. Adams filed his motion for relief from that judgment, his motion is untimely. See *Mudge v. United States*, 78 Fed. Cl. 818 (2009) (holding that a motion under Rule 60(b)(3) was untimely when the motion was filed approximately two years and nine months after entry of judgment).

No other provisions of RCFC 60(b) help Mr. Adams. Even if Mr. Adams' motion were considered to have been filed under RCFC 60(b)(4) ("the judgment is void"), it would be unavailing. Motions for relief from judgment invoking that ground must be made within a "reasonable time." RCFC 60(c)(1). A delay of over ten years is not reasonable. Correspondingly, RCFC 60(b)(6) ("any other reason that justifies relief") is not applicable. That catch-all provision is "available only in extraordinary circumstances and only when the basis for relief does not fall within any of the other subsections of Rule 60(b)." *Fiskars, Inc. v. Hunt Mfg. Co.*, 279 F.3d 1378, 1382 (Fed. Cir. 2002). Mr. Adams' motion falls within RCFC 60(b)(3), and thus RCFC 60(b)(6) cannot be invoked.²

CONCLUSION

For the reasons stated, Mr. Adams' motion for relief from judgment is DENIED, as are his ensuing motions "Showing Proof of FRCP Violation By Defendant" and "For Payment of All Sums and Amounts Due," filed March 18, 2011 and April 4, 2011, respectively.

It is so ORDERED.

Charles F. Lettow
Judge

¹The pertinent provisions of RCFC 60 are identical to those of Fed. R. Civ. P. 60, and decisions interpreting and applying Fed. R. Civ. P. 60 accordingly are relevant authority for this case. The format of Fed. R. Civ. P. 60 was changed in 2007 in conjunction with a restyling of the rules, see Fed. R. Civ. P. 60 advisory committee note, 2007 amendment, and the format of RCFC 60 was revised in 2008 to reflect this stylistic modification. See RCFC 60 Rules Committee Note, 2008 Amendment.

²Mr. Adams' claim regarding tolling would also fail on the merits. The Supreme Court in 2008 confirmed that the statute of limitations provided by 28 U.S.C. § 2501 is jurisdictional in this court and that tolling of that statute is not available. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133-34 (2008).