

In the United States Court of Federal Claims

No. 07-225 C

(Filed: October 24, 2007)

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)	
DWAYNE GARRETT)	
)	Motion to Vacate, Construed in
Plaintiff,)	the Alternative as Motion for
)	Reconsideration; RCFC
v.)	60(b)(4); RCFC 59(a)(1)
)	
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

ORDER

Before the court is Plaintiff's [M]otion to [V]acate [T]his Court's [O]rder of [D]ismissal [pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure (FRCP)] . . . (plaintiff's Motion). The United States Court of Federal Claims follows the Rules of the United States Court of Federal Claims (RCFC), which generally mirror the FRCP. According to Rule 60(b) of the RCFC: "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: . . . (4) the judgment is void . . ." RCFC (60)(b). "[I]t is well established that a judgment is void for purposes of 60(b)(4) only when the court that rendered the judgment lacked jurisdiction or failed to act in accordance with due process of law." Broyhill Furniture Indus., Inc. v. Craftmaster Furniture Corp., 12 F.3d 1080, 1084 (Fed. Cir. 1993) (interpreting FRCP 60(b)(4)). After careful review, the court has determined that plaintiff's Motion does not require further briefing. As previously stated, this court lacks subject matter jurisdiction over plaintiff's claim. Garrett v. United States, No. 07-225, 2007 WL 2989141, at *3 (Fed. Cl. 2007). The court's judgment, rendered October 5, 2007, see Docket No. 9, is not void and Rule 60(b)(4) of the RCFC is inapplicable.

In light of the fact that plaintiff filed his Motion within 10 days, and for reasons of judicial efficiency and economy, the court will also construe plaintiff's Motion as a Motion for Reconsideration. See RCFC 59. Rule 59 provides that:

[R]econsideration may be granted to all or any of the parties and on all or part of the issues, for any of the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. On a motion under this rule, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

RCFC 59(a)(1). The court has discretion as to whether to grant a motion for reconsideration. Fru-Con Constr. Corp. v. United States (Fru-Con), 44 Fed. Cl. 298, 300 (1999). It is not the design of Rule 59 to provide an opportunity for re-argument: “[t]he movant does not persuade the court to grant such motion by merely reasserting arguments which were previously made and were carefully considered by the court.” Henderson County Drainage Dist. No. 3. v. United States, 55 Fed. Cl. 334, 337 (2003); see also Fru-Con, 44 Fed. Cl. at 301 (“[t]he movant may not merely recapitulate ‘cases and arguments considered by th[e] court before rendering its original decision.’” (citations omitted)). To meet its burden, the moving party “must show: (1) that an intervening change in the controlling law has occurred; (2) that previously unavailable evidence is now available; or (3) that the motion is necessary to prevent manifest injustice.” Fru-Con, 44 Fed. Cl. at 301 (citations omitted).

Plaintiff has failed to meet his burden under Rule 59 of the RCFC. In particular, plaintiff has failed to show that any change in the controlling law has occurred, that new evidence is available, or that the motion is “necessary to prevent manifest injustice.” Plaintiff’s Motion is therefore DENIED.

IT IS SO ORDERED.

EMILY C. HEWITT
Judge