

In the United States Court of Federal Claims

No. 97-439C
Filed: August 1, 2012

TALASILA, INC. and M.R.)
MIKKILINENI,)
)
Plaintiffs,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
)

ORDER

DENYING RELIEF FROM JUDGMENT

In this action, plaintiffs, Talasila, Inc. (a Texas corporation dissolved in 1997) and M.R. Mikkilineni (the sole shareholder of Talasila, Inc.), seek relief from judgment pursuant to RCFC 60(b) or, in the alternative, RCFC 60(d). Specifically, plaintiffs ask the court to set aside its earlier judgment, affirmed on appeal, that dismissed plaintiffs' complaint without prejudice for failure to prosecute. Talasila, Inc. v. United States, No. 97-439C (Fed. Cl. Aug. 17, 2000), aff'd, 240 F.3d 1064 (Fed. Cir. 2001). Upon consideration of the facts and arguments presented, the court concludes that plaintiffs have not demonstrated grounds for relief under RCFC 60(b) or (d).

I.

On June 24, 1997, Talasila, Inc. and M.R. Mikkilineni filed a complaint in this court challenging the lawfulness of the United States Army Corps of Engineers' default termination of Talasila's fixed-price construction contract for the renovation of the United States Reserve Center in Clarksburg, West Virginia. On April 19,

1999, the court granted plaintiffs' counsel's motion to withdraw from the case, leaving Talasila, Inc. without counsel in violation of RCFC 81(d)(8) (now RCFC 83.1(a)(3)) (requiring that a corporation be represented by counsel in an action before this court). When subsequent efforts to obtain new counsel proved unsuccessful, Mr. Mikkilineni advised the court that Talasila, Inc. had been dissolved in August 1997 (approximately two months after the filing of its complaint in this court), and maintained that in accordance with Texas law (the jurisdiction in which Talasila had been incorporated), Mr. Mikkilineni was now the successor-in-interest to the corporation's assets and thus was entitled to pursue the corporation's claim against the United States in his own right.

The court rejected this contention, pointing out that under Texas law, a corporation continues to survive beyond the date of its dissolution to permit the resolution of any existing claims brought by or against the corporation within the three-year period following dissolution. Given Talasila's continued corporate existence for this three-year period, the court ruled that prosecution of Talasila's claim in this court required that it be represented by counsel pursuant to RCFC 81(d)(8) (now RCFC 83.1(a)(3): "An individual who is not an attorney . . . may not represent a corporation . . ."). Mr. Mikkilineni, however, was unable to obtain counsel to represent Talasila's interests before this court. By order dated August 17, 2000, the court therefore dismissed the complaint without prejudice for failure to prosecute. Mr. Mikkilineni moved for reconsideration; the court denied the motion in an order dated September 5, 2000. Thereafter, Mr. Mikkilineni filed an appeal with the Court of Appeals for the Federal Circuit; he was not successful. In a decision dated February 16, 2001, the Federal Circuit affirmed this court's ruling, holding that under Texas law, Talasila remained the real party in interest with respect to the prosecution of its claim against the United States and that its pursuit of relief here required Talasila to be represented by counsel. Talasila, Inc. v. United States, 240 F.3d 1064 (Fed. Cir. 2001). Mr. Mikkilineni sought reconsideration and reconsideration en banc. The Federal Circuit denied such relief on March 27, 2001.¹

On March 7, 2001, while his request for reconsideration was pending before the Federal Circuit, Mr. Mikkilineni, now acting in his individual capacity, filed a second complaint in this court. Once again, Mr. Mikkilineni claimed that he was the successor-in-interest to Talasila, Inc., a dissolved corporation, and was entitled, in that capacity, to pursue the corporation's contract claim against the United States. The court again rejected Mr. Mikkilineni's argument.

¹ On July 21, 2001, following the rejection of his appeal by the Federal Circuit, Mr. Mikkilineni filed a motion in this court for relief from judgment pursuant to RCFC 60(b). The court denied the request in an order dated September 13, 2001. The Federal Circuit affirmed this denial in a decision dated June 4, 2002. Talasila, Inc. v. United States, 36 Fed. App'x 430 (Fed. Cir. 2002).

In a comprehensive opinion issued on June 21, 2002, Senior Judge Robert J. Yock ruled, inter alia: (i) that the claim at issue involved a contract between Talasila, Inc. and the United States; (ii) that under Texas law, proceedings on an existing claim by or against a dissolved corporation could be brought within the three-year period following dissolution and that, as to proceedings so commenced, the corporation continued to survive until all resulting judgments had been executed; and (iii) that based on the provisions of Talasila's contract with the United States and the provisions of Texas law, Talasila was and remained the real party in interest. Mikkilineni v. United States, No. 01-124C (Fed. Cl. June 21, 2002). Mr. Mikkilineni, the court determined, had no standing to bring the suit.

The court went on to say that even if Talasila, Inc. were substituted as the real party in interest in the litigation, the claim could not go forward for lack of timeliness. The court pointed out that under the Contract Disputes Act, a suit challenging the decision of a contracting officer in the Court of Federal Claims must be brought "within 12 months from the date of receipt of [the] contracting officer's decision." 41 U.S.C. § 609(a)(3) (now codified at 41 U.S.C. § 7104(b)(3)). The action before the court, however, was not commenced until March 7, 2001, some four and a half years after receipt of the contracting officer's decision; hence, the court concluded, substitution of Talasila as a party plaintiff would accomplish nothing. Mikkilineni, slip op. at 34–35. Talasila's claim clearly would be out of time and thus no longer actionable. Id. Based on the foregoing reasons, the court ruled that it lacked jurisdiction to hear Mr. Mikkilineni's claim and, alternatively, that the claim was time-barred under the twelve-month limitations period of the Contract Disputes Act. Id. at 36–37.

Mr. Mikkilineni appealed to the Federal Circuit; he again was unsuccessful. The Federal Circuit explained its decision as follows:

The heart of Mr. Mikkilineni's argument is that he, as sole share-holder of Talasila, Inc. and successor-in-interest to its assets, can bring this cause of action in his own name. This is not supported by Texas law. Under the Texas corporate survival statute, the dissolved corporation *itself* retains limited rights, including the right to prosecute any claim brought within three years of dissolution. Tex. Bus. Corp. Act. Ann. art. 7.12(A)(1) (West 2001). If an action is filed within three years, the dissolved corporation continues to exist for purposes of that action. Id. art. 7.12(C). Any claims are extinguished if no action is brought within three years of dissolution. Id. Thus, any right to pursue a cause of action either belongs to the dissolved corporation or no longer exists; at no time does it pass to another party.

The Court of Federal Claims dismissed the complaint on an alternative ground—that the claim was time-barred under the CDA. The CDA mandates that suits in the Court of Federal Claims must be filed within twelve months of the contracting officer’s decision at issue. 41 U.S.C. § 609(a)(3). It is undisputed that Mr. Mikkilineni did not satisfy that requirement in this case.

Mikkilineni v. United States, 53 Fed. App’x 82, 83 (Fed. Cir. 2002).

II.

Plaintiffs, now represented by counsel, seek relief under RCFC 60(b) and (d). RCFC 60(b) provides in pertinent part as follows: “On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding” on a number of enumerated grounds, including when “applying [the judgment] prospectively is no longer equitable” (RCFC 60(b)(5)) or for “any other reason that justifies relief” (RCFC 60(b)(6)). RCFC 60(d), in turn, provides in pertinent part as follows: “This rule does not limit a court’s power to . . . entertain an independent action to relieve a party from a judgment, order, or proceeding . . .” Plaintiffs rely on these three provisions, RCFC 60(b)(5) and (6) and RCFC 60(d), as offering alternative grounds in support of their request that the court vacate the judgment of dismissal without prejudice that was entered against them on August 17, 2000.

Fundamental to plaintiffs’ request for relief from judgment is their view that the order of dismissal operated as an injunction restraining Talasila from proceeding here without legal counsel. In keeping with this view, plaintiffs say that since they now have secured the benefit of counsel, “[c]ontinuing to apply that injunction or order when the facts or circumstances have changed is no longer equitable to maintain the dismissal.” Joined with this assertion is plaintiffs’ further view that “relief [from the order of dismissal] would place the case back to the point where it was before dismissal, which would allow Talasila, as a dissolved corporation, to continue to exist for purposes of prosecuting its existing claim that was brought in a timely manner originally in this Court.”

The court sees no merit in this argument. The order dismissing the case without prejudice for failure to prosecute did not enjoin Talasila from proceeding here without legal counsel. Rather, that result followed from the court’s rule requiring that a corporation be represented by a licensed attorney. The court’s order was an enforcement of that requirement but imposed no other limitations on Talasila’s conduct. “[D]ismissals without prejudice operate to leave the parties as if no action had ever been commenced.” Harris v. City of Canton, Ohio, 725 F.2d

371, 376 (6th Cir. 1984). Talasila was free to refile an action in this court, subject only to the requirement that it be represented by an attorney. No action of the court was necessary to secure that end. To read the court's dismissal order as an injunction is simply not correct.

It is true, of course, that had plaintiffs attempted to reinstate an action here on their own, they would have faced a limitations problem: a recommencement of suit on Talasila's contract claim more than one year after receipt of the contracting officer's decision of September 4, 1996, would have been beyond the one-year limitations period of the Contract Disputes Act, 41 U.S.C. § 7104(b)(3), and thus beyond the court's jurisdiction to hear and decide. Borough of Alpine v. United States, 923 F.2d 170, 173 (Fed. Cir. 1991) (concluding that the Claims Court "lacked the power to entertain" a claim not filed within twelve months from the date of the contracting officer's decision).

In an effort to overcome this result, plaintiffs make the argument that under Texas law, when proceedings on a claim of a dissolved corporation have been commenced, either before or within the three-year period following dissolution (as was the case here), the claim survives indefinitely as an equitable claim until a judgment on the merits has been fully executed. Based on this interpretation of Texas law, plaintiffs maintain that their claim remains actionable in this court. The court cannot accept this argument. Texas law cannot override the one-year limitations period that Congress has prescribed in the Contract Disputes Act for the filing of contract claims against the United States in this court. Altamiranda Vale v. Avila, 538 F.3d 581, 585 (7th Cir. 2008) ("Rule 60(b) has the force of a federal statute, and federal statutes override conflicting state law.").

Presumably, it is plaintiffs' awareness of this limitations problem that now leads them to seek relief under RCFC 60(b) and (d)—relief which, as they view it, would restore the case to the court's active docket "to the point where it was before dismissal." Assuming for the sake of argument that an order under RCFC 60(b) would in fact have retroactive application, plaintiffs nevertheless offer no persuasive reason in support of such an order. Indeed, the whole of their argument is that as a small, closely held corporation with little or no market capital, Talasila has been uniquely disadvantaged by the rule requiring a corporation to be represented by legal counsel in court proceedings. Talasila, plaintiffs point out, has never had its day in court because it lacked the funds necessary to retain counsel. Now, however, having obtained counsel, plaintiffs urge the court, in the interest of fairness, to vacate the judgment of dismissal and allow the litigation finally to go forward.

We are not persuaded by this argument. The decision to do business in a corporate form was not one imposed upon Mr. Mikkilineni; it was instead a decision he freely made, no doubt to secure the benefits of limited liability. "The primary

benefit, and often the primary purpose, of incorporating a closely-held business is to shield the shareholders from liability for the corporation's debts." Trustees of the Graphic Communication Int'l Union Upper Midwest Local 1M Health and Welfare Plan v. Bjorkedal, 516 F.3d 719, 730 (8th Cir. 2008). But having chosen to do business in a corporate form to secure the advantages that it provides, Mr. Mikkilineni must also accept the disadvantages attendant to that choice: "that a corporation may appear in the federal courts only through licensed counsel." Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 202 (1993). There is no unfairness in holding Mr. Mikkilineni to the consequences of his choice. Feinberg v. Comm'r, 377 F.2d 21, 27–28 (8th Cir. 1967) ("Having availed himself of the tax advantages of using the corporate form to perpetuate his business, taxpayer must likewise accept its tax disadvantages as well.").

Finally, we should also note that a motion under RCFC 60(b) "must be made within a reasonable time." RCFC 60(c)(1). Given the fact that plaintiffs did not secure counsel for nearly a dozen years after the August 17, 2000, dismissal of their complaint, relief under RCFC 60 would not be appropriate.

III.

For the reasons set forth above, plaintiffs' motion for relief from judgment under RCFC 60 is denied for lack of merit.

s/John P. Wiese

John P. Wiese

Judge