

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JOHN TERRY BURRIDGE and :
DOROTHY MAE BURRIDGE :
 :
v. : C.A. No. 98-366L
 :
LINDSEY ROBIN SADEGHI :

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A); LR Cv 72(a)) is Plaintiff John Terry Burridge’s Motion for Relief from Judgment under Fed. R. Civ. P. 60(b)(6). (Document No. 44). Defendant opposes the Motion as unsupported and untimely. (Document No. 45).

This case was commenced by Plaintiffs in 1998 and was the subject of a settlement conference on April 27, 2000. The parties resolved the case and presented a Rule 41(a)(1)(A)(ii) stipulation of dismissal to the Court that was promptly endorsed by District Judge Lagueux on April 28, 2000, and the case was closed. (See Document No. 41).

Plaintiff now seeks relief from judgment¹ under Rule 60(b)(6). Rule 60(b) gives the Court discretion to relieve a party from “a final judgment, order, or proceeding” for several specific reasons. Rule 60(b)(6) is the so-called “catch all” provision which covers “any other reason that justifies relief.” See Paul Revere Variable Annuity Ins. Co. v. Zang, 248 F.3d 1, 5-6

¹ There is no judgment in this case. Pursuant to a settlement, the parties stipulated to voluntary dismissal of this case pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii). Although Judge Lagueux endorsed the stipulation, “[a] voluntary dismissal by stipulation under Rule 41(a)(1)(A)(ii) is effective immediately upon filing and does not require judicial approval.” Wright & Miller, Federal Practice & Procedure: Civil 3d § 2363 at p. 448 (2008).

(1st Cir. 2001) (cautioning that Rule 60(b)(6) motions should be granted “only where exceptional circumstances justifying extraordinary relief exist”). In his Motion, Plaintiff alleges that Defendant engaged in certain conduct “while the settlement negotiations were in progress and at the time the settlement stipulation was signed” which was intended to and did place him “under duress.”² Rule 60(b)(3) provides an avenue for relief in cases of “fraud..., misrepresentation, or misconduct by an opposing party.” “To prevail under Rule 60(b)(3), Plaintiff must prove by clear and convincing evidence that the dismissal was obtained through fraud, misrepresentation, or other misconduct by the adverse party.” Bonneau v. Clifton, 215 F.R.D. 596, 600 (D. Or. 2003). Thus, since he is alleging that Defendant engaged in misconduct in connection with the settlement process and that he agreed to dismissal under duress, Plaintiff’s claim is properly brought under Rule 60(b)(3) and not the Rule 60(b)(6) “catch-all” provision, and will be deemed to be a Rule 60(b)(3) motion. In addition, a motion under Rule 60(b)(3) must, by rule, be filed “no more than a year after the entry of the judgment or order or the date of the proceeding.” See Rule 60(c)(1), Fed. R. Civ. P. Since Plaintiff is seeking relief from an order entered on April 28, 2000, his Motion is untimely.

In addition, even if this Court countenanced Plaintiff’s effort to present a Rule 60(b)(3) motion in Rule 60(b)(6) clothing, a Rule 60(b)(6) motion must, by rule, be filed “within a reasonable time.” See Rule 60(c)(1), Fed. R. Civ. P. Plaintiff’s Motion is devoid of any legal or factual support for the position that a period in excess of ten years should be considered a

² Plaintiff also alleges that Defendant has “herself never complied and refuses to comply with said settlement.” (Document No. 44 at p. 1). However, such a claim is not proper for consideration under Rule 60 since the settlement agreement is not an order of this Court. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994) (federal courts do not have automatic ancillary jurisdiction to enforce terms of a settlement agreement following a voluntary dismissal by stipulation pursuant to Rule 41(a)(1)(A)(ii)).

“reasonable time” in this case. Further, such a finding would, in any event, fly in the face of both the parties’ and the Court’s interest in certainty and finality of outcome.

For the foregoing reasons, Plaintiff’s Motion for Relief from Judgment (Document No. 44) is DENIED.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
June 13, 2012