UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	No. 2:11-cv-06861-SVW (SSx)	Date	February 8, 2012
Title	Stan Lee Media Inc v. Conan Sales Co LLC et al		

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Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: IN CHAMBERS ORDER re DEFENDANTS' MOTIONS TO DISMISS [30] [35]

I. INTRODUCTION

Plaintiff filed the instant action on August 19, 2011 alleging the following claims: (1) Relief from Order; (2) Declaratory Relief as to Ownership of Conan Properties; (3) Avoid Transfers of Conan Properties; (4) Breach of Fiduciary Duty; (5) an Accounting; (6) Restitution of Unjust Enrichment; and (7) Imposition of a Constructive Trust. The gravamen of Plaintiff's claim is that an April 30, 2002 transfer of all of the shares of Conan Properties, Inc. ("Conan Properties") from Plaintiff to Defendant Conan Sales Co., LLC ("CSC") during Plaintiff's bankruptcy proceedings was not authorized by Plaintiff, and is thus void. Accordingly, Plaintiff seeks to retain its pre-bankruptcy interest in Conan Properties. Plaintiff also seeks an accounting of the assets and profits of Conan Properties, restitution and damages caused by an alleged breach of fiduciary duty, and a constructive trust to recapture money and property derived from Conan Properties after the April 30, 2002 transfer.

Two groups of Defendants filed separate Motions to Dismiss. On September 30, 2011, Defendants CSC, Conan Properties International LLC, Paradox Entertainment, Inc., Paradox Entertainment AB and Fredrik Malmberg (collectively, the "Paradox Defendants") filed a Motion to Dismiss. On October 12, 2011, Defendants Arthur Lieberman, Gil Champion and Junko Kobayashi (collectively, the "Managing Defendants") filed a Motion to Dismiss.

On December 5, 2011, the Court held a hearing in which it informed the parties that the Court would construe Plaintiff's first "claim," brought under Federal Rule of Civil Procedure 60(b)(4), as a separate motion brought under that rule. Accordingly, the Court instructed the parties that it would only consider that part of Plaintiff's pleading. See 12 Moore's Federal Practice § 60.25 (3d Ed. 2011); ("[A] court may not use Rule 60 to grant affirmative relief in addition to the relief contained in the prior order or judgment."); see also Delay v. Gordon, 475 F.3d 1039, 1044-47 (9th Cir. 2007). The Court also ordered the parties to provide supplemental briefing and declarations in light of that instruction.

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Plaintiff's Motion for Relief from Judgment is hereby DENIED for the reasons set forth in this Order.

II. FACTUAL BACKGROUND

A. The Conan Intellectual Property

At issue in this case is the ownership of intellectual property rights (the "Conan Intellectual Property") involving the fictional character "Conan" or "Conan the Barbarian" including rights in the motion picture "Conan the Barbarian 3D," which was released on August 19, 2011. (Compl. ¶ 3).[1]

B. The Parties

1. Plaintiff

Plaintiff SLMI is an administratively-dissolved Colorado corporation and the successor in interest of its wholly-owned subsidiary, Delaware corporation Stan Lee Media, Inc., which was successor in interest to Delaware corporation Stan Lee Entertainment, Inc. (Id. ¶ 6). Plaintiff alleges that non-party Stan Lee, well known comic book author and creator of a number of established comic book heroes, was founder, controlling shareholder and chairman of SLMI. (Id. ¶ 21).

2. Defendants

SLMI has named two groups of Defendants. The first group (the "Paradox Defendants") includes: (1) CSC; (2) Conan Properties International LLC (current record owner of title to copyrights and trademarks that are part of the Conan Intellectual Property, hereinafter referred to as "CPIL"); (3) Paradox Entertainment (a Delaware corporation, and sole owner of CPIL, hereinafter referred to as "PEI"); (4) Paradox Entertainment AB (a Swedish corporation, and sole owner of PEI) and (5) Fredrik Malmberg, Chairman and/or Chief Executive Officer of CPIL. (Id. ¶¶ 7-9, 11-13).

The second group (the "Managing Defendants") includes: (1) Arthur Lieberman, who Plaintiff claims was Plaintiff's lawyer before and during its bankruptcy case until the April 30, 2002 transfer of Conan Properties to Defendant CSC; (2) Junko Kobayashi, Plaintiff's Controller before and during its bankruptcy case; and (3) Gil Champion, Plaintiff's Chief Operating Officer before and during its

[1]The Court will use "Compl." to refer to specific paragraphs in Plaintiff's Complaint, notwithstanding the fact that, as noted above, the Court construes Plaintiff's First Claim as a separate Motion brought pursuant to Fed. R. Civ. P. 60.

bankruptcy. (Id. ¶¶ 14-16).

C. Plaintiff's Acquisition of Conan Properties, Subsequent Bankruptcy, and Transfer of Conan Properties to Defendant CSC

In September 2000, SLMI and CSC entered into a Stock Purchase Agreement. (Lieberman Decl., Ex. 2). Under the terms of the Stock Purchase Agreement, SLMI purchased all of the issued and outstanding stock in Conan Properties (a wholly-owned subsidiary of CSC). In exchange, CSC received SLMI stock subject to certain price protection guarantees. The Stock Purchase Agreement gave CSC the right to foreclose on the Conan Intellectual Property in the event of default.

On or around February 16, 2001 SLMI filed a bankruptcy petition with the United States Bankruptcy Court for the Central District of California. (Id. ¶ 27). Following that filing, CSC asserted that SLMI had defaulted under the Stock Purchase Agreement. (See Managing Defendants' Request for Judicial Notice, hereinafter "MD-RJN" Ex. C). CSC could not simply foreclose on the Conan Intellectual Property due to an automatic stay pursuant to SLMI's bankruptcy proceedings. Accordingly, on or about August 24, 2001, CSC filed a motion for relief from stay seeking to foreclose on the Conan Intellectual Property. CSC's motion was opposed both by SLMI and an Official Committee of Unsecured Creditors ("the Committee"), which was represented by bankruptcy counsel Gary Klausner. (Compl., Ex. 2 at 03840-03841).

CSC's motion and SLMI's opposition notwithstanding, the Committee and CSC continued to negotiate in order to resolve the dispute. CSC and the Committee eventually entered into a Stipulation to Compromise Disputes with CSC (the "Settlement"). Under the terms of the Settlement, CSC agreed to pay SLMI $275,000 by June 30, 2002.[2] In exchange, SLMI agreed to assign the Conan Properties shares as well as related contract rights back to CSC. On March 4, 2002, Plaintiff's bankruptcy counsel filed a Motion seeking approval of the Settlement. (Id. ¶ 34; Ex. 2). On March 25, 2002, the Bankruptcy Court entered an Order approving the Motion (the "Settlement Approval Order").[3] SLMI alleges that the March 2002 Motion to approve the Settlement failed to disclose key facts to the Bankruptcy Court including the fact that most of Plaintiff's shareholders had not received notice of the motion as well as Defendant Lieberman's alleged conflicts. (Id. ¶ 36).

On or around April 30, 2002, Defendants CSC and Kobayashi executed documents

[2]CSC also agreed to pay SLMI additional contingent compensation in the event that Warner Brothers exercised an option to make a certain film. Warner Brothers never exercised the option at issue.

[3]The Settlement Approval Order is attached to the Declaration of William H. Kiekhofer, III as Exhibit D.

implementing

the Settlement. (Id. ¶ 39). SLMI claims that Defendant Kobayashi was not authorized to sign these documents or transfer the Conan Properties shares to CSC. (Id. ¶ 40).

D. Defendants' Alleged Control of Plaintiff Through 2010

SLMI alleges that in April 2002, Defendants Lieberman, Kobayashi and Champion worked with Stan Lee in an effort to divert SLMI's assets to QED, another company controlled by Lee and Lieberman. (Id. ¶ 41). Plaintiff references an April 11, 2002 order by the Bankruptcy Court that approved sales of Plaintiff's intellectual property to a company called SLC, LLC, which was to be "creatively controlled by Stan Lee." (Id. ¶ 42). However, those assets were transferred not to SLC, but to QED and POW!, another company owned by Stan Lee. As Plaintiff notes, this Court held that the purported transfer of assets to QED and POW! was void because it was not authorized by the Bankruptcy Court. See Order Denying Plaintiffs' Motion for Summary Judgment as to Standing, QED Productions, LLC v. Nesfield, Case No. CV 07-0225 SVW (SSx) (Dkt. No. 130) (Jan. 20, 2009).

SLMI's bankruptcy case was ultimately dismissed on November 14, 2006 pursuant to an October 2006 motion filed by the Office of the U.S. Trustee.[4] (Id. ¶ 45). SLMI alleges that, in 2007, SLMI shareholders commenced corporate governance proceedings "seeking to free [Plaintiff] from [Stan] Lee's control and adverse domination." (Id. ¶ 48). These proceedings lasted until May 27, 2010, when the Colorado Court of Appeals held that a slate of directors, independent of Stan Lee, had been validly elected as Plaintiff's new board. On or about July 8, 2010, Plaintiff's new board of directors retained counsel to investigate Plaintiff's rights and to commence legal proceedings, including the instant action, to recover Plaintiff's assets.

III. LEGAL STANDARDS

A. Federal Rule of Civil Procedure 60(b)(4)

Under Rule 60(b)(4), "the court may relieve a party or its legal representative from a final judgment, order [because] the judgment is void." Fed. R. Civ. P 60(b)(4). "A judgment is not void . . .simply because it is or may have been erroneous." U.S. v. Holtzman, 762 F.2d 720, 724 (9th Cir. 1985) (quoting 11 C. Wright & A. Miller, Federal Practice & Procedure § 2862, at 198 (1973)). Rather, a judgment is "void" under Rule 60(b)(4) "only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or

[4]Plaintiff's bankruptcy counsel did not oppose that motion. (Compl. ¶ 46).

the opportunity to be heard." United Student Aid Funds, Inc. v. Espinosa, 559 U.S.___, 130 S.Ct. 1367, 1371 (2010) (internal citations omitted). The moving party has the burden of establishing entitlement to relief under Rule 60(b)(4). See, e.g. In re La Sierra Financial Services, Inc., 290 B.R. 718, 732 (9th Cir.BAP 2002) (citing In re Martinelli, 96 B.R. 1011, 1013 (9th Cir. BAP 1988)).

Furthermore, while Rule 60(c)(1) requires that motions seeking relief from judgment under Rule 60(b) be brought within a "reasonable time," a motion under Rule 60(b)(4) "brought many years after the judgment was obtained may nevertheless be made within a 'reasonable' time" due to the "unique considerations applicable to void judgments." 12 Moore's Federal Practice § 60.44[5][c] (3d Ed. 2011); see also Meadows v. Dominican Republic, 817 F.2d 517, 521 (9th Cir. 1987).

B. Federal Rule of Civil Procedure 60(d)(3)

Rule 60(d)(3) provides that a judgment or order may be set aside for "fraud on the court." Fed. R. Civ. P. 60(d)(3). "In order to set aside a judgment or order because of fraud upon the court . . . it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision." England v. Doyle, 281 F.2d 304, 309 (9th Cir. 1960). "'Fraud upon the court' is 'read narrowly, in the interest of preserving the finality of judgments.'" In re Safarian, 2010 WL 6259763, at
*7 (9th Cir.BAP 2010) (citing In re Levander, 180 F.3d 1114, 1119 (9th Cir.1999)). "Generally, perjury or nondisclosure are not 'fraud upon the court,' when they can be challenged in court." In re Safarian, 2010 WL 6259763, at *7 (citing In re Lavendar, 180 F.3d at 1120). "Furthermore, an independent action is available only 'to prevent a grave miscarriage of justice.'" In re Safarian, 2010 WL 6259763, at *7 (citing United States v. Beggerly, 524 U.S. 38, 47(1998)). A plaintiff bringing a motion under Rule 60(d)(3) to set aside the judgment based on fraud on the court must establish fraud on the court by clear and convincing evidence. See England, 281 F.2d at 309–10; see also In re Von Borstel 2011 WL 477817, *6 (Bankr. D.Or. Feb. 3, 2011).

IV. DISCUSSION

A. Whether the Bankruptcy Court's March 25, 2002 Order was Void Under Rule 60(b)(4)

As noted above, the Court construes SLMI's First Claim as a Motion for Relief From Judgment

pursuant to Fed. R. Civ. P. 60(b)(4).[5] Because there is no jurisdictional issue in this case, the only possible basis for relief from the Settlement Approval Order under Rule 60(b)(4) is a due process violation. To that end, SLMI advances three arguments. First, SLMI argues that the Settlement Approval Order is void because SLMI shareholders were not given notice of the proposed Settlement. Second, SLMI argues that, at the time of the Settlement Approval Order, the SLMI board was adversely dominated by Defendant Lieberman such that SLMI lacked capacity to receive notice of the Settlement. Finally, SLMI argues that Defendant Kobayashi lacked authority to approve the Settlement on behalf of SLMI. The Court finds that SLMI has not put forth evidence sufficient to establish that the Settlement Approval Order was void under Rule 60(b)(4).[6]

1. Notice to SLMI Shareholders

SLMI contends that notice of the proposed Settlement should have been given to all of SLMI's approximately 1,800 shareholders. First, the Court agrees with Defendants that SLMI has failed to allege standing with regards to SLMI shareholders. In order to establish standing to bring an action in federal court, a plaintiff must show that he has suffered concrete and particularized harm that is traceable to the challenged action of the defendant. See, e.g. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992). Bankruptcy standing is narrower than Article III standing: to have standing to object to a bankruptcy order, a person must have a pecuniary interest in the outcome of the bankruptcy proceedings. See, e.g. In re Cult Awareness Network, Inc., 151 F.3d 605, 607 (7th Cir. 1998). In other

[5]Defendants have filed two separate Motions to Dismiss Plaintiff's Complaint. In those Motions, Defendants argue that Plaintiff has failed to state a claim under Rule 12(b)(6). Defendant's arguments that Plaintiff has failed to state a claim under Rule 12(b)(6) are now irrelevant given that the Court construes Plaintiff's Complaint as a Rule 60 motion.

[6]At a hearing held January 30, 2012, Plaintiff's counsel argued that, while CSC characterized itself as a secured creditor, creditors in CSC's position under a stock purchase agreement are actually treated as unsecured under the relevant provisions of the Bankruptcy Code. Accordingly, Plaintiff argued that the Settlement Approval Order impermissibly allowed CSC to jump ahead of the unsecured creditors represented by the Committee. As noted above, a "judgment is not void . . .simply because it is or may have been erroneous." Holtzman, 762 F.2d at 724 (quoting 11 C. Wright & A. Miller, Federal Practice & Procedure § 2862, at 198 (1973)). Rather, a judgment is void under Rule 60(b)(4) "only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." Espinosa, 130 S.Ct. at 1371 (internal citations omitted). Accordingly, Plaintiff's argument fails under Rule 60(b)(4).

words, individual shareholders have no protectable interest unless they could plead and show that, but for the conduct alleged in the Complaint, there would have been a distribution from the bankruptcy estate to shareholders. See In re Quanalyze Oil & Gas Corp., 250 B.R. 83, 90 (W.D. Tex. 2000); In re Nielsen, 383 F.3d 922, 927 (9th Cir. 2004); In re Beezley, 994 F.2d 1433, 1434 (9th Cir. 1993). As Defendants argue, SLMI has made no showing that SLMI shareholders would have received a distribution were it not for the Settlement Approval Order. Furthermore, SLMI has not demonstrated why SLMI would have standing to sue on behalf of any such shareholders.

Second, the Court agrees with Defendants that notice to SLMI shareholders of the proposed Settlement was not required under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure. See Fed. R. Bankr. P. 9019; Fed. R. Bankr. P. 2002. SLMI thus contends that the Settlement was actually a "sale" requiring notice to the equity holders under 11 U.S.C. § 363(n). SLMI is correct that Courts have characterized a "compromise" as a "sale" requiring shareholder notice under 11 U.S.C. § 363(n) in certain circumstances. However, all of the cases upon which SLMI relies for this proposition involve the presence of multiple bids for the assets at stake, a condition not present here. See In re DiCostanzo, 399 Fed. Appx. 307 (9th Cir. 2010), In re Fitzgerald, 428 B.R. 872 (9th Cir. B.A.P. 2010), In re Mickey Thompson Ent. Group, 292 B.R. 415 (9th Cir. B.A.P. 2003). Therefore, the Court agrees with Defendants that the cases cited by SLMI are distinguishable. Accordingly, the Court agrees with Defendants that SLMI has not established that notice to SLMI shareholders of the proposed Settlement was required under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.[7]

2. Defendant Lieberman's Alleged Adverse Domination and Conflict of Interest

Defendant Lieberman has been Stan Lee's personal counsel for more than 15 years. (Lieberman Decl. ¶ 4). It is undisputed that Lieberman owned an interest in CSC as well as stock in SLMI. Accordingly, as Lieberman states in his declaration, he had a conflict with regards to the original 2000 transaction memorialized in the August 31, 2000 Stock Purchase Agreement. (Id. ¶ 7). Lieberman advised the parties in writing of this conflict. (Id. Ex. 1). Lieberman further declares that it was his "regular practice at all relevant times, whenever an issue came up involving SLMI and Conan, to advise or remind all concerned" of his conflict. (Id. ¶ 8).

As noted above, soon after the SLMI bankruptcy case was filed, the unsecured creditors formed a
Creditors Committee pursuant to 11 U.S.C. § 1102(a)(1), which was represented by Gary Klausner,

[7]The Court further agrees with Defendants that SLMI has not produced evidence in support of its allegation that the proposed Settlement involved substantially all of the assets of the SLMI estate so as to require notice to equity holders under Fed. R. Bankr. P. 2002(d).

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an experienced bankruptcy lawyer. As Defendants note, it was the Committee on behalf of the unsecured creditors, not the Individual Defendants on behalf of SLMI and its equity holders, that negotiated the Settlement that was ultimately approved by the Bankruptcy Court in the Settlement Approval Order. While SLMI alleges various misrepresentations and nondisclosures as well as adverse domination of the SLMI board by Lieberman and Stan Lee, the Court agrees with Defendants that SLMI has made no showing that Lieberman provided any services to SLMI in connection with CSC, nor has SLMI made any showing that Lieberman provided services to the Committee or in any way influenced the negotiations between the Committee (represented by Klausner) and CSC (represented by bankruptcy counsel Eric Israel).[8] Furthermore, SLMI has also failed to cite any authority, nor has the Court located any, in which a Court vacated an order as void under Rule60(b)(4) based on an allegation of adverse domination.

3. Whether SLMI was Properly Represented

SLMI claims that it was not properly represented during the proceedings that led to the Settlement Approval Order due to the fact that: (1) then-CEO Kenneth Williams resigned early in 2002; (2) no successor CEO was appointed; and (3) Defendant Junko Kobayashi was serving SLMI only on a part-time basis. As Defendants note, companies with few or no assets that are going through a bankruptcy are often unable to afford to continue to pay for the full-time services of their officers and employees. SLMI has failed to cite any authority in support of the proposition that proceedings in a bankruptcy case involving a company in that position are invalid and/or subject to being set aside and vacated in subsequent proceedings. (Id. at 12).

Furthermore, Defendants have presented evidence that Defendant Kobayashi was, in fact, authorized to represent SLMI in the bankruptcy proceedings without separate board authorization. For example, SLMI's Statement of Financial Affairs, filed at the outset of SLMI's bankruptcy case, identifies Kobayashi as Executive Vice President, Treasurer, Controller and Secretary. (Kiekhofer Decl., Ex. B). In addition, SLMI identifies Kobayashi as the company's Controller in its Complaint. (Compl. ¶ 15).

[8]At a hearing held January 30, 2012, Plaintiff's counsel for the first time suggested that Klausner essentially acted as a co-conspirator along with Lieberman in negotiating a Settlement that was overly favorable to CSC, a company in which Lieberman held a financial interest. However, when asked whether Klausner's credibility was at issue for purposes of the instant Motion, Plaintiff's counsel answered no and suggested that Klausner had been "duped" by Lieberman.

SLMI argues that, pursuant to a February 12, 2002 Retention Agreement between SLMI and Kobayashi, SLMI needed bankruptcy court approval to hire Kobayashi, and that her hiring was invalid because no such approval was obtained. (See McGrath Decl. Ex. 9). However, as Defendants argue, inspection of the Retention Agreement makes it clear that SLMI wished to "retain" the then-existing services of Kobayashi by providing her a bonus in the event that SLMI was sold or reorganized in the bankruptcy. Neither of those events occurred. Accordingly, no bonus was ever made payable to Kobayashi, and the issue of court approval became moot.

B. Fraud on the Court Under Rule 60(d)(3)

SLMI faces a heavy burden in establishing fraud on the court under Rule 60(d)(3). Specifically, SLMI must demonstrate by clear and convincing evidence the existence of an "unconscionable plan or scheme . . . designed to improperly influence the court." England, 281 F.2d at 309. SLMI alleges that Defendants Lieberman and Kobayashi fraudulently procured the Settlement Approval Order from the Bankruptcy Court by failing to disclose: (1) the fact that SLMI shareholders had not received notice of the proposed Settlement;[9] (2) SLMI's contention that Lieberman allegedly acted as counsel both for SLMI and Stan Lee while simultaneously holding shares in CSC; (3) CSC would be receiving an asset worth at least $4.3 million; (4) SLMI's contention that no legally authorized representative of SLMI signed the stipulation approving the Settlement; and (5) SLMI's board had not acted to approve the Settlement. (Compl. ¶ 36). SLMI also notes that Lieberman failed to disclose the fact that he represented SLMI's wholly-owned subsidiary, Conan Properties, in a trademark infringement lawsuit in a New York district court. See Conan Properties, Inc. v. Moore Creations, Inc., et al., Case No: 00-cv-08012 (S.D.N.Y. 2000).

First, "[g]enerally, perjury or nondisclosure are not 'fraud upon the court,' when they can be challenged in court." In re Safarian, 2010 WL 6259763, at *7 (citing In re Lavendar, 180 F.3d at 1120). Second, "'[f]raud upon the court' is 'read narrowly, in the interest of preserving the finality of judgments.'" In re Safarian, 2010 WL 6259763, at *7 (9th Cir.BAP 2010) (citing In re Levander, 180 F.3d 1114, 1119 (9th Cir.1999)). Accordingly, while SLMI claims the alleged nondisclosures at issue here were "critically important," the Court finds that SLMI has failed to meet its burden to set forth, by "clear and convincing evidence," facts demonstrating an unconscionable plan or scheme. England, 281 F.2d at 309.

As noted above, at a hearing held on January 30, 2012, SLMI initially argued that Gary Klausner, who represented the Committee, was essentially a co-conspirator in Lieberman's alleged

[9]As noted above, the Court finds that SLMI has not established that SLMI shareholders were actually entitled to notice of the proposed Settlement.

scheme to defraud SLMI into transferring the Conan Intellectual Property to Defendant CSC. SLMI pointed to the fact that Klausner's fees were paid out of the $275,000 payment from CSC to SLMI that was part of the Settlement. However, near the conclusion of that hearing, SLMI changed its story, arguing instead that, rather than essentially acting as a co-conspirator, Klausner was "duped" by Lieberman. SLMI has offered no evidence showing that Klausner acted other than in the best interests of the Committee, nor has Plaintiff offered any evidence disputing Defendants' contention that Klausner negotiated an arms length agreement on behalf of the Committee. Furthermore, SLMI has produced no evidence, let alone clear and convincing evidence, that Klausner somehow participated in Liebmeran's allegedly fraudulent scheme, thus causing Kobayashi to approve the Settlement on behalf of SLMI.[10] In short, while SLMI

claims that Defendants committed a fraud on the court, what SLMI is really alleging is fraud on a party, which is not a basis for relief under Rule 60(d)(3). Accordingly, the Court finds that SLMI is not entitled to relief.

V. CONCLUSION

Plaintiff's Motion is DENIED for the reasons set forth in this Order.

[10]As noted above, Defendants have produced evidence sufficient demonstrate that Kobayashi was authorized to act on behalf of SLMI.

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