UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**SACV 23-1016-KK-ADSx**	Date:	May 9, 2025
Title:	*Mount Vernon Fire Insurance Company v. The Kelemen Company Inc. et al.*		

Present: The Honorable KENLY KIYA KATO, UNITED STATES DISTRICT JUDGE

Noe Ponce	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **(In Chambers) Order DENYING Defendants' Motion for Relief from Judgment [Dkt. 78]**

I.
INTRODUCTION

On June 9, 2023, plaintiff Mount Vernon Fire Insurance Company ("Plaintiff") filed a Complaint against defendants The Kelemen Company, Inc. and Tibor Kelemen ("Kelemen") (collectively, "Defendants"), seeking a declaration upholding its rescission of coverage for Defendants and reimbursement for attorney's fees in connection with its legal defense of Defendants. ECF Docket No. ("Dkt.") 1, Compl. On January 30, 2024, the Court issued an Order granting Plaintiff's motion for summary judgment. Dkt. 44. Defendants now file the instant Motion for Relief from Judgment ("Motion") pursuant to Federal Rule of Civil Procedure 60(b) ("Rule 60(b)"). Dkt. 78.

The Court finds this matter appropriate for resolution without oral argument. See Fed. R. Civ. P. 78(b); L.R. 7-15. For the reasons set forth below, Defendants' Motion is **DENIED**.

II.
BACKGROUND

On June 9, 2023, Plaintiff filed a Complaint against Defendants seeking rescission of five consecutive insurance policies Plaintiff issued to defendant The Kelemen Company, Inc., based upon allegations Defendants provided false representations in their insurance policy applications. Compl. Specifically, Plaintiff alleged Defendants submitted multiple insurance policy applications

misrepresenting whether "any employment related, or third party discrimination, or third party harassment inquiry, complaint, notice of hearing, claim or suit been made against any entity proposed for insurance or any person proposed for insurance in the capacity of either director, officer, member (if an LLC), or employee of any entity proposed for insurance[.]" Compl. ¶ 11. Plaintiff alleged it approved the insurance policy applications and issued the insurance policies, but subsequently learned about the misrepresentations through the course of representing Defendants in state court in two separate lawsuits "for employment related, workplace harassment, workplace discrimination, and wrongful termination claims[.]" Id. ¶ 29. Indeed, in July 2015, Plaintiff alleged "a former employee at [defendant Kelemen's] prior company" filed a sexual harassment and wrongful termination lawsuit ("2015 Lawsuit") against defendant Kelemen. Id. ¶ 24.

On December 21, 2023, Plaintiff filed a Motion for Summary Judgment. Dkt. 35. On January 30, 2024, the Court granted summary judgment in favor of Plaintiff, finding Defendants "ultimately provided a false answer" in their insurance policy applications and awarding Plaintiff the attorney's fees incurred in connection with its representation of Defendants.[1] Dkt. 44 at 10. The Court cited the insurance policy application, which asked:

> 7. "Within the last 5 years, has any employment related, or third party discrimination, or third party harassment inquiry, complaint, notice of hearing, claim or suit been made against any entity for insurance or any person proposed for insurance in the capacity of either director, officer, member (if an LLC), or employee of any entity proposed for insurance? If "Yes", complete USLI Claim Supplement for each claim."

Id. at 3 ("Question 7"). In response, Defendants, through their insurance broker, answered "No" to Question 7, and Tam Doan ("Doan"), the Operations Manager for defendant The Kelemen Company, Inc., signed the 2018 insurance policy application. Id. at 3. Because the Court found there was no genuine dispute (1) Defendants falsely answered "No" to Question 7 and (2) a different answer to Question 7 would have impacted Plaintiff's decision to issue the policies, the Court granted summary judgment in Plaintiff's favor. Id. at 10. On July 10, 2024, the Court amended its judgment to add additional judgment debtors. Dkts. 71, 72.

On March 5, 2024, Defendants filed a notice of appeal to the Ninth Circuit, appealing the Court's summary judgment order. Dkt. 48. On October 17, 2024, the Ninth Circuit granted the parties' joint motion for voluntary dismissal of the appeal. Dkt. 77.

Separately, on April 2, 2024, Defendants filed a complaint in state court against the insurance brokers who prepared the relevant insurance policy applications ("State Court Litigation"). Dkt. 78 at 4-5. Discovery in the State Court Litigation produced a 2015 email chain. Dkt. 78-5. The email chain included the following relevant emails:

[1] In addition, the Court denied Defendants' request for a deferred ruling on Plaintiff's Motion for Summary Judgment. Dkt. 44 at 9.

- A March 30, 2015 email from a representative of United States Liability Insurance Group ("USLI") denying coverage to Wind Water Realty Inc.[2]
- An April 13, 2015 email – sent internally between employees of Defendants' insurance brokerage – stating USLI found allegations against "the owner" of Wind Water Realty Inc. to be "very disturbing[.]"[3]
- An April 13, 2015 email from Doan to the insurance broker noting "the reason [Wind Water Realty Inc. was] getting the policy in the first place" was due to the allegations against defendant Kelemen.

Id. at 3-5.

On February 7, 2025, Defendants filed the instant Motion based on the 2015 email chain discovered in the State Court Litigation. Dkt. 78. Defendants argue relief should be granted because the newly discovered emails prove Plaintiff made fraudulent misrepresentations to the Court regarding its prior knowledge of the 2015 lawsuit. Id. at 6-10. In addition, Defendants argue their delay in presenting the emails is excusable neglect, and the Court should grant relief in the interest of justice. Id. at 10-11. In support of the Motion, Defendants filed the declaration of Richard Collins, attaching as exhibits, among other things, the relevant emails. Dkt. 78-1 – 78-8.

On April 3, 2025, Plaintiff filed an Opposition to the Motion and a Request for Judicial Notice.[4] Dkt. 79. Plaintiff argues, among other things, it properly posed Question 7 and was entitled to rely on defendant The Kelemen Company, Inc.'s answer, rather than connect the actions of executives from different entities submitting insurance policy applications three years apart. Id. at 14-15.

On April 10, 2025, Defendants filed a Reply to the Motion. Dkt. 80.

This matter, thus, stands submitted.

III.
DISCUSSION

A. APPLICABLE LAW

Federal Rule of Civil Procedure 60(b) ("Rule 60(b)") "permits litigants to request reconsideration of a final judgment, order, or proceeding entered against them." Bynoe v. Baca, 966 F.3d 972, 979 (9th Cir. 2020) (citing Fed. R. Civ. P. 60(b)). "Rule 60(b) provides for extraordinary relief and may be invoked only upon a showing of exceptional circumstances." Engleson v. Burlington N. R.R. Co., 972 F.2d 1038, 1044 (9th Cir. 1992) (quoting Ben Sager Chems. Int'l v. E.

[2] USLI is the parent company of Plaintiff, and Wind Water Realty Inc. is defendant Tibor Kelemen's prior company. Dkt. 79 at 4.

[3] The former Wind Water Realty Inc. employee who raised the subject allegations subsequently filed a lawsuit against, among others, defendant Tibor Kelemen in July 2015. Dkt. 35-2 at 18-19.

[4] The Court does not rely on the documents submitted with Plaintiff's Request for Judicial Notice. Accordingly, Plaintiff's Request for Judicial Notice is **DENIED as MOOT**.

Targosz & Co., 560 F.2d 805, 809 (7th Cir. 1977)). Rule 60(b) enumerates grounds upon which a court "may relieve a party . . . from a final judgment, order, or proceeding[.]" Fed. R. Civ. P. 60(b). Pursuant to Rule 60(b), the Court may relieve a party from a final judgment or order 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 Rule 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.

Fed. R. Civ. P. 60(b).

B. ANALYSIS

Here, Defendants seek relief pursuant to Rule 60(b)(1), Rule 60(b)(2), Rule 60(b)(3), and Rule 60(b)(6) based on the discovery of a "2015 email chain revealing [Plaintiff] had actual knowledge" of the lawsuit against defendant Kelemen prior issuing the policy in 2018. Dkt. 78 at 1. Defendants argue the newly discovered emails create a genuine issue of material fact, which would have precluded summary judgment. Id. Put differently, Defendants argue this Court should grant relief because Plaintiff's parent company denied an insurance policy application to a non-party, Wind Water Realty Inc., based on allegations against defendant Kelemen three years prior to approving defendant The Kelemen Company, Inc.'s insurance policy applications. Because the new emails do not change the Court's prior disposition, the Court declines to grant such extraordinary relief.

As an initial matter, the Court finds Plaintiff did not commit fraud or misconduct by making "representations [it] had no knowledge of the [2015 Lawsuit], which formed the basis for rescinding" coverage to Defendants. Dkt. 78 at 6. Defendants, effectively, want the Court to require Plaintiff to make connections between the insurance policy applications of two different companies that filed applications three years apart. However, Defendants have not produced any evidence to suggest Plaintiff should have made the tenuous connection between the two applications. Moreover, the emails acknowledging the allegations are from March and April 2015, but the *lawsuit* was not filed until July 2015. Dkts. 78-5 at 4-5, 35-2 at 12. Thus, the emails fail to demonstrate Plaintiff knew of the 2015 Lawsuit. Hence, the newly presented emails do not demonstrate "by clear and convincing evidence" Plaintiff obtained judgment through fraud or misconduct as required for relief under Rule 60(b)(3). De Saracho v. Custom Food Mach., Inc., 206 F.3d 874, 880 (9th Cir. 2000) (affirming the denial of relief pursuant to Rule 60(b)(3) where the underlying factual findings had not changed).

Even if the Court were inclined to grant such extraordinary relief, Defendants' Motion misunderstands the Court's rationale for granting summary judgment. Defendants suggest the Court granted summary judgment because Plaintiff had no prior knowledge of the lawsuit against defendant Kelemen. However, the Court granted summary judgment because Defendants provided

a false answer to Question 7 on their insurance policy application. Despite Defendants' best efforts to create a genuine issue of material fact based upon the 2015 email chain, Defendants have not presented any evidence to suggest Defendants truthfully answered Question 7.

While the 2015 email chain may create a genuine dispute as to when Plaintiff first learned of the allegations against defendant Kelemen, this dispute is not material. As the Court noted in its prior order, "[t]he fact that the insurer has demanded answers to specific questions in an application for insurance is in itself usually sufficient to establish materiality as a matter of law." LA Sound USA, Inc. v. St. Paul Fire & Marine Ins. Co., 156 Cal. App. 4th 1259, 1268-69 (2007) (quoting Thompson v. Occidental Life Ins. Co., 9 Cal. 3d 904, 916 (1973)). Hence, the material fact is whether Defendants provided a false answer to any of Plaintiff's questions in the insurance policy application. It remains uncontroverted Plaintiff asked Question 7 in the insurance policy application, and that Defendants provided a false answer. Indeed, the newly presented evidence includes an email from Doan, who signed the insurance policy applications for defendant The Kelemen Company, Inc., confirming she was aware of the allegations against defendant Kelemen. Dkt. 78-5 at 3. Hence, this email further confirms Defendants knowingly provided a false answer to Question 7.

Ultimately, the Court granted summary judgment because "a truthful answer to Question 7 would have impacted Plaintiff's decision to issue" policies to Defendants. Hence, the new emails are insufficient to change the Court's prior disposition pursuant to Rule 60(b)(2).[5] Sedell v. Wells Fargo of California Ins. Servs., Inc., No. C 10-4043 SBA, 2014 WL 1158987, at *3 (N.D. Cal. Mar. 20, 2014) (denying relief pursuant to Rule 60(b)(2) where the new evidence would not "have likely changed the outcome of the Court's summary judgment order").

Thus, Defendants have not presented evidence sufficient to grant relief from the Court's prior judgment. Accordingly, Defendants' Motion is **DENIED**.

IV.
CONCLUSION

For the reasons set forth above, Defendants' Motion for Relief from Judgment is **DENIED**.

IT IS SO ORDERED.

[5] For similar reasons, the Court declines to grant relief pursuant to Rule 60(b)(1), Rule 60(b)(3), and Rule 60(b)(6).