

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

GATEWAY BANK, :  
Plaintiff :  
 :  
 :  
v. : 5:90-CV-532 (EBB)  
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 :  
GMG BROKERAGE SERVICES, INC., :  
and GEORGE M. GALGANO, :  
Defendants :

**RULING ON MOTION TO VACATE OR MODIFY JUDGMENT**

**INTRODUCTION**

By Motion dated April 17, 2002, Defendants GMG Brokerage Services, Inc. ("GMG") and George M. Galgano ("Galgano") seek the modification or vacatur of the judgment entered in this matter on January 26, 1993. Defendants moved pursuant to Federal Rules of Civil Procedure 60 and 62. The judgment in question was in the principal amount of \$10,147,176.30, with interest in the amount of \$1,231,106.80, from August 27, 1991 to September 17, 1992. The judgment followed two and one-half years of litigation. No appeal was taken from the judgment.

Defendants move on the grounds that the judgment has been satisfied and that the continued holding by Plaintiff of 7,000 shares of Gateway Bank is inequitable, in that the judgment continues to have a disallowed prospective effect.

**STATEMENT OF FACTS**

The Court sets forth only those facts deemed necessary to an

understanding of the issues raised in, and decision rendered on, this Motion.

On or about March 1, 1989, GMG entered into a Mortgage Agreement with Gateway, whereby GMG agreed to procure mortgages on behalf of Gateway. Pursuant to the terms of the agreement, GMG was obligated, at its own cost and expense, to provide collection services for all delinquent loans and/or repurchase or bring current any loan which had become delinquent for more than 60 days. Pursuant to the agreement, GMG began procuring mortgages for Gateway. Subsequently, some of the loans went into default.

Gateway commenced an action against GMG and Galgano for breach of contract, fraud and RICO, by filing a Verified Complaint, Motion for Temporary Restraining Order, and Application for Preliminary Injunction on or about October 22, 1990. Gateway also moved for a disclosure of assets. This Court signed both the Order to Show Cause for Preliminary Injunction and the Temporary Restraining Order, following two conference calls with Galgano. On October 31, 1990 the Court granted a Motion for Continuation of the Temporary Restraining Order.

The Verified Complaint was never answered.

From October through December, 1990, Gateway was initially concerned with the issue of preserving the loan files that were in the custody of Defendants. After agreeing to produce the

files, Defendants produced only partially complete files. At the deposition of GMG's former counsel on December 12, 1991, Gateway learned that there were various documents missing from each of the produced loan files. The documents were not ultimately produced until September, 1991, a year later, following successive Court orders imposing sanctions on Galgano.

No counsel filed an appearance in the case until August, 1991. Although two attorneys had attended two depositions in December, 1990, neither filed an appearance in the case. The third attorney took no action in the face of many Court orders and motions for default and default judgment.

Prior to prosecuting the merits of the action, Gateway feared that Galgano might dissipate any assets by which a judgment could be satisfied. Because he fled to the Cayman Islands to avoid the litigation, no discovery could be taken of him. Finally, Gateway obtained a subpoena issued by the Court pursuant to 28 U.S.C. Section 1783 and served Galgano in the Cayman Islands. Galgano ignored the subpoena.

Upon Galgano's return to the United States, Gateway again made various attempts to locate his whereabouts in order to serve him with discovery and subpoenas. Finally, upon Galgano's failure to appear at a deposition, this Court signed an Order of Contempt after Galgano next failed to attend a Court-ordered Order to Show Cause. Although Attorney Dominick Barbara appeared

at the hearing to allegedly represent the interests of Galgano, he, too, failed to enter an appearance in the case.

In the meantime, despite Court orders requiring that all assets of Defendants be turned over to the Court appointed receiver, Galgano directed his son to forward them to him in the Cayman Islands. Galgano continued to marshal assets upon his return to this country, notwithstanding his knowledge of the Court order of March 28, 1991, enjoining Defendants from doing same.

After various hearings and motion practice and the filings of Orders To Show Cause, all ignored by Galgano, Galgano finally appeared by counsel in August, 1991. A default was entered by the Clerk on August 27, 1991. Upon the request of Galgano's fourth attorney, Dominick Porto, the Court suspended temporarily a March 28, 1991 Order of Contempt and Incarceration against Galgano until further order of the Court.

At a hearing before the Court on October 29, 1991, Porto advised the Court that he would no longer represent Defendants due to their failure to pay for his services. He was then owed \$15,000. The Court gave him one week in which to file an opposition to the Motion for Default Judgment. Prior to his withdrawal, he filed a Cross-Motion to Set Aside the Default, which was granted.

Galgano continued to refuse discovery and to attend a

deposition or court hearings. He did not hire another attorney to represent Defendants, nor did he appear pro se to represent himself. Accordingly, on February 4, 1992, Gateway moved for reconsideration. Galgano never responded to this Motion. The Motion was granted and the default was reinstated on August 11, 1992. A hearing on damages was held on September 15, 1992, at which time judgment in the above-referenced amount was entered. No one appeared to oppose Gateway's application. The judgment was never appealed.

Now, nine years later, Galgano moves to modify or vacate this judgment, on the grounds that it is inequitable for the judgment to continue to have prospective effect.

Galgano asserts that Gateway made approximately 163 mortgages "during the relevant time period", totaling \$16,000,000. Galgano "assumes" that GMG processed these mortgages, although he has no verification of this. He further contends that, inasmuch as the majority of these loans have been satisfied, discharged, assigned or foreclosed, and still has assets finally turned over to the Court-appointed receiver, Gateway has earned more than enough money to satisfy this judgment. He seeks return of his stock, which he claims is worth \$2,000,000.

#### **LEGAL ANALYSIS**

Although Defendants move pursuant to Federal Rules of Civil

Procedure Rules 60 and 62, the Court finds no applicability of Rule 62 to this action. Thus, its only analysis will be of Rule 60.

Rule 60(b) provides, in pertinent part, as follows

On motion and upon 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: . . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed, or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of judgment. The motion shall be made within a reasonable time . . . .

Pursuant to Rule 60(b)(5), Defendants seek credit for the amounts collected by Plaintiff for the nearly \$10,000,000 allegedly collected by Gateway for mortgages which they "assume" were processed by GMG. The difficulty with Defendants' claim is that none of these payments **were made by them**. In each case they cite, relief from a judgment was entered when the party against whom it was entered proved that payments had been made by them **personally**. In Johnson Waste Materials v. Marshall, 611 F.2d 593 (5<sup>th</sup> Cir. 1980), records of payments made by defendants could not be located prior to the entry of judgment. A year later, the defendants moved for relief under Rule 60(b)(5) and produced copies of cancelled checks reflecting payment of a portion of the wages in question and the appellate court granted relief from the

judgment to the extent of those payments. Similarly, in Ferrell v. Trailmobile, Inc., 223 F.2d 697 (5<sup>th</sup> Cir. 1955), the judgment debtor was afforded relief when he produced copies of money orders evidencing full payment of a tractor trailer loan. "The defendants are entitled to relief from the judgment only to the extent of **their own payments.**" Sunderland v. City of Philadelphia, 575 F.2d 1089, 1091 (3<sup>rd</sup> Cir. 1978)(judgment debtor credited for \$7,500 personal payment on \$35,000 judgment)(emphasis added). It is clear from this persuasive precedent that, inasmuch as Galgano is attempting to claim monies, the collection of which he had nothing to do with, his claim under Rule 60(b)(5) must be rejected.

On October 23, 2002, this Court ordered briefing of the issues of "timeliness" of the Motion and "extraordinary circumstances", as mandated by the Second Circuit. See PRC Harris, Inc. v. Boeing Co., 700 F.2d 894, 897 (2d Cir. 1983); United States v. Cirami, 563 F.2d 26, 32 (2d Cir. 1977).

Galgano sets forth a chronology of the events of the underlying litigation completely at odds with the true facts and claims that his fanciful version constitutes "extraordinary circumstances." The only thing that is indeed extraordinary is his attempt to rewrite the true history of this litigation, as taken directly from this Court's files. Galgano's contempt for his adversary and this Court existed for the full two and one-

half years of that litigation. He will find no relief from his conduct at this time.

Too, he has offered no credible reason for the delay of nine years in the filing of this Motion. His assertion that he had nothing with which to defend the case nine years ago and suddenly he now does is unacceptable. Galgano flouted every order of this Court, treating it contemptuously for two and one-half years. He made absolutely no attempt to participate in the underlying litigation, even going so far as to flee to a foreign jurisdiction. For these reasons, it would be the antithesis of justice to modify, let alone vacate, this judgment.

**CONCLUSION**

For all of the reasons set forth herein, Defendants Motion For An Order Pursuant to F.R.C.P. 60 and 62 to Vacate or Modify Judgment [Doc. No. 102] is hereby DENIED. The Clerk is directed to maintain this case as closed.

SO ORDERED

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ELLEN BREE BURNS  
SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this \_\_\_\_ day of December, 2002.



