UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ANGEL COLLAZO,	:	
	:	
Plaintiff,	:	NO. 3:03cv1620 (MRK)
	:	
v.	:	
	:	
SIKORSKY AIRCRAFT CORP.,	:	
	:	
Defendant.	:	

RULING

Plaintiff Angel Collazo, proceeding *pro se*, brought this action against his former employer, Defendant Sikorsky Aircraft Corporation, alleging that his termination was the result of improper race and national origin discrimination, as well as discrimination on the basis of a disability. *See* Amend. Compl. [doc. #3] at 3-4. Currently pending before the Court is Mr. Collazo's motion for relief from judgment under Rule 60 of the *Federal Rules of Civil Procedure* [doc. #41]. For the reasons set forth below, this motion is DENIED.

In its Ruling and Order dated June 23, 2004 [doc. #36], the Court granted Defendant's Motion to Dismiss because (1) Mr. Collazo failed to timely file a charge with the United States Equal Employment Opportunity Commission ("EEOC") regarding his allegations that his termination was the result of improper discrimination, and (2) he could not meet the legal standard for establishing that the statute of limitations on his claim should be equitably tolled. *Id.* at 3, 5-6. Judgment entered on June 25, 2004 [doc. #37], and this case was terminated. Mr. Collazo filed an appeal to the Second Circuit on June 28, 2005. *See* Notice of Appeal [doc. #38]. While his case was pending on appeal at the Second Circuit, Mr. Collazo filed his motion for

relief from judgment under Rule 60 [doc. #41] with this Court on October 12, 2004.

As a general rule, "[t]he filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Specifically, "once [a] plaintiff had filed a notice of appeal, the district court [is] divested of jurisdiction to grant or deny relief under either Rule 59 or Rule 60(b)," except with the permission of the Court of Appeals. *Weiss v. Hunna*, 312 F.2d 711, 713 (2d Cir. 1963) (cited in *Kai Wu Chan v. Reno*, 932 F. Supp. 535, 537 (S.D.N.Y. 1996)). There is one possible exception to this general rule, which is outlined in Rule 4(a)(4)(A) of the *Federal Rules of Appellate Procedure.* Rule 4(a)(4)(A) states in relevant part that:

> If a party timely files in the district court any of the following motions under the *Federal Rules of Civil Procedure*, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: . . .
>
> (iv) to alter or amend the judgment under Rule 59; . . .
>
> (vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

Fed. R. App. Proc. 4(a)(4)(A). Thus, when a timely motion is made under Rule 59(e), or a motion for relief under Rule 60 is filed no later than ten days after a judgment is entered, the jurisdiction-divesting effect of a notice of appeal is nullified, and the district court is permitted to address the motion. *See Kai Wu Chan*, 932 F. Supp. at 538 (citing *Lowrance v. Achtyl*, 20 F.3d 529, 533 (2d Cir. 1994)).

Because Mr. Collazo's motion for relief under Rule 60 was filed more than three months after the judgment entered – not ten days thereafter – his motion did not qualify under the Rule 4(a)(4)(A)(vi) exception. Therefore, this Court did not have jurisdiction to consider Mr.

Collazo's motion for relief under Rule 60, except by permission from the Second Circuit.

This Court never received permission from the Second Circuit to consider Mr. Collazo's motion for relief under Rule 60. In fact, as gleaned from Mr. Collazo's most recent filing with this Court [doc. #45], Mr. Collazo apparently filed a motion with the Second Circuit for dismissal of his appeal without prejudice to reinstatement after this Court addressed his Rule 60 motion. The Mandate of the United States Court of Appeals for the Second Circuit [doc. #46] (the "Mandate") lends support to this interpretation of Mr. Collazo's statement in his most recent filing. The Mandate states, in relevant part, that Mr. Collazo "moves for appointment of counsel and *to withdraw his appeal*." *Id.* (emphasis added). However, the Court of Appeals denied Mr. Collazo's motion to withdraw his appeal (along with his other pending motions) and dismissed his appeal because it "lack[ed] an arguable basis in law." *Id.* (citing *Nietzke v. Williams*, 490 U.S. 319, 325 (1989); 28 U.S.C. § 1915(e)).

The Mandate issued on February 22, 2005, and a certified copy of the mandate was docketed in the District of Connecticut on March 3, 2005. *See* Mandate [doc. #46]. Once the Mandate issued and Mr. Collazo's appeal was dismissed, this Court reacquired jurisdiction to consider his motion for relief under Rule 60.

In considering Mr. Collazo's motion for relief under Rule 60, this Court is well aware that most *pro se* plaintiffs "lack familiarity with the formalities of pleading requirements," and because of this fact, courts "must construe *pro se* [pleadings] liberally, applying a more flexible standard to evaluate their sufficiency than [they] would when reviewing a [pleading] submitted by counsel." *Taylor v. Vermont Dep't of Educ.*, 313 F.3d 768, 776 (2d Cir. 2002). Furthermore, it is well settled that *pro se* pleadings "should be read 'to raise the strongest arguments that they

suggest.' " *Green v. United States*, 260 F.3d 78, 83 (2d Cir. 2001) (quoting *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996)).

However, the standard for granting a motion for relief from judgment under Rule 60 is strict. *See Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986); *cf. Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) ("The standard for granting [a motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked – matters, in other words, that might reasonably be expected to alter the conclusion reached by the court."). "Properly applied, Rule 60(b) strikes a balance between serving the ends of justice and preserving the finality of judgments." *Nemaizer*, 793 F.2d at 61 (quoted in *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1144 (2d Cir. 1994)). Rule 60 "should be broadly construed to do substantial justice, yet final judgments should not be lightly reopened." *Nemaizer*, 793 F.2d at 61 (internal quotations and citations omitted). "Motions under Rule 60(b) are addressed to the sound discretion of the district court," *Mendell In Behalf of Viacom, Inc. v. Gollust*, 909 F.2d 724, 731 (2d Cir. 1990), and Rule 60 is properly invoked "only upon a showing of exceptional circumstances." *Nemaizer*, 793 F.2d at 61.

Rule 60(b) provides in relevant part:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (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 the judgment.

Fed. R. Civ. P. 60(b). Mr. Collazo primarily bases his motion for relief from judgment on "newly discovered evidence," and thus falls under Rule 60(b)(2).[1]

A party seeking relief from judgment under Rule 60(b)(2) "has an onerous standard to meet." *United States v. Int'l Bhd. of Teamsters*, 247 F.3d 370, 392 (2d Cir. 2001). Specifically, the party seeking relief must demonstrate that

> "(1) the newly discovered evidence was of facts that existed at the time of trial or other dispositive proceeding, (2) the [party seeking relief] must have been justifiably ignorant of them despite due diligence, (3) the evidence must be admissible and of such importance that it probably would have changed the outcome, and (4) the evidence must not be merely cumulative or impeaching."

Id. (quoting *United States v. IBT*, 179 F.R.D. 444, 447 (S.D.N.Y. 1998)).

Having carefully reviewed Mr. Collazo's motion for relief from judgment [doc. #41], the Defendant's memorandum in opposition [doc. #42], and Mr. Collazo's reply [doc. #45], the Court finds that Mr. Collazo has failed to meet the onerous standard for granting his motion for relief from judgment under Rule 60(b)(2). From the record before the Court, it appears that the majority of Mr. Collazo's allegedly "new" evidence – including his purported cassette recording of his unemployment benefits hearing with the Defendant – concerns events and acts that he personally knew about or was involved in that occurred prior to the filing of this lawsuit (and clearly prior to the Court's ruling on the motion to dismiss). Thus, Mr. Collazo was not justifiably ignorant of this allegedly new evidence, and it cannot be a basis for granting his

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[1] The Court notes that Rule 60(b)(6)'s "catchall" provision does not apply in this case because "if the reasons offered for relief from judgment can be considered in one of the more specific clauses of Rule 60(b), such reasons will not justify relief under Rule 60(b)(6)." *United States v. Int'l Bhd. of Teamsters*, 247 F.3d 370, 391-92 (2d Cir. 2001).

motion for relief under Rule 60(b)(2). *See Int'l Bhd. of Teamsters*, 247 F.3d at 292. Furthermore, the letter from the Interim Executive Director of the State of Connecticut Commission on Human Rights and Opportunities (CHRO) to Mr. Collazo dated August 3, 2004 (attached to the motion for relief from judgment [doc. #41]) does not alter this Court's conclusion that Mr. Collazo did not meet the standard for equitable tolling of the statute of limitations for filing his EEOC charge. *See Int'l Bhd. of Teamsters*, 247 F.3d at 292.

Therefore, Plaintiff's motion for relief from judgment [doc. #41] is DENIED. It is apparent that Mr. Collazo feels very strongly about his case and believes that he was wronged. However, as sympathetic as the Court may be to Mr. Collazao's circumstances, he has not provided a proper legal or factual basis for the Court to grant him the extraordinary relief he requests from the Court's original ruling, which has already been effectively affirmed by the Second Circuit. **Therefore, the Clerk is directed to close this file.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: April 13, 2005.