

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

RAD NAIR,	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	3:03CV1688 (SRU)
v.	:	
	:	
KIMBERLY CARMICHAEL OF ALLSTATE	:	
INSURANCE CO.,	:	
Defendant.	:	

**RULING ON PLAINTIFF’S MOTION FOR RELIEF FROM JUDGMENT AND  
DEFENDANT’S MOTION FOR SANCTIONS**

The plaintiff, Rad Nair, has moved under Rule 60(b) of the Federal Rules of Civil Procedure to set aside the summary judgment entered in this action on September 30, 2004.<sup>1</sup> For the reasons that follow, Nair’s motion (doc. # 46) is denied.

Nair makes several arguments. First, he asserts that his due process rights have been violated because the defendant, Kimberly Carmichael, moved to dismiss his complaint and never answered it. This argument fails because Nair has no due process right to have Carmichael file an answer. Carmichael timely moved to dismiss the case, that motion was converted to a motion for summary judgment, and summary judgment was granted. Under these circumstances, the standard deadline for filing an answer was altered, *see* Fed. R. Civ. P. 12(a)(4), and never expired.

Second, Nair argues that the judgment in this case is void because the court lacked

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<sup>1</sup> The caption of Nair’s motion also listed an earlier case Nair filed against Kimberly Carmichael in this District, Civil Action No. 3:02cv717 (SRU). It is unclear whether Nair seeks to reopen that case, which was resolved by a stipulated settlement agreement approved by the court. If Nair does seek to reopen that matter, to the extent that his motion is timely, this decision also resolves that request.

subject matter jurisdiction to hear the prior action between the parties, Civil Action No. 3:02cv717 (SRU) (the "prior action"). The prior action was removed to this court on the basis of diversity jurisdiction. Nair now claims that the amount in controversy in that case was less than \$75,000. Nair's initial disclosures in the prior action outline claims exceeding \$90,000 and the complaint in that case included a CUTPA claim under which punitive damages and attorney's fees are available. Accordingly, it does not appear to a legal certainty that the jurisdictional amount requirement was not met in the prior action. *See Ocean Ships, Inc. v. Stiles*, 315 F.3d 111, 115 (2d Cir. 2002). Thus, the court had subject matter jurisdiction over the prior action and Nair's present argument to the contrary fails.

Third, Nair argues that defense counsel in the prior action engaged in fraud on the court by improperly removing the action to federal court and by bribing special masters and plaintiff's counsel in an effort to obtain a settlement. The case was properly removed to this court, as discussed above, so that conduct did not constitute a fraud on the court. Furthermore, there is absolutely no evidence that defense counsel acted inappropriately in any respect, much less that counsel bribed anyone. This argument is entirely frivolous.

Finally, Nair argues that defense counsel removed the present action "in spite of res-judicata from prior action" and that defense counsel bribed a clerk not to enter a default on the docket. This action was appropriately removed and the defendant was never in default. Again, there is not a shred of evidence to support any claim of wrongdoing by defense counsel. This argument, too, is entirely frivolous.

Following Nair's Rule 60(b) motion, defendant Kimberly Carmichael moved under Rule 11 for sanctions against Nair. Although Carmichael is correct to point out that Nair's

arguments are frivolous and his allegations entirely unsupported, her motion for sanctions (doc. # 50) is denied. Nair is a pro se litigant who may not be aware of the serious consequences that can flow from making unsupported accusations of criminal conduct. Nair is hereby warned that he will be fined or otherwise sanctioned if he again files a frivolous motion or alleges wrongdoing by opposing counsel without any evidentiary support.

Nair's motion for relief from judgment (doc. # 46) is denied. Carmichael's motion for sanctions (doc. # 50) is denied.

It is so ordered.

Dated at Bridgeport, Connecticut, this 9<sup>th</sup> day of May 2005.

/s/ Stefan R. Underhill  
Stefan R. Underhill  
United States District Judge