

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Diviacchi v. Stallings

Diviacchi · No. 24-cv-07827-EMC · Decided April 28, 2025

OPINION

Diviacchi v. Stallings

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 VALERIANO DIVIACCHI, Case No. 24-cv-07827-EMC 8 Plaintiff,

ORDER DENYING PLAINTIFF'S

9 v. MOTION TO ALTER OR AMEND

JUDGMENT

10 BRANDON STALLINGS, et al., 11 Defendants. Docket No. 30 12 13 14 Previously, the Court granted Defendants' motion to dismiss based on claim preclusion 15 (res judicata) and entered a final judgment in Defendants' favor. Mr. Diviacchi now moves to 16 alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e).

17 Rule 59(e) allows a party to move to alter or amend a judgment. Under Rule 59(e), relief 18 may be obtained if there was a manifest error by the Court or to prevent manifest injustice. See, 19 e.g., *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (indicating that a Rule 59(e) 20 motion may be granted if "necessary to correct manifest errors of law or fact upon which the 21 judgment is based" or "to prevent manifest injustice"). Here, the Court concludes that, although it 22 did make an error regarding a citation to one case, that error was not material. 23 In its order of dismissal, the Court held that res judicata was a bar to Mr. Diviacchi's case 24 because the California Supreme Court had previously denied his petition for review. In the 25 pending motion, Mr. Diviacchi does not make any real challenge to the Court's analysis finding 26 that the three res judicata elements were met. Rather, in his motion, he returns to his fairness 27 argument – i.e., that it is unfair to hold that the California Supreme Court decision has preclusive 1 "because a mere decision by the State Bar (as opposed to the state court) was not enough to 'cause 2 [him] to suffer a cognizable deprivation under federal law'"). Docket No. 28 (Order at 11). 3 Additionally, Mr. Diviacchi continues to characterize the California Supreme Court's denial of his 4 petition for review and petition for rehearing as non-decisions, without engaging with the reasoning 5 from *In re Rose*, 22 Cal. 4th 430 (2000), which held those summary denials were in fact substantive 6 decisions on the merits. See *id.* at 445-46. 7 As an initial matter, the Court

denies Mr. Diviacchi's motion for relief because the Court's res 8 *judicata* holding is valid based on its analysis of the three res *judicata* factors alone. 9 However, even considering Mr. Diviacchi's fairness arguments in the pending motion, the 10 Court concludes that his motion for relief should still be denied. Mr. Diviacchi criticizes the Court's 11 reliance on three cases: *San Remo Hotel, L.P. v. City of San Francisco*, 545 U.S. 323 (2005); *Fair 12 Assessment in Real Estate Association, Inc. v. McNary*, 454 U.S. 100 (1981); and *Margulis v. State 13 Bar of California*, 845 F.2d 215, 216 (9th Cir. 1988). Mr. Diviacchi is correct that the holding in *San 14 Remo Hotel* was subsequently abrogated, see *Knick v. Township of Scott*, 588 U.S. 180, 184 (2019) 15 (eliminating the previous requirement for Fifth Amendment takings claims that a state court must first 16 deny a plaintiff's claim "for just compensation under state law" before being able to bring the suit in 17 federal court; this requirement was what the *San Remo Hotel* Court deemed preclusive); thus, the 18 Court's reliance on *San Remo Hotel* as an example of a case "where a litigant is unable to vindicate 19 federal rights in a federal forum," Docket No. 28 (Order at 12 n.11), was in error. However, it was not 20 improper for the Court to rely on *Allen v. McCurry*, 449 U.S. 90 (1980), simply because it was quoted 21 in *San Remo Hotel*, and, in *Allen*, the Supreme Court noted the following: 22 The . . . basis of the Court of Appeals' holding appears to be a generally framed principle that every person asserting a federal right 23 is entitled to one unencumbered opportunity to litigate that right in a federal district court, regardless of the legal posture in which the 24 federal claim arises. But the authority for this principle is difficult to discern. It cannot lie in the Constitution, which makes no such 25 guarantee, but leaves the scope of the jurisdiction of the federal district courts to the wisdom of Congress. And no such authority is 26 to be found in § 1983 itself. For reasons already discussed at length, nothing in the language or legislative history of § 1983 proves any 27 congressional intent to deny binding effect to a state-court judgment claims, and thereby has shown itself willing and able to protect 1 federal rights. And nothing in the legislative history of § 1983 reveals any purpose to afford less deference to judgments in state 2 criminal proceedings than to those in state civil proceedings. There is, in short, no reason to believe that Congress intended to provide a 3 person claiming a federal right an unrestricted opportunity to relitigate an issue already decided in state court simply because the 4 issue arose in a state proceeding in which he would rather not have been engaged at all. 5

6 *Id.* at 103-04 (emphasis added) (footnotes omitted). The italicized language above cuts against Mr.

7 Diviacchi's fairness argument. *Allen*'s holding is still good law. 8 As for the Court's citation to *Fair Assessment*, 454 U.S. at 100, that was for a limited 9 purpose. Contrary to what Mr. Diviacchi suggests, the Court did not claim that *Fair Assessment* was a 10 preclusion case (it was not). Rather, the Court simply cited the case as an example where a litigant did 11 not have a right to a federal forum (more specifically, a lower federal court) to vindicate a federal 12 right. That remains correct. See *id.* at 116 ("[D]espite the ready access to federal courts provided by 13 *Monroe* and its progeny, we hold that taxpayers are barred by the principle of comity from

asserting § 14 1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek 15 protection of their federal rights by state remedies, provided of course that those remedies are plain, 16 adequate, and complete, and may ultimately seek review of the state decisions in this Court [i.e., the 17 Supreme Court].”). 18 As for Margulis, the Court simply cited the case in support of the principle that “important 19 principles of judicial comity . . . counsel against federal judicial oversight of alleged constitutional 20 infirmities in a state’s determination of who is qualified for admission to the bar.” Docket No. 28 21 (Order at 12) (quoting Margulis, 845 F.2d at 216); see also Margulis, 845 F.2d at 217 (noting the 22 “general desirability of giving the state court the first opportunity to consider a state statute or rule in 23 light of federal constitutional arguments . . . [and that] the strength of the state interest in regulating the 24 state bar . . . [is] especially great since lawyers are essential to the primary governmental function of 25 administering justice, and have historically been officers of the courts” (quoting District of Columbia 26 Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16 (1983)). Mr. Diviacchi has failed to counter that 27 point in any meaningful way, simply arguing that a federal court should still be able to review a state 1 Finally, the Court notes that Mr. Diviacchi did have access to a federal forum, which he did not 2 pursue. He could have appealed the California Supreme Court’s denial of his petition to the United 3 States Supreme Court just as plaintiffs in Feldman did. 4 For the foregoing reasons, Mr. Diviacchi’s motion to alter or amend the judgment is 5 denied. 6 This order disposes of Docket No. 30. 7 8 IT IS SO ORDERED. 9 10 Dated: April 28, 2025 11 12 EDW . CHEN 13 United States District Judge 15 16 = 17 18 19 20 21 22 23 24 25 26 27 28