

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Sakuma v. Association of Apartment Owners of the Tropics at Waikele

Sakuma v. Ass'n of Apartment Owners of the Tropics at Waikele, 311 F. App'x 9 (9th Cir. 2009) · No. Nos. 07-16396, 07-17189, 07-17298 · Decided January 14, 2009

SUMMARY

The Ninth Circuit addressed three consolidated appeals arising from post-judgment orders in litigation involving Patsy N. Sakuma. It dismissed the appeal from a civil contempt order as moot and affirmed orders designating Sakuma a vexatious litigant, imposing a pre-filing screening order, and denying relief from a judgment enforcing a settlement. The court held that Sakuma received adequate notice and an opportunity to be heard and that her Rule 60(b)(6) arguments were untimely and insufficient.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                        |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Ninth Circuit                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Rymer; Trott; Wallace                                                                                                                                                                                                                                                  |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                                |
| DECIDED               | January 14, 2009                                                                                                                                                                                                                                                       |
| DOCKET                | Nos. 07-16396, 07-17189, 07-17298                                                                                                                                                                                                                                      |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Consolidated appeals from three post-judgment district court orders: a civil contempt order; an order designating Sakuma a vexatious litigant and imposing a pre-filing screening order; and an order denying relief from a judgment enforcing a settlement agreement. |
| STANDARD OF REVIEW    | Abuse of discretion for the denial of Rule 60(b) relief and the vexatious-litigant order; appellate jurisdiction over the contempt appeal was also considered.                                                                                                         |
| PRECEDENTIAL VALUE    | nonprecedential                                                                                                                                                                                                                                                        |
| PARTIES               | Patsy N. Sakuma v. Association of Apartment Owners of the Tropics at Waikele                                                                                                                                                                                           |

TOPICS

mootness

writ of certiorari

appellate procedure

civil procedure

contracts

## PRACTICE AREAS

civil procedure

appellate procedure

contracts

## QUESTIONS PRESENTED

1. Whether the appeal from the civil contempt order was moot after Sakuma complied with the order and no sanctions were imposed.
2. Whether the district court violated Sakuma's due process rights by entering a pre-filing screening order without adequate notice and an opportunity to be heard.
3. Whether Sakuma was entitled to relief from the settlement judgment under Federal Rule of Civil Procedure 60(b)(6) based on alleged breaches of the settlement agreement.

## HOLDINGS

1. The appeal was moot because Sakuma had complied with the contempt order and the district court had imposed no contempt sanctions; relief from the order would provide her no remedy.
2. The district court did not violate Sakuma's procedural rights because it gave her an opportunity to brief the issue, considered her arguments, and entered findings supporting the screening order.
3. Sakuma was not entitled to Rule 60(b)(6) relief because her breach arguments were untimely, and the alleged June 2006 breach did not constitute a complete frustration of the settlement agreement.

## KEY QUOTATIONS

*“Because relief from the contempt order would not afford Sakuma any remedy, the appeal is moot.”* (311 F. App'x at 10-11)

*“The single breach alleged to have occurred in June 2006 was not a “complete frustration” of the settlement agreement and, therefore, would not justify relief.”* (311 F. App'x at 11)

## FACTUAL BACKGROUND

Sakuma was subject to a district court civil contempt order, a vexatious-litigant designation with a pre-filing screening requirement, and a judgment enforcing a 2002 settlement agreement. She complied with the contempt order, and the district court imposed no contempt sanctions. She later sought relief from the settlement judgment under Rule 60(b)(6), alleging breaches of the settlement agreement, including one alleged breach in June 2006.

## PROCEDURAL HISTORY

Sakuma appealed post-judgment orders entered by the district court in underlying litigation involving enforcement of a 2002 settlement agreement. The Ninth Circuit dismissed the contempt appeal as moot because Sakuma had complied with the order and no contempt sanctions had been imposed, and affirmed the orders concerning the vexatious-litigant screening order and denial of Rule 60(b)(6) relief.

## DISPOSITION

dismissed

#### CASES CITED

- *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100 (9th Cir. 2006)
- *De Long v. Hennessey*, 912 F.2d 1144, 1146-1147 (9th Cir. 1990)
- *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1394 (9th Cir. 1991)
- *Keeling v. Sheet Metal Workers Int'l Ass'n, Local Union 162*, 937 F.2d 408, 410 (9th Cir. 1991)

#### OPINION

*Sakuma v. Association of Apartment Owners of the Tropics at Waialeale* 311 F. App'x 9

PER CURIAM.

#### MEMORANDUM \*\*

In these consolidated appeals, Patsy N. Sakuma, an attorney, appeals pro se from three post-judgment orders of the district court. In No. 07-16396, Sakuma appeals from a civil contempt order, and we lack jurisdiction over this appeal. In Nos. 07-17189 and 07-17298, Sakuma appeals from orders designating her a vexatious litigant and entering a pre-filing screening order, and denying her motion for relief from a judgment enforcing a settlement in underlying litigation. We have jurisdiction over the appeals in Nos. 07-17189 and 07-17298 under 28 U.S.C. § 1291. We review for an abuse of discretion. *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100 (9th Cir.2006) (denial of a Rule 60(b) motion); *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir.1990) (vexatious litigant order). We dismiss No. 07-16396 and affirm Nos. 07-17189 and 07-17298. In No. 07-16396, Sakuma complied with the contempt order and the district court never imposed sanctions for contempt. Because relief from the contempt order would not afford Sakuma any remedy, the appeal is moot. See *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1394 (9th Cir.1991). Consequently, we dismiss the appeal for lack of jurisdiction. In Nos. 07-17189 and 07-17298, Sakuma contends that the district court failed to afford her notice and an opportunity to be heard before imposing the pre-filing screening order. We disagree. The district court afforded Sakuma an opportunity to brief the issue, considered Sakuma's arguments, and thereafter entered findings supporting the screening order. See *De Long*, 912 F.2d at 1147. In No. 07-17189, Sakuma also appeals from the order denying her motion for relief from judgment. See Fed.R.Civ.P. 60(b)(6). Sakuma contends the district court should have afforded relief under Rule 60 based on defendants' alleged breaches of the 2002 settlement agreement. However, the alleged breaches occurred long before Sakuma filed her Rule 60(b)(6) motion. Sakuma should have raised her contention earlier, including in a prior Rule 60 motion that has already been affirmed by this court. This contention is therefore untimely. See Fed.R.Civ.P. 60(c)(1). The single breach alleged to have occurred in June 2006 was not a "complete frustration" of the settlement agreement and, therefore, would not justify relief. *Keeling v. Sheet Metal Workers Int'l Ass'n, Local Union 162*,

937 F.2d 408, 410 (9th Cir.1991). Sakuma's remaining contentions are unpersuasive. Sakuma's motion to expedite is denied as moot. No. 07-16396 DISMISSED. Nos. 07-17189 and 07-17298 AFFIRMED. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.