[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11135
Non-Argument Calendar

D.C. Docket No. 0:16-cv-60877-KMW

CATHERINE KERRUISH,
BARBARA CRESSMAN,

Plaintiffs - Appellants,

versus

ESSEX HOLDINGS, INC., et al.,

Defendants,

RODNEY RUTTY,
JPMORGAN CHASE BANK, N.A.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(January 8, 2021)

Before WILSON, MARTIN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

Plaintiffs Catherine Kerruish and Barbara Cressman appeal from the district court's order denying their motion to set aside the judgment under Federal Rule of Civil Procedure 60(b). Plaintiffs each lost more than $700,000 investing in what turned out to be a Ponzi scheme. Kerruish v. Essex Holdings, Inc., 777 F. App'x 285, 287 (11th Cir. 2019) (per curiam) (unpublished). They say they invested in Essex Holdings, Inc. ("Essex") partly in reliance on false representations made by a JPMorgan Chase Bank, N.A. ("Chase") employee named Rodney Rutty in a letter sent on Chase letterhead. Id. at 287. They sued Rutty for common law fraud and sought to hold Chase vicariously liable. Id. at 287–88. The district court dismissed their claims against Chase and granted summary judgment to Rutty. Id. at 288. A panel of this Court affirmed those decisions in June 2019. Id.

In October 2019, Plaintiffs filed a Rule 60(b) motion in the district court, claiming they were entitled to relief. The district court denied Plaintiffs' motion as untimely. After careful review, we affirm.

I.

Between 2012 and 2013, Plaintiffs each invested £500,000 (more than $700,000 in U.S. dollars) in Essex. Kerruish, 777 F. App'x at 287–88.[1] Essex held itself out to be a Florida-based global trading company active in sugar trading

[1] The facts and procedural history are more fully laid out in the previous panel's opinion. See Kerruish, 777 F. App'x at 287–90.

and iron ore mining.[2] However, Essex was actually a sham company set up by Defendant Navin Xavier to defraud investors.[3] Plaintiffs filed suit in the Southern District of Florida, naming several people and companies as defendants, alleging Defendants fraudulently induced Plaintiffs to invest £500,000 in Essex's Ponzi scheme.

Plaintiffs alleged that in making their investments, they relied on, among other things, letters from two Chase employees.[4] They alleged that Rutty signed one of these letters in his capacity as a Chase Business Specialist. The "Chase letter" reads:

> Dear Sir/Madam
>
> At the request of our valued customer Essex Holdings, Inc. please be advised of the following information in reference to their Sugar Allocation.
>
> Essex Holdings, Inc. has purchased the following contract in the amount of One Million Five Hundred Thousand Metric Tons of White Refined Sugar from Shepton Mallet Corp. S.A., under allocation number SM009582-121SM3331MT1500000-51210. The initial purchase consists of One Hundred Twenty Five Thousand Metric Tons for the next twelve consecutive months.

[2] Kerruish and her husband, Stephen, invested in 2012. Cressman invested in 2013. Plaintiffs are both citizens of Great Britain.

[3] The government brought federal fraud charges against Xavier. He ultimately pled guilty to two counts of wire fraud in connection with the Essex scheme.

[4] Plaintiffs also relied on advice from Kerruish's brother-in-law, Simon Kerruish. Simon and a man named Robert Jarvis ran Lucino Limited, a Cyprus-based company acting as a collection agent to facilitate fraudulent overseas investments into Essex. Simon and Jarvis are both deceased.

> We further confirm that Essex Holdings have [sic] a proven business history in the export of ICUMSA 45 sugar from Brazil.
>
> Please feel free to contact us if you have any further questions on this matter.
>
> [Signature]
> Rodney Rutty
> Business Specialist

After several of Plaintiffs' claims had been dismissed, Rutty moved for summary judgment on the two remaining claims against him. Among other things, Rutty argued the fraud claims against him could not be sustained because the evidence showed he did not sign the Chase letter and there was no evidence he received payments from the Essex scheme. Then, more than two months after summary judgment briefing was complete and more than four months after the close of discovery, Plaintiffs moved to submit a declaration from Xavier to support the authenticity of the Chase letter. In the declaration, Xavier says he paid Rutty to sign the Chase letter and make false representations to any potential investor who inquired about Essex.

The district court declined to consider Xavier's declaration.[5] And, in reaching its decision to grant Rutty summary judgment, it found that "Plaintiffs

[5] Aside from Plaintiffs' lateness in submitting the declaration, the district court noted several problems with Xavier's declaration. For example, the court had "serious concerns" about the reliability of Xavier's statements because they "directly contradict" previous statements Xavier had made under oath. The district court also said Xavier was not represented by counsel during the meeting with Plaintiffs' counsel.

have not offered sufficient evidence to create a genuine issue of fact regarding whether Rutty signed the Chase letter." The court noted that although Rutty admitted the signature looked like his signature, he also testified he did not prepare or sign the letter, and never saw the letter before Plaintiffs' counsel emailed it to him. Beyond that, Xavier admitted in his criminal proceedings that he used forged bank letters as part of his scheme to attract investors. See Kerruish, 777 F. App'x at 289. The district court then entered judgment in favor of Rutty on July 10, 2018. The final judgment in this action was electronically filed with the court on October 29, 2018.

On October 28, 2019, Plaintiffs filed the motion that is the subject of this appeal. They claimed that under Rule 60(b), they were entitled to relief from the judgment because newly discovered evidence showed Rutty lied about his involvement with the letter. Plaintiffs' counsel discovered a document, obtained from a backup hard drive maintained by Kerruish's recently deceased brother-in-law, Simon, that implicated Rutty. The letter, purportedly written by Simon, apologized to Rutty for his receiving a rogue phone call from a prospective Essex investor. Plaintiffs argued this letter shows that Simon and Rutty had a business relationship, which in turn proves "beyond a shadow of a doubt" that Rutty perjured himself at his deposition. Plaintiffs also pointed to deposition testimony from other Essex investors in a separate civil suit, and Xavier's recantation of his

sworn statement that he forged the Chase letter, as evidence to bolster their Rule 60(b) motion.

The district court denied the motion. It held that because the motion was filed "over a year and three months after final judgment was entered in favor of Rodney Rutty," Plaintiffs' motion was untimely. And because Plaintiffs offered no explanation for why they did not obtain the deposition evidence from the other Essex investors while this case was ongoing, Plaintiffs' delay in filing their motion also did "not constitute a 'reasonable' amount of time under Rule 60(c)." Plaintiffs timely appealed.

II.

We review the grant of relief under Rule 60(b) for an abuse of discretion. AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc., 579 F.3d 1268, 1270 (11th Cir. 2009). We review de novo legal conclusions and review factual findings for clear error. Id.

III.

Plaintiffs argue the district court abused its discretion on two grounds. First, they say the district court made an error of law when it found Plaintiffs' motion was untimely. Second, they argue the district court clearly erred by failing to consider the evidence supporting the motion. We do not need to reach the second argument because the first is dispositive of this appeal.

Rule 60(b) permits a district court to relieve a party from a final judgment for specified reasons. See Fed. R. Civ. P. 60(b). Plaintiffs filed their motion under Rule 60(b)(2), relying on newly discovered evidence, and Rule 60(b)(3), relying on fraud. A Rule 60(b)(2) or (3) motion must be made within one year of the entry of the judgment. See Fed. R. Civ. P. 60(c)(1). A motion made under Rule 60(b) "must" also be "made within a reasonable time." Id.

In Plaintiffs' case, the district court found the motion untimely under both the "year after the entry of the judgment" and the "reasonable time" requirements. Plaintiffs argue the judgment entered against Rutty on July 10, 2018 was not a "final judgment" for purposes of Rule 60(b). Rather, they assert the district court did not enter final judgment until October 29, 2018. And because they filed their motion on October 28, 2019, one day before the year-end clock, Plaintiffs say their motion was timely. Defendants primarily argue that whether the district court erred on this point makes no difference, because Plaintiffs failed to appeal the court's "reasonable time" finding.

Defendants' argument prevails. Motions under Rule 60(b)(1), (2), or (3) "must be made within a reasonable time" and be made "no more than a year after the entry of judgment or order, or the date of the proceeding." Fed. R. Civ. P. 60(b), (c); see 11 Mary Kay Kane, Federal Practice and Procedure § 2866 (3d ed. 2019) (Oct. 2020 Update); A & F Bah. LLC v. World Venture Grp., Inc., 796 F.

App'x 657, 661 (11th Cir. 2020) (per curiam) (unpublished) (explaining that "Rule 60(c)(1) ostensibly requires that all motions under Rule 60(b)"—except Rule 60(b)(4) motions—"be 'made within a reasonable time'" (quoting Hertz Corp. v. Alamo Rent-A-Car, 16 F.3d 1126, 1130 (11th Cir. 1994)). Thus "the motion may be rejected as untimely if not made within a 'reasonable time' even though the one-year period has not expired." Federal Practice and Procedure § 2866. That is precisely what the district court did here. And because Plaintiffs have failed to challenge the court's "reasonable time" finding,[6] which is an independent ground for denying their motion, we affirm the district court's order.

AFFIRMED.

[6] Plaintiffs say they did not waive the issue because it "is clear from the appeal itself" and argue that this Court must read appellate briefs liberally. But a determination of what constitutes a reasonable time depends on the facts in any given case, and in making the determination, courts should consider whether the movant had a good reason for the delay in filing and whether the non-movant would be prejudiced by the delay. Lairsey v. Advance Abrasives Co., 542 F.2d 928, 930 (5th Cir. 1976); see also Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (adopting as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981). This is a fact-intensive inquiry that Plaintiffs have not briefed, so we will not address it. See Access Now, Inc. v. Sw. Airlines Co., 385 F.3d 1324, 1330 (11th Cir. 2004).