UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL CAREY; LEONE CAREY; DOUGLAS CARPA and ROBERT TALBOT (or their successor trustees), as Trustees of the RANCH HOLDING TRUST; MICHAEL BLOOMQUIST (or his successor trustee), as Trustee of the HIDDEN MEADOWS HOLDING TRUST; PAMELA GRAFF; PATRICIA WELCH (aka PATRICIA KOERNER); STATE OF CALIFORNIA FRANCHISE TAX BOARD, and STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS,

Defendants.

No. 2:05-cv-02176-MCE-CMK

ORDER

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In response to the Motion for Order of Ejectment (Docket No. 140) filed by Plaintiff the United States of America, and concurrently with their Opposition to said Motion, Defendants Michael and Leone Carey have brought a Motion to Vacate the July 5, 2007 Judgment in this matter pursuant to Federal Rule of Civil Procedure 60(b).

In addition, John, Byron and George Carey seek leave to intervene as a matter of right under Federal Rule of Civil Procedure 24(a) to file a similar request to vacate the Court's Order of Foreclosure filed February 11, 2008. The Court now considers both of those requests.

Federal Rule of Civil Procedure 60(c) limits the period within which a motion to set aside a judgment can be timely filed. Any motion filed under Rule 60(b)(1), (2) or (3) must be made within one year of the entry of judgment from which relief is sought. Fed. R. Civ. P. 60(c)(1). Here, Defendants Michael and Leone Carey assert both "newly discovered evidence" under Rule 60(b)(2) and "fraud, misrepresentation or misconduct" under Rule 60(b)(3). See Defs.' Mot. Vacate J. 4-7. Because the present Motion filed by Michael and Leone Carey was filed on April 13, 2010, close to three years after the Judgment in question was entered on July 5, 2007, it is plainly untimely insofar as it is brought under either Rule 60(b)(2) or (b)(3).

Although Mr. and Mrs. Carey's Motion also purports to be brought under Rule 60(b)(4) and (b)(6),[1] and while those subsections do not carry the same express one year limitation, any motion brought under Rule 60(b) "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1).

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[1] Those subsections permit relief from a void judgment, and further allow a court to vacate a judgment for "any other reason that justifies relief."

As the United States points out, whether a Rule 60 motion is brought within the requisite reasonable time "depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties." Lemoge v. United States, 587 F.3d 1188, 1196 (9th Cir. 2009); citing Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981) (per curiam).

As indicated above, the Judgment which the Careys now seek to set aside was filed nearly three years ago. In the interim period, that Judgment has been both appealed and affirmed by the Ninth Circuit. Most of the grounds cited by the Careys to support their Motion pertain in some respect to the Chapter 7 bankruptcy, which was virtually concluded by the time this action was filed on October 27, 2005 (the Bankruptcy Court's Memorandum and Order relied upon by the Careys, for example, was filed on April 25, 2005 and judgment was subsequently entered two days later). The Careys have advanced no convincing reason why they could not have brought any arguments pertaining to the bankruptcy much earlier than they in fact did. The Careys' own papers underscore that point, since they themselves claim to have "discovered" a legal argument in September 2009, yet did not bring it to the Court's attention until some seven months later.

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Even more importantly, interests of finality weigh against consideration of the Carey's Motion at this juncture. "There must be an end to litigation someday", Ackermann v. United States, 340 U.S. 193, 198 (1950), and as the United States has delineated in their Opposition to the Careys' Motion, there have been at least three different attacks on the Court's Judgment since the Careys filed their Notice of Appeal in this case. See United States' Opp., 3:16-4:19.

Finally, the Careys would fare not better even if their latest claims, as set forth in this Motion, were considered on their merits. The Careys have shown no newly discovered evidence that could not have been discovered through reasonable diligence, and the evidence they now identify would not have made a difference in the Court's decision in any event. Additionally, the Careys' allegations of fraud against the United States are frivolous; the Bankruptcy Court's decision clearly prevented the Careys' tax liabilities from being discharged in bankruptcy despite the Careys' oft-repeated arguments to the contrary.

The request brought by John, George and Byron Carey to intervene as a matter of law so that they then move to set aside the Judgment is no more persuasive. Their intervention request, brought nearly three years after judgment was entered in this case, is plainly untimely.

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In sum, for the reasons set forth above, the Motion to Vacate Judgment brought by Michael and Leone Carey (Docket No. 145), as well as the Motion for Leave to Intervene brought by John, Byron and George Carey (Docket No. 153) are DENIED.[2]

IT IS SO ORDERED.

Dated: May 26, 2010

MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

[2] Because oral argument was not of material assistance, the Court ordered this matter submitted on the briefing. E.D. Local Rule 230(g).