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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOODMAN BALL, INC.,)	
)	
Plaintiff(s),)	No. C07-1148 BZ
)	
v.)	ORDER OF DISMISSAL
)	
CLEAR WATER USA, INC., et)	
al.,)	
)	
Defendant(s).)	
_____)	

On February 13, 2008 the remaining parties settled this case during mediation. On February 29, 2008 I issued a conditional dismissal which allowed the parties to reopen the case within 60 days if the settlement was not consummated. No party moved to reopen the case within the 60 day period. On December 12, 2008 plaintiff filed a motion to reopen the case, pursuant to Rule 60(b), which I granted as unopposed. Thereafter defendants Mach II Aviation, Inc. and Escape Velocity of Tampa Bay, Inc., represented by new counsel, filed a motion pursuant to Rule 60(b), requesting relief from their failure to have opposed plaintiff's earlier motion. On August 5, 2009, I granted their motion and found that based on the

1 complete record, I would not have granted plaintiff's earlier
2 motion. In part this is because defendants persuaded me that
3 they had tried to consummate the settlement, making two
4 payments totaling \$60,000, but had been deterred by various
5 acts of plaintiff, including the filing of the motion to
6 reopen. I therefore conditioned the granting of defendants'
7 motion on their paying the final installments. This they
8 failed to do, contending that the import of my finding was
9 that plaintiff was not entitled to reopen the case and that
10 the Court had not retained jurisdiction to enforce the
11 settlement.

12 Having further considered the matter, I conclude that the
13 case should be dismissed. Plaintiff's motion to reopen was
14 based on Rule 60(b) as interpreted in Keeling v. Sheet Metal
15 Workers' Int'l. Assoc., 937 F.2d 408, 410 (9th Cir. 1991).
16 Essentially plaintiff claimed that defendants' conduct
17 amounted to fraud and satisfied the "extraordinary
18 circumstances" standard of Keeling. Having all the facts
19 before me, I find that that standard was not satisfied, at
20 least as far as the two defendants before the Court are
21 concerned.¹ The fact that the defendants made two of the four
22 payments required by settlement, totaling \$60,000, suggests
23 that they did not enter into the settlement with the intent to
24 defraud plaintiff or engage in a fraud upon the Court. Had
25 that been their intent, they would not have paid the money;

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27 ¹ To the extent that Solar Diesel's conduct may have
28 been more egregious, Solar Diesel had been dismissed for lack
of jurisdiction so reopening the case would provide plaintiff
with no recourse against that party.

1 certainly not the second payment which was made after the time
2 to reopen the case had passed.

3 The Court is also satisfied that it lacks jurisdiction to
4 enforce the settlement. The settlement agreement states that
5 "the parties shall stipulate to the dismissal of the action
6 with prejudice, with the Court retaining jurisdiction to
7 enforce the terms of the settlement". Plt's Mot. to Reopen
8 Ex. 1 ¶ 5. However, no such stipulation was ever submitted
9 and the Court never entered an order retaining jurisdiction.
10 While Kokkonen v. Guardian Life Insurance Co. Of America, 511
11 U.S. 375, 378 (1994) seems to assume without deciding that the
12 Ninth Circuit ruling in Keeling is correct insofar as
13 reopening a case is concerned, the Supreme Court made it clear
14 that absent an explicit retention of jurisdiction, once a case
15 is dismissed, a court lacks jurisdiction to enforce a
16 settlement agreement.

17 For these reasons, I conclude that the Order granting the
18 plaintiff's motion to reopen case filed January 6, 2009 was
19 improvidently entered and it is hereby **VACATED. IT IS FURTHER**
20 **ORDERED** that this Court does not have jurisdiction to enforce
21 the settlement. **IT IS THEREFORE ORDERED** that this case be
22 **DISMISSED.**² Plaintiff's motion to enforce the Court's Order

23 ///

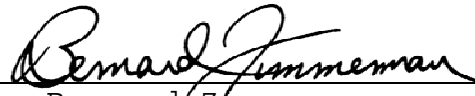
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27 ² This Order is without prejudice to any rights that
28 plaintiff has to pursue Solar Diesel in its bankruptcy
proceeding or elsewhere or to file a separate action against
defendants for breach of contract.

1 and for attorneys' fees is **DENIED**.

2 Dated: December 4, 2009



Bernard Zimmerman
United States Magistrate Judge

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