

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

625 3RD STREET ASSOCIATES, L.P., a California  
limited partnership,  
Plaintiff,

No. C 09-00564 WHA  
No. C 09-03820 WHA

v.

BOARD OF THE NATIONAL CREDIT UNION  
ADMINISTRATION, in its capacity as liquidating  
agent for the Kaiperm Federal Credit Union,  
KAIPERM FEDERAL CREDIT UNION, a federal  
credit union, and STANLEY ABRAMS, an individual,  
Defendants.

**ORDER DENYING MOTION  
TO AMEND JUDGMENT  
TO AWARD RESCISSION**

**INTRODUCTION**

In this real-estate fraud action, plaintiff moves under Rule 59(e) to amend the judgment and for rescission in lieu of money damages. For the reasons below, plaintiff's motion is **DENIED.**

**STATEMENT**

Plaintiff 625 3rd Street Associates is an investor group. In 2007 it purchased the Oakland headquarters of defendant Kaiperm Federal Credit Union. Defendant Stanley Abrams was then Kaiperm's CEO. Plaintiff paid Kaiperm eight million dollars and Kaiperm agreed to lease the bank building back for the next fifteen years.

At the time of the deal, Kaiperm was struggling financially. In the year after the sale and leaseback, defendant Board of the National Credit Union Administration placed Kaiperm in

1 involuntary liquidation due to insolvency. Using its special enforcement powers in 12 U.S.C.  
2 1787(c)(1), the NCUA repudiated the lease with plaintiff. In other words, Kaiperm kept the eight  
3 million dollars but escaped from the lease. In better times, the building could perhaps have been  
4 re-let, but by the time of the repudiation, the hot real estate market had turned cold. Plaintiff then  
5 brought this action, alleging that Kaiperm and Abrams had breached a warranty and fraudulently  
6 induced the sale-leaseback transaction in the first place.

7 At trial, plaintiff asked for \$10.1 million in its opening statement, but then asserted varied  
8 and lesser figures throughout the trial. During its closing argument, plaintiff asked the jury for  
9 \$4.49 million. The jury rejected the warranty claim. The jury, however, found fraud and  
10 awarded plaintiff \$630,000. Judgment was entered.

11 Now plaintiff seeks to amend the judgment and obtain rescission of the original  
12 transaction in lieu of the disappointing verdict. Specifically, plaintiff seeks to convey title to the  
13 Oakland property to the NCUA and return \$564,623.00 in rent it collected from Kaiperm to the  
14 NCUA; in return, plaintiff seeks \$11.3 million. This figure includes the purchase price of the real  
15 estate and closing costs (\$8,189,558.27), prejudgment interest on that sum (\$2,729,852.70), and  
16 expenditures made to benefit the property (\$376,076.00).

### 17 ANALYSIS

18 The rule of decision respecting the availability of rescission is federal law, not state law.  
19 Specifically, the federal rule is that whether to grant or withhold rescission is discretionary in  
20 accord with sound principles of equity.

21 Two decisions bear on whether federal rather than state law guides the rescission issue in  
22 the circumstances of our action. One is *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). There, the  
23 claim arose under a federal statute. The question was the degree to which a state statute of  
24 limitations applied in federal equity. The Supreme Court drew a distinction between diversity  
25 suits, where a federal court is, in effect, “only another court of the State,” and federal question  
26 suits:

27 We do not have the duty of a federal court, sitting as it were as a court of a State,  
28 to approximate as closely as may be State law in order to vindicate without  
discrimination a right derived solely from a State. We have the duty of federal

1 courts, sitting as national courts throughout the country, to apply their own  
2 principles in enforcing an equitable right created by Congress.

3 *Id.* at 395.

4 The second decision is *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943). There,  
5 the United States sued to recover on a check that had been stolen and cashed with a forged  
6 signature. The issue was whether a delay barred the action. Though no federal statute governed  
7 the action, the Supreme Court held that the rule from *Erie* did not apply because:

8 The rights and duties of the United States on commercial paper which it issues are  
9 governed by federal rather than local law. . . . In absence of an applicable Act of  
Congress it is for the federal courts to fashion the governing rule of law according  
to their own standards. . . .

10 In our choice of the applicable federal rule we have occasionally selected state  
11 law. But reasons which may make state law at times the appropriate federal rule  
are singularly inappropriate here.

12 *Id.* at 366–67 (citation omitted). Later decisions emphasize the presence of a federal interest and  
13 a significant conflict with state law in applying a federal rule of decision. *See, e.g., Boyle v.*  
14 *United Technologies Corp.*, 487 U.S. 500, 507–08 (1988). These precedents militate in favor of  
15 displacing state law, even in the absence of an underlying federal claim, when a national interest  
16 is implicated and the remedy sought is equitable.

17 Federal question jurisdiction arose here from the necessary, substantial, and disputed issue  
18 of the effect of the NCUA’s exercise of its contract repudiation power (*see* Dkt. No. 50). A  
19 federal question arises not only if “law that creates the cause of action” is federal law, but also:

20 [If the] state-law claim necessarily raise[s] a stated federal issue, actually disputed  
21 and substantial, which a federal forum may entertain without disturbing any  
congressionally approved balance of federal and state judicial responsibilities.

22 *Grable & Sons Metal Prods. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005).

23 Specifically, in the instant action, state law claims necessarily raised the federal issue of  
24 whether the lease was effectively repudiated by the NCUA’s regulatory powers because the  
25 lawsuit pretended the liquidation never occurred; this federal issue was actually disputed because  
26 plaintiff’s theory was that before the takeover and liquidation there was a *de facto* merger  
27 between Kaiperm and another credit union, Alliant Credit Union, rendering the NCUA’s action a  
28 nullity; and the issue was substantial because it went to the heart of liability.





1 losing up to \$2.2 million a year and had a true net worth of only eight to ten million dollars. This  
2 must be repeated: Plaintiff knew that Kaiperm was going down and going down at an alarming  
3 rate that would not sustain a fifteen-year lease. This evidence was consistent with the view that  
4 plaintiff did not much care about the solvency of their tenant because, at the time, the real estate  
5 market was strong — the word used at trial was “frothy.” It would not have been unusual for this  
6 landlord to be willing to gamble on its tenant’s solvency because it would have been easily  
7 replaced. This circumstance changed, of course, *after the deal* when the economy collapsed.  
8 In short, this is not a strong case for the application of equity. The verdict more closely matches  
9 the equities than would rescission, which would, in the chancellor’s view, be a disproportionate  
10 remedy.

11 **CONCLUSION**

12 For the reasons above, plaintiff’s motion to amend the judgment to award rescission is  
13 **DENIED.**

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15 **IT IS SO ORDERED.**

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17 Dated: December 7, 2010.

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20 WILLIAM ALSUP  
21 UNITED STATES DISTRICT JUDGE  
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