

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez**

Civil Action No. 10-cv-2516-WJM-KLM

AURARIA STUDENT HOUSING AT THE REGENCY, LLC, a Colorado limited liability company,

Plaintiff,

v.

CAMPUS VILLAGE APARTMENTS, LLC, a Delaware limited liability company,

Defendant.

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**ORDER GRANTING MOTION TO VACATE ATTORNEYS' FEE JUDGMENT**

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This matter is before the Court's on the Defendant's "Unopposed Fed. R. Civ. P. 60(b)(5) Motion to Vacate the Attorneys' Fee Judgment [Docket # 312]." (ECF No. 322 ("Defendant's Motion").)

Having considered the motion, the Court FINDS and ORDERS as follows:

1. On February 3, 2015, an amended merits judgment was entered against Defendant, Campus Village Apartments, LLC ("Campus Village"). (ECF No. 260.) On September 24, 2015, Campus Village's Rule 50 motions were denied. (ECF No. 286.)
2. Campus Village appealed the amended judgment and the order on the Rule 50 motions to the United States Court of Appeals for the Tenth Circuit. (See ECF No. 287 (Notice of Appeal).)
3. Plaintiff subsequently moved for an award of its fees and costs under the Clayton Act, 15 U.S.C. § 15(a). (See ECF No. 302.)

4. On August 5, 2016, the Court issued an Opinion and Order on the motion for fees and costs, granting the motion in part and denying it in part. (ECF No. 311.)

5. On August 8, 2016, the Court entered a judgment (the “Fee Judgment”) awarding certain fees and costs to the Plaintiff. (ECF No. 312.)

6. On December 15, 2016, the Court of Appeals vacated the merits judgment. *See Auraria Student Housing at the Regency, LLC v. Campus Village Apartments, LLC*, -- F.3d --, 2016 WL 7260600 (10th Cir. 2016). (See also ECF Nos. 313, 314.)

7. The Tenth Circuit’s mandate issued on January 6, 2017. (See ECF No. 317.)

8. Under Rule 60(b)(5) of the Federal Rules of Civil Procedure, the Court may vacate a judgment if that judgment “is based on an earlier judgment that has been reversed or vacated[.]” See Fed. R. Civ. P. 60(b)(5) (emphasis added).

9. When a fee judgment was based upon a merits judgment that is later vacated, the fee judgment is also properly vacated under Rule 60(b)(5). See *Flowers v. So. Regional Phys. Svcs., Inc.*, 286 F.3d 798, 801 (5th Cir. 2002); *Cal. Med. Ass’n v. Shalala*, 207 F.3d 575, 577–78 (9th Cir. 2000) (“Since the fee award is based on the merits judgment, reversal of the merits removes the underpinnings of the fee award.”); *Mother Goose Nursery Schools, Inc. v. Sendak*, 770 F.2d 668, 675–676 (7th Cir. 1985) (losing party at district court is not “forced into the ludicrous position of appealing fee awards they might otherwise choose not to challenge in order not to be faced with a fee award . . . if the underlying action is reversed”); *RMA Ventures California v. SunAmerica*

*Life Ins. Co.*, 576 F.3d 1070, 1976 (10th Cir. 2009) (Lucero, J., concurring) (“If we were to reach the merits and reverse the district court’s decision, however, there is little doubt that RMA would be entitled to relief from the subsidiary attorneys’ fee judgment.”); 12-60 Joseph T. McLaughlin, et al., *Moore’s Federal Practice - Civil* § 60.46 (2016) (“Rule 60(b)(5) authorizes a district court to grant relief from an attorney’s fee award if the underlying merits judgment that was the basis for the fee award is vacated on appeal.”).

10. Rule 60 requires that motions to vacate be made “within a reasonable time[.]” See Fed. R. Civ. P. 60(c)(1). Here, Defendant made its motion shortly (less than two weeks) after the Tenth Circuit’s mandate vacating the merits judgment was filed with the Clerk of Court. (See ECF No. 317.) The Court finds the motion was made within a reasonable time. See *Cal. Med.*, 207 F.3d at 579; *Ass’n for Retarded Citizens of Connecticut, Inc. v. Thorne*, 68 F.3d 547, 553 (2d Cir. 1995) (holding that a “time lag of less than a month” was “not unreasonable” under Rule 60(b)(5)).

11. Plaintiff does not oppose this motion or the relief sought.

12. In light of the foregoing, the Court concludes that relief under Rule 60(b)(5) is warranted. The merits judgment on which the Fee Judgment was predicated has been vacated, and Campus Village has moved for relief from the Fee Judgment within a reasonable time.

Accordingly, Defendant’s Unopposed Fed. R. Civ. P. 60(b)(5) Motion to Vacate the Attorneys’ Fee Judgment [Docket # 312] (ECF No. 322) is GRANTED, and the Fee Judgment (ECF No. 312) is hereby VACATED, pursuant to Rule 60(b)(5).

Dated this 24<sup>th</sup> day of January, 2017.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "William J. Martínez", written over a horizontal line.

William J. Martínez  
United States District Judge