

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ERICH SPECHT, an individual and doing business)	
as ANDROID DATA CORPORATION, and THE)	
ANDROID’S DUNGEON INCORPORATED,)	
)	
Plaintiffs/Counter-Defendants,)	
v.)	Civil Action No. 09-cv-2572
)	
GOOGLE INC.,)	Judge Harry D. Leinenweber
)	
Defendant/Counter-Plaintiff.)	

PLAINTIFFS’ RULE 60 (b) (6) MOTION FOR RELIEF FROM A FINAL JUDGMENT

Plaintiff Erich Specht, an individual and doing business as Android Data Corporation and The Android’s Dungeon Incorporated (collectively, “Plaintiff”), by and through his attorney, respectfully moves this Court for relief from a final judgment pursuant to Rule 60 (b) (6) of the Fed. R. Civ. Proc.. In support hereof, Plaintiffs state as follows:

1. Rule 60 (b) (6) provides, in relevant part, that: “On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons ...(6) any other reason that justifies relief.

2. Plaintiffs are seeking relief from the Court’s final judgment because it is preventing them from appealing the Court’s prior order granting Google summary judgment.

3. On August 22, 2011 the Court of Appeals dismissed Plaintiffs appeal as premature citing the dismissal of Google’s counterclaims without prejudice. (See Exhibit 1).

4. On December 17, 2011 the Court granted summary judgment against Plaintiffs and in favor of Google on all five counts of Plaintiffs’ Second Amended Complaint and counts I and III of Google’s counterclaims. [ECF 295].

5. On February 24, 2011, the Court granted Google's oral motion to dismiss the remaining five counterclaims (II, IV, V, VI and VII) without prejudice to be reinstated in the event that the cause is reversed on appeal. (Feb. 24, 2011 Transcript of Proceedings at p. 6) (Exhibit 2).

6. There being nothing left for the Court to decide, it entered final judgment. [ECF 311].

7. On March 22, 2011, believing that judgment was final, Plaintiffs filed a timely notice of appeal. [ECF 312].

8. Plaintiffs are now being denied their right to appeal until a final order is entered by this Court on Google's counterclaims.

9. Unless Google agrees to have its claims dismissed with prejudice (which it has thus far declined to do) or seeks leave to re-file its claims for adjudication, Plaintiffs are powerless to bring this case to finality without court intervention.

10. Court intervention is necessary and proper because Google has thus far failed to take any action on its own to move this case to finality.

Wherefore, Plaintiffs are moving this Court, pursuant to Rule 60 (b), to move this case forward and toward finality by:

- a. ordering Google to file a motion to re-file its dismissed counterclaims within a reasonable period of time, not to exceed 14 days; or
- b. making a Rule 54 (b) finding, if the court expressly determines that there is no just reason for delay; or
- c. vacating the order dismissing the counterclaims without prejudice and then strike them, with prejudice, pursuant to Rule 12(f), because the relief sought in the

counterclaims is redundant of the relief already granted Google. See, for e.g.,
Strickrath v. Globalstar, 2008 WL 2050990.

Respectfully submitted,

ERICH SPECHT, an individual and doing
business as ANDROID DATA
CORPORATION, and THE ANDROID'S
DUNGEON INCORPORATED

By: /s/Martin J. Murphy

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CERTIFICATE OF SERVICE

Martin J. Murphy, an attorney, certifies that he caused copies of the foregoing to be served by electronically filing the document with the Clerk of Court using the ECF system this 29th day of August , 2011.

/s/ Martin J. Murphy

EXHIBIT 1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

August 22, 2011

Before

William J. Bauer, Circuit Judge
Michael S. Kanne, Circuit Judge
Diane P. Wood, Circuit Judge

ERICH SPECHT, et al.,]	Appeal from the United
Plaintiffs-Appellants,]	States District Court for
]	the Northern District of
No. 11-1689	v.	Illinois, Eastern Division.
]
GOOGLE INC.,]	No. 1:09-cv-02572
Defendant-Appellee.]	
]	Harry D. Leinenweber,
]	Judge.

O R D E R

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

The district court dismissed a portion of defendant Google's counterclaim (specifically Counts II, IV, V, VI and VII) without prejudice, at the request of defendant Google. Defendant Google is able, if it chooses to do so, to reinstate those claims after this appeal is resolved; it reportedly declined plaintiffs-appellants' invitation to dismiss these claims with prejudice. This appeal, therefore, is premature. See, e.g. India Breweries, Inc. v. Miller Brewing Co., 612 F.3d 651 (7th Cir. 2010).

EXHIBIT 2

1 THE COURT: Is there objection to that?

2 MR. MURPHY: No, your Honor.

3 THE COURT: The motion -- motion of the
4 defendant/counterclaimant, Counts 2, 4, 5, 6, and 7 of the
5 counterclaim are dismissed without prejudice to be reinstated in
6 the event that the cause is reversed on appeal.

7 MR. FINN: Your Honor, just so this Court is aware, we
8 plan on filing a motion for attorneys' fees at least under the
9 extraordinary case findings of the Lanham Act.

10 I don't believe that affects the appeal date or the
11 stay but just wanted this Court to be aware.

12 THE COURT: I don't think that does either. It's my
13 understanding that's -- so that as of today then, the judgment
14 is final for purposes of the appeal.

15 Thank you.

16 MR. MURPHY: Thank you, your Honor.

17 MR. FINN: Thank you, your Honor.

18 (Proceedings Concluded.)

19 C E R T I F I C A T E

20 I certify that the foregoing is a correct transcript from
21 the record of proceedings in the above-entitled matter.

22

23 s/s _____
GAYLE A. MCGUIGAN, CSR, RMR, CRR
24 Official Court Reporter

Date

25