

**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF LOUISIANA**

FIREFIGHTERS' RETIRMENT SYSTEM,  
MUNICIPAL EMPLOYEES' RETIRMENT SYSTEM,  
AND FIREFIGHTERS' PENSION & RELIEF FUND

CIVIL ACTION  
15-482-SDD-EWD

VERSUS

ROYAL BANK OF SCOTLAND PLC

**RULING**

This matter is before the Court on the *Motion for Rehearing, or Alternatively, Motion to Alter or Amend Judgment*<sup>1</sup> filed by Plaintiffs, Firefighters' Retirement System, Municipal Employees' Retirement System, and Firefighters' Pension & Relief Fund ("Plaintiffs"). Defendant, Royal Bank of Scotland PLC ("RBS"), filed an *Opposition*<sup>2</sup> to this motion. Plaintiffs seek reconsideration of this Court's *Order*<sup>3</sup> which dismissed Plaintiffs' claims against RBS without prejudice.

Plaintiffs argue that the Court's *Order*<sup>4</sup> should be "vacated or, alternatively, altered or amended, and the *Motion to Dismiss*<sup>5</sup> filed by RBS should be reheard based upon the recent June 24, 2016 *Order* in the related case entitled *Firefighters' Retirement Systems., et al. v. Citco Group Limited, et al.*, Case No. 3:13-cv-373-SDD-EWD ("Citco")."<sup>6</sup> Plaintiffs

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<sup>1</sup> Rec. Doc. 51.

<sup>2</sup> Rec. Doc. 53.

<sup>3</sup> Rec. Doc. 50.

<sup>4</sup> *Id.*

<sup>5</sup> Rec. Doc. 14.

<sup>6</sup> Rec. Doc. 51 (internal citations omitted).

contend this is proper because the Court in *Citco* “vacated its Order granting a Motion to Dismiss for lack of personal jurisdiction” in favor of *Citco* Defendants, and ordered both Plaintiffs and *Citco* Defendants to submit briefs “addressing the applicable legal standard for the Court’s exercise of *in personam* jurisdiction considering nationwide service of process authority pursuant to Bankruptcy Rule 7004(d) on or before July 8, 2016.”<sup>7</sup> Because removal was the same in both *Citco*<sup>8</sup> and the present case,<sup>9</sup> removal related to bankruptcy jurisdiction, the Court examines the jurisdictional basis under Bankruptcy rule 7004(d).

#### **I. Motion for Reconsideration Under Rule 59**

As the Fifth Circuit stated in *Edward H. Bolin Company, Inc. v. Banning Company Inc.*, “Rule 59(e) has been interpreted as covering motions to vacate judgments, not just to modify or amend.”<sup>10</sup> Accordingly, Plaintiffs’ motion will be considered under the standards governing Rule 59(e) motions.

A motion under Rule 59 “[i]s not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment.”<sup>11</sup> Rather, Rule 59(e) serves the purpose of correcting manifest errors of law

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<sup>7</sup> *Id.* (internal citations and quotations omitted).

<sup>8</sup> *Firefighters’ Ret. Sys., et. al. v. Citco Group Limited, et al.*, No. 13-373 (M.D. La. filed June 13, 2013), Rec. Doc. 290.

<sup>9</sup> Rec. Doc. 1.

<sup>10</sup> *Edward H. Bolin Co., Inc. v. Banning Co., Inc.*, 6 F.3d 350, 355 (5th Cir. 1993).

<sup>11</sup> *Templet v. HydroChem, Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (citing *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir.1990)).

or fact, or presenting newly discovered evidence.<sup>12</sup> “‘Manifest error’ is one that ‘is plain and indisputable, and that amounts to a complete disregard of the controlling law.’”<sup>13</sup>

The Fifth Circuit has held that altering, amending, or reconsidering a judgment under Rule 59(e) “[i]s an extraordinary remedy that should be used sparingly.”<sup>14</sup> “A Rule 59(e) motion should not be used to re-litigate prior matters that ... have been resolved to the movant's dissatisfaction.”<sup>15</sup> While the district courts do have “considerable discretion in deciding whether to grant or deny a motion to alter a judgment,”<sup>16</sup> denial of Rule 59(e) motions to alter or amend is favored.<sup>17</sup>

Federal Rule of Civil Procedure 59(e) clearly states that “a motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”<sup>18</sup> *Judgment* in the present case was entered on March 31, 2016.<sup>19</sup> Plaintiffs filed the present *Motion* on June 24, 2016 – well beyond the 28 day deadline required under Rule 59(e).<sup>20</sup> The Fifth Circuit has strictly interpreted the 28 day deadline of Rule 59(e); in *McLendon v. Big Lots Stores, Inc.*, the Fifth Circuit held that a district court did not abuse

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<sup>12</sup> *St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123 F.3d 336, 339 (5th Cir. 1997); *Sawhney v. TD Ameritrade, Inc.*, No. 09–7651, 2010 WL 5057413, at \*1 (E.D. La. Dec. 2, 2010).

<sup>13</sup> *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004) (quoting *Venegas–Hernandez v. Sonolux Records*, 370 F.3d 183, 195 (1st Cir. 2004)).

<sup>14</sup> *Templet*, 367 F.3d at 479 (citing *Clancy v. Empl'rs Health Ins. Co.*, 101 F.Supp.2d 463, 465 (E.D.La.2000)).

<sup>15</sup> *Voisin v. Tetra Techs., Inc.*, No. 08–1302, 2010 WL 3943522, at \*2 (E.D.La. Oct.6, 2010).

<sup>16</sup> *Hale v. Townley*, 45 F.3d 914, 921 (5th Cir.1995).

<sup>17</sup> See *S. Constructors Grp., Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir.1993).

<sup>18</sup> Fed. R. Civ. P. 59(e).

<sup>19</sup> Rec. Doc. 46.

<sup>20</sup> Rec. Doc. 51.

its discretion when the court denied a Rule 59 motion filed one day after the Rule 59(e) 28 day deadline.<sup>21</sup>

Plaintiffs argue their Rule 59(e) motion was timely because it was filed within 28 days of the Court's Amended *Order*.<sup>22</sup> RBS argues that the 28 day period should begin on the date that the Court entered the original *Order*, March 31, 2016, not the date of the *Amended Order*, June 24, 2016.<sup>23</sup> In *Transit Casualty Company v. Security Trust Company*, the Fifth Circuit found that a district court's modification of an order of dismissal from a dismissal with prejudice, to a dismissal without prejudice, was "not such a substantial substantive change as to ...extend [the] time for filing such a motion."<sup>24</sup> While *Transit* and the present case are distinguishable as *Transit* dealt with a 60(b) motion and the question of whether an appeal of a 60(b) order tolls the time for making a 60(b) motion, the Court finds that the same rationale applied by the court in *Transit* applies to the present case. Accordingly, the Court finds that the 28 day period to file a motion under Rule 59 began on March 31, 2016, making Plaintiffs' *Motion for Rehearing* untimely and, thus, is time barred.

## **II. Converting Plaintiffs' Rule 59 Motion to a Rule 60 Motion**

Although Plaintiffs did not make a Rule 60 argument in their *Motion for Rehearing*,<sup>25</sup> the Court may nevertheless convert the Rule 59 motion to a Rule 60 Motion: "a court may treat an untimely 59(e) motion to alter or amend the judgment as if it were a

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<sup>21</sup> 749 F.3d 373, 374 (5th Cir. 2014).

<sup>22</sup> Rec. Doc. 60-1. See Rec. Doc. 50.

<sup>23</sup> See Rec. Docs. 46, 51.

<sup>24</sup> 441 F.2d 788, 791 (5th Cir. 1971).

<sup>25</sup> Rec. Doc. 51.

Rule 60(b) motion if the grounds asserted in support of the Rule 59(e) motion would also support Rule 60(b) relief.”<sup>26</sup> The Court has vacated its previous *Ruling* in Citco in light of the Fifth Circuit’s finding that, “at the time of removal, jurisdiction was proper under 28 U.S.C. 1334(b) because the suit involved matters ‘related to’ a Chapter 11 bankruptcy proceeding.”<sup>27</sup> Given the present suit is related to Citco, and the grounds for removal asserted by RBS invoke the Court’s “related to” jurisdiction,<sup>28</sup> justice requires the Court to convert Plaintiffs’ Rule 59 motion to a Rule 60 motion.

### III. Motion for Reconsideration Under Rule 60(b)

Federal Rule of Civil Procedure 60(b)(5) states:

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: the judgment has been satisfied, released or discharged; **it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.**<sup>29</sup>

Federal Rule of Civil Procedure 60(c) provides: “A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.”<sup>30</sup> As the Court has determined it appropriate to convert Plaintiffs’ 59 motion to a Rule 60(b)(5) motion, as long as the Plaintiffs filed their motion within a reasonable time, and the grounds asserted also support a Rule 60 motion, the Court deems the motion timely. The record in Citco

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<sup>26</sup> *Halicki v. Louisiana Casino Cruises, Inc.*, 151 F.3d 465, 470 (5th Cir. 1998).

<sup>27</sup> *Firefighters’ Ret. Sys., et. al. v. Citco Group Limited, et al.*, No. 13-373 (M.D. La. filed June 13, 2013), Rec. Doc. 290.

<sup>28</sup> Rec. Doc. 1.

<sup>29</sup> Fed. R. Civ. P. 60(b)(5) (emphasis added).

<sup>30</sup> Fed. R. Civ. P. 60(c).

and the present case illustrates the following: The original *Judgment* dismissing RBS was issued on March 31, 2016; the Court requested that the Parties in Citco brief *in personam* jurisdiction based upon nationwide service of process on June 24, 2016; on June 24, 2016, Plaintiffs filed the present *Motion for Rehearing* as to RBS.<sup>31</sup> Plaintiffs filed their *Motion for Rehearing* on the same day that the Court requested briefing in Citco on the issue of *in personam* jurisdiction – the earliest opportunity for them to properly file the present motion. As the Court has converted the motion to a Rule 60 motion, the filing was timely.

The Supreme Court in *Frew ex. rel Frew v. Hawkins* held that Rule 60(b)(5) is proper if “it is no longer equitable that the judgment should have prospective application...encompass[ing] the traditional power of a court of equity to modify a decree in light of a changed circumstance.”<sup>32</sup> Because the Fifth Circuit clarified a fundamental element of *in personam* jurisdiction in a related case, and based upon the Supreme Court’s holding in *Frew*, the Court finds that it would be inequitable for the Court to continue to enforce the *Dismissal*<sup>33</sup> in favor of RBS having failed to apply the appropriate jurisdictional analysis. Accordingly, the Court grants Plaintiffs’ *Motion for Rehearing*<sup>34</sup> under Federal Rule of Civil Procedure 60(b)(5).

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<sup>31</sup> Rec. Docs. 36 and 51; *Firefighters’ Ret. Sys., et. al. v. Citco Group Limited, et al.*, No. 13-373 (M.D. La. filed June 13, 2013), Rec. Doc. 290.

<sup>32</sup> 540 U.S. 431, 441; 124 S.Ct. 499, 905-06; 157 L.Ed.2d. 855 (2004).

<sup>33</sup> Rec. Doc. 50.

<sup>34</sup> *Id.*

**IV. Conclusion**

For the reasons set forth above, Plaintiffs' *Motion for Rehearing, or Alternatively, Motion to Alter or Amend Judgment*<sup>35</sup> is GRANTED.

The Parties shall brief the issue of related to jurisdiction as ordered in Record Document 57.

**IT IS SO ORDERED.**

Signed in Baton Rouge, Louisiana on December 12, 2016.



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**JUDGE SHELLY D. DICK  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

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<sup>35</sup> Rec. Doc. 51.  
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