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Federal Civil Procedure - Judgments - Use of Federal Rule 60(b)(6) to Adjust Forfeitures Downward

Cecil R. Mellin
University of Michigan Law School

FEDERAL CIVIL PROCEDURE—JUDGMENTS—USE OF FEDERAL RULE 60 (b) (6) TO ADJUST FORFEITURES DOWNWARD—Defendant gained eight thousand dollars through thirty false cotton loan notes submitted to and paid by a government agency. The United States instituted a civil action under the False Claims Act,[1] which provides that persons committing the prohibited acts shall pay to the United States a two-thousand-dollar forfeiture for each violation plus double the amount of damages sustained by the United States in the transactions. Judgment totalling sixty thousand dollars, or two thousand dollars on each of thirty false notes,[2] was awarded the United States.[3] On defendant's motion to vacate the judg-

1 12 Stat. 696, 698 (1863), as amended, 31 U.S.C. (1958) §231.

2 The government was denied double damage recovery because its agency, by refusing to accept defendant's offer to repurchase the notes and by not selling the goods involved until the market price fell, failed to mitigate government's damages.

3 The court of appeals reversed on grounds that a claim was not made against a department of the government within the meaning of the statute. United States v. McNinch, (4th Cir. 1957) 242 F. (2d) 359. The United States Supreme Court reversed the court of appeals on this point. United States v. McNinch, 356 U.S. 595 (1958). On remand the court of appeals affirmed the district court's decision. Toepleman v. United States, (4th Cir. 1959) 263 F. (2d) 697.

ment under federal rule 60 (b) (6) on the ground that enforcement of the judgment would cause extreme hardship and injustice, *held,* motion granted on condition that defendant pay twenty thousand dollars in satisfaction of the judgment. Federal rule 60 (b) (6) gives district courts power to vacate judgments of forfeiture on terms that are just where the total forfeiture[4] provided by statute would unjustly penalize defendant far beyond the degree commensurate with its gains. *United States v. Cato Brothers, Inc.,* (E.D. Va. 1959) 175 F. Supp. 811, cert. den. 80 S. Ct. 753 (1960).

Originally rule 60 (b) allowed vacation of a judgment on motion when the judgment was taken through movant's "mistake, inadvertence, surprise, or excusable neglect." But the rule was found deficient in that it did not cover certain cases where vacation was desirable, such as where reversal of a prior judgment withdrew the basis for the present judgment, or where newly discovered evidence justified such relief.[5] This deficiency was remedied by interpreting an ambiguous saving clause as preserving old ancillary remedies, not mentioned in the federal rules, which were used by the district courts to grant vacation in cases not covered by the terms of rule 60 (b).[6] In 1946 rule 60 (b) was amended in order to encompass all legally acceptable reasons for which a judgment could be vacated by motion after time for appeal had run.[7] The old ancillary remedies were abolished and new grounds for vacation of a judgment were added. The first five subsections of present rule 60 (b) give specific grounds for which a judgment may be vacated.[8] The need for a general, residual clause to cover unforeseen contingencies is met by subsection (6) which provides that if the motion is brought within a reasonable time a judgment can be vacated on terms that are just for "any other reason justifying relief." The language "any other" is taken

[4] Although civil penalty is the proper terminology, the word forfeiture is used here to denote the two-thousand-dollar sum fixed by the False Claims Act as the liability on each claim in addition to double damages; this follows the language of the principal case, the Supreme Court, and the statute. However, note also that any liability beyond single damages is categorized in theory as punitive. See e.g., MCCORMICK, DAMAGES 277 (1935).

[5] See Moore, "Federal Relief From Civil Judgments." 55 YALE L.J. 623 at 668, 691-692 (1946).

[6] These were the common law remedies of audita quarela and writ of error coram nobis, and the equitable remedy of bill of review or bill in the nature of bill of review. For an analysis of these remedies, see Moore, "Federal Relief From Civil Judgments," 55 YALE L.J. 623 at 659-682 (1946). See also 7 MOORE, FEDERAL PRACTICE, 2d ed., §§60.11, 60.12 (1955).

[7] Notes of Advisory Committee on Amendments to Rule 60, Subdivision (b), 28 U.S.C. (1958) 5180.

[8] The first five sections of amended rule 60 (b) provide relief from a final judgment on the following grounds: "(1) mistake, inadvertence, surprise, or excusable neglect . . . ; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59 (b); (3) fruad . . . , extrinsic, or intrinsic . . . ; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed, or . . . vacated, or it is no longer equitable that the judgment have prospective application. . . ." Rule 60 (b), Fed. Rules Civ. Proc., 28 U.S.C. (1958). The amendments became effective October 20, 1949.

as requiring only that the reason urged for vacation under subsection (6) be something other than the reasons specified by subsections (1-5).[9] Beyond this requirement, the language of subsection (6) offers little guide as to whether on particular facts a judgment should be vacated. It is clear that the district courts have broad power to vacate a judgment in any case, limited only by the exercise of a sound discretion in making the finding that such relief is appropriate.[10] Thus it would be difficult to level criticism at the use, in the principal case, of rule 60 (b) (6) to vacate a statutory forfeiture judgment if, indeed, it can be said that "reasons justifying relief" were present. Basically, the court found that rule 60 (b) (6) could be used to make a downward adjustment because the forfeiture provided by statute was too harsh under the circumstances.[11] But if a policy behind the False Claims Act is to deter future frauds on the United States Government, it would seem that harshness is a proper characteristic of judgments rendered under the act. The senatorial sponsor of the original bill did announce that its general purpose was to punish and prevent frauds but, since the same bill also set up a criminal punishment for the same acts, it could be argued that there is no necessity to implement a like policy in setting up a civil remedy.[12] However, the fact that the act provides for double damages and a fixed-sum forfeiture clearly indicates that more than compensation was in-

[9] This construction is usually verbalized by saying subsections (1-5) and (6) are "mutually exclusive." Another rationale for such construction arises from the fact that there is a one-year time limit for motions under subsections (1-3), while there is none fixed for subsection (6). If a particular reason for vacation could be urged under subsections (1-3) or (6), the one-year time limit on subsections (1-3) would be meaningless. 7 MOORE, FEDERAL PRACTICE, 2d ed., §60.27 (1), p. 295 (1955). See Klapprott v. United States, 335 U.S. 601 at 614-615 (1949), modified 336 U.S. 942 (1949). Compare United States v. Karahalias, (2d Cir. 1953) 205 F. (2d) 331 at 333 (indicates that mutual exclusiveness is not the necessary logical construction). However, several opinions have ignored this distinction. See note, 61 YALE L.J. 76 at 83 (1952).

[10] An analysis of the cases in which vacation has been granted or denied under rule 60 (b) (6) indicates that there is no criterion more specific than the broad terms of the provision itself by which any particular case can be resolved. Some generalizations can be made, such as that rule 60 (b) (6) is not to be used as a substitute for an appeal, but none of these generalizations apply in the principal case. See, generally, 7 MOORE, FEDERAL PRACTICE, 2d ed., §60.27 (1), pp. 297-300 (1955). See also Klapprott v. United States, note 9 supra, at 614-615.

[11] The district court said that the Supreme Court in United States ex rel. Marcus v. Hess, 317 U.S. 537 (1943), had indicated that the forfeiture should be commensurate with defendant's gain, but the Hess case does not support such a rule. The Supreme Court there said that the statutory remedy was chiefly to indemnify the United States. The district court believed the total forfeiture to be excessive, and it accomplished a downward adjustment by vacating the entire judgment via federal rule 60 (b) (6), but on terms that were just, i.e., payment of twenty thousand dollars. It appears that the "commensurate" rule was used to support the finding that the forfeiture was excessive (because it was not commensurate) and to find a logical stopping place in the downward adjustment. Because the amount of forfeiture on each false note is expressly set by the False Claims Act, it is clear that here the trial court could not have adjusted the total forfeiture on the general principles of remittitur of a damage award that is excessive in light of the applicable law and facts.

[12] CONG. GLOBE, 37th Cong., 3d sess., 952 (1863). 12 Stat. 696, 698 (1863).

tended,[13] and liability beyond compensation would seem to indicate a purpose to deter.[14] Since harshness would seem to be a necessary incident of a congressional purpose to deter future fraud, the use of rule 60 (b) (6) to make a downward adjustment of the forfeiture on grounds that it was too harsh is questionable.

In support of the result in the principal case, it might be argued that there are degrees of harshness, and that the court was confronted with a judgment that was too harsh even after giving recognition to the desirability of deterring future frauds. That the court recognized this distinction is supported by the fact that in light of the eight-thousand-dollar profit of defendant and the cost of a lengthy litigation, a twenty-thousand-dollar forfeiture, coupled with payment of litigation costs, was deemed appropriate.[15] But the question remains whether a court should be allowed to use rule 60 (b) (6) to make any downward adjustments once some deference is made to the fact that some harshness was intended by the legislators. It would be difficult to determine whether due consideration was given to a deterrent policy on a particular set of facts. Furthermore, Congress has traditionally been allowed to say just how burdensome their civil sanctions should be,[16] and their purpose seems unequivocally expressed in the False Claims Act. Thus it would seem that forfeiture judgments should generally be allowed to stand in accordance with the congressional dictate without alteration by way of the vague terms of rule 60 (b) (6).

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[13] This assumes that we think in terms of traditional damage theory, which has classed damages beyond compensation as punitive or exemplary. See note 4 supra.

[14] A statement by the United States Supreme Court that the False Claims Act did no more than provide complete indemnity to the United States seems to support a view that no deterrent purpose is involved. However, the Court in making the statement was dealing with an argument that the False Claims Act sanction constituted criminal punishment within the meaning of the constitutional prohibition against double jeopardy, and thus this statement only negates criminal punishment, as distinct from a civil penalty. See United States ex rel. Marcus v. Hess, note 11 supra, at 549, 551-552. Compare Helvering v. Mitchell, 303 U.S. 391 at 401 (1938) (fifty percent additional tax assessment for fraudulent deficiency in returns); Rex Trailer Co. v. United States, 350 U.S. 148 at 151-154 (1956) (double damages and two-thousand-dollar forfeiture for obtaining surplus government property by fraud).

[15] Principal case at 816.

[16] This is true so long as the liability is not so severe as to be considered a criminal punishment. See Helvering v. Mitchell, note 14 supra, at 399-400; United States ex rel. Marcus v. Hess, note 11 supra, at 550.