Holland & Hart

Stephen Masciocchi

Partner
303.295.8451
Denver
smasciocchi@hollandhart.com

Tina Van Bockern

Partner
303.295.8107
Denver
trvanbockern@hollandhart.com

10th Circuit Rejects Request to Vacate $13.5M Stipulated Judgment With FTC Notwithstanding Change in Law

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Despite the U.S. Supreme Court's decision in *AMG Capital Management v. Federal Trade Commission*, 593 U.S. 67 (2021), holding that Section 13(b) of the Federal Trade Commission Act does not allow for equitable monetary relief, the U.S. Court of Appeals for the Tenth Circuit affirmed the rejection of a Rule 60(b)(6) motion to vacate a stipulated judgment for payment of equitable monetary relief that was entered before the *AMG* decision was issued. See *FTC v. Elite IT Partners*, — F. 4th —, 2024 U.S. App. LEXIS 1473 (10th Cir. Jan. 23, 2024).

Elite Stipulates to a $13.5M Judgment and Then Seeks to Vacate It

The Federal Trade Commission (FTC) sued James Martinos and Elite IT Partners (collectively, Elite) alleging Elite engaged in a fraudulent scheme to sell unnecessary services. Id. at * 1. Elite and the FTC stipulated to a judgment under which Elite would pay the FTC $13.5 million in equitable monetary relief under Section 13(b) of the act. Id. at *1, *4. Elite also "waive[d] all rights to … challenge or contest the validity of" the stipulated judgment. Id. at * 2.

About a year after entry of the stipulated judgment, the Supreme Court held in *AMG* that Section 13(b) of the Federal Trade Commission Act does not allow for equitable monetary relief. Id. at *1. The *AMG* decision led Elite to ask the U.S. District Court for the District of Utah to vacate the judgment under Federal Rule of Civil Procedure 60(b)(6). Id. at *2. That rule provides for relief from a final judgment for "any … reason that justifies relief." Fed. R. Civ. P. 60(b)(6). The district court denied Elite's request, reasoning that "the change in case law had arisen in a factually unrelated case" and Elite "hadn't presented other circumstances warranting vacatur." 2024 U.S. App. LEXIS 1473, at *1–2; see *FTC v. Elite IT Partners*, 653 F. Supp. 3d 1089, 1097–98 (D. Utah 2023). Elite then appealed.

Tenth Circuit Holds Elite Waived the Right to Challenge the Judgment

Even though the district court did not address the stipulated judgment's waiver clause, the Tenth Circuit began its analysis by deciding whether

Elite waived the right to collaterally challenge the judgment and, therefore, also waived its appellate arguments. 2024 U.S. App. LEXIS 1473, at *2–4. The appellate court answered both questions in the affirmative. Id. at *2–3. Relying on the language of the waiver clause, the court held that Elite "waived [its] appellate arguments because these arguments 'challenge or contest the validity of' the stipulated judgment" Id. at *4. Elite made four arguments to "sidestep the waiver clause," including that (1) it wasn't contesting the judgment under the law that existed at the time of execution, (2) the parties misunderstood the law when they executed the stipulation, (3) the district court had broad equitable power to vacate the judgment, and (4) Rule 60(b)(6) allows for the reopening of "final agreements, no matter what they say, when certain conditions are present." Id. at *4–5. The Tenth Circuit found all four "unpersuasive." Id. at *5.

The court reasoned that Elite was in fact contesting the judgment under the case law. And, importantly, there could be no misunderstanding of the law because, when the stipulation was executed, a circuit split existed as to the availability of equitable monetary relief, and the certiorari petition in AMG, filed before Elite entered into the stipulation, addressed the split. Id. at *5–6. The Tenth Circuit also concluded that the district court's equitable powers could not overcome the waiver clause. Id. at *6. The court rejected Elite's final argument because Elite provided "no authority" in support. Id. at *7.

The Tenth Circuit thus concluded that the waiver clause applied to bar Elite's appellate arguments. Id. Circuit Judge Briscoe concurred in this holding but wrote separately to indicate she would "rest … affirmance on waiver and would not proceed to address the merits." Id. at *16.

On the Merits, the Appellate Court Affirmed Rule 60(b)(6) Relief Was Unavailable

Despite concluding the appellate arguments were waived, the Tenth Circuit addressed the merits "[g]iven the importance of the underlying issue." Id. at *7.

Elite argued that the district court erred in applying a "categorical bar" to relief under Rule 60(b)(6) "when a party relies on a change in the case law in a factually unrelated case" or "by categorically declining to consider the pertinent equitable considerations." Id. at *8–9. Elite relied on the Tenth Circuit's previous decision in Johnson v. Spencer, 950 F.3d 680 (10th Cir. 2020), which reversed the district court's denial of relief "on the ground that Rule 60(b)(6) categorically disallows vacatur on claims for damages." Id. at *8. The circuit court responded that Johnson simply "doesn't apply." Id. at *7.

Instead, the Tenth Circuit explained that the district court correctly interpreted other Tenth Circuit precedent holding that "a change in case law doesn't support vacatur when the cases are unrelated." Id. at *9–14 (citing cases). It acknowledged that there are two exceptions that have been applied to allow vacatur under Rule 60(b)(6): (1) "when the change in case law takes place in a factually related case"; or (2) "when the change

precedes issuance of a final order." Id. at *10. But these circumstances didn't exist in Elite's case. Id. at *12.

Lastly, the Tenth Circuit rejected Elite's argument that the district court disregarded its other equitable arguments. Id. at *14–16. It first observed that Elite's other so-called equitable arguments still depended on the AMG decision: rather than arguing the stipulation was "unfair," Elite had argued it was "illegal" because of the change in law. Id. at *15. "The district court could thus reasonably regard these arguments as part of [Elite's] reliance on a change in the case law." Id. In any event, the circuit court determined that the district court had, indeed, reviewed and rejected the arguments. Id.

Stephen Masciocchi and Tina Van Bockern are attorneys in Holland & Hart's Denver office. Masciocchi co-chairs the appellate group at Holland & Hart and assists clients with high-stakes federal and state appeals and class actions. Van Bockern helps clients appeal federal agency regulations, decisions, and orders, as well as unfavorable trial court judgments in a variety of substantive areas.
