IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LORENZO MASGA AYUYU, et al., Plaintiff, v. COMMONWEALTH INVESTMENT COMPANY, INC., et al., Defendants.	Civil Action No. 92-1679 **DECISION AND ORDER QUASHING SUBPOENA AND TERMINATING DISCOVERY**

Non-party Bank of Saipan filed a motion to quash a subpoena duces tecum issued on it by defendant Marianas Public Land Trust ("MPLT"), on the grounds that MPLT did not comply with 4 CMC § 6454 in issuing the subpoena. In addition, non-party San Roque Beach Development Co., Ltd. ("SRBD") moves for a protective order against the same subpoena on the grounds that the discovery sought is improper, irrelevant and intrudes on SRBD's privacy rights. The motions, and two identical motions filed in the companion case *Ayuyu v. Realty Trust Corp.*, No. 92-1678, came before the Court for hearing on August 25, 1993.

FOR PUBLICATION

I. FACTS

The underlying lawsuit in these companion cases was dismissed from the bench on March 10, 1993. Nevertheless, discovery continued from that time until July, 1993. The subpoena in question issued on July 22, 1993, calling for a representative of Bank of Saipan to attend a deposition and produce records on July 29, 1993. The subpoena requests all bank records of Larry Lee Hillblom, Michael W. Dotts, Robert J. O'Connor and SRBD from November 1, 1992 through June 30, 1993. *See Subpoena Duces Tecum To Bank of Saipan* (July 22, 1993).

On August 18, this Court halted all further discovery in these cases, on the grounds that there was no pending action or motion.[1/] Then, on August 24, 1993, MPLT filed a "Motion for Sanctions Against Plaintiff and his Counsel and Motion for Damages for Fraud Upon the Court."

II. MPLT'S MOTION FOR SANCTIONS

In light of the Court's August 18, 1993 order, any renewed request for discovery has to find its basis in MPLT's Motion for Sanctions. SRBD's Motion argues that the discovery sought is not authorized under Rule 11 and is irrelevant. *See Memorandum in Support of Motion to Quash*, at 9, 16. Counsel for MPLT stated at the August 25, 1993 hearing that the bulk of the discovery sought was under the aegis of MPLT's "fraud on the court" claim. Tape

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[1/] This ruling was issued from the bench by Judge Castro, who ordered the parties to prepare a written order. While both parties submitted draft orders, neither draft fairly represented Judge Castro's oral ruling and both were rejected by the Court. As a consequence, a written order was not entered by the Court until September 2, 1993.

No. 982c, counter no. 225-250. Therefore, before this Court can decide whether Financial Privacy Act safeguards apply here, it must determine what further discovery is allowable under Rule 11 and MPLT's "fraud upon the court" claim.

A. DISCOVERY UNDER RULE 11

1. General Guidelines. As the Advisory Committee Notes to Rule 11 make clear, Rule 11 was not designed to spawn extensive "satellite litigation" over sanctions once the underlying dispute is resolved. Rather, "the Court must to the extent possible limit the scope of sanction proceedings to the record. Thus, discovery should be conducted only by leave of court, and then only in extraordinary circumstances." Advisory Committee Notes, Fed. R. Civ. P. 11. *See also* Federal Judicial Center, *Manual for Litigation Management and Cost and Delay Reduction*, 34 (1992) ("[C]lose judicial control should be maintained over [sanctions proceedings] to prevent the spawning of satellite litigation and the degradation of professional standards in the conduct of the litigation"); ABA Litigation Section, *Standards and Guidelines for Practice Under Rule 11*, 121 F.R.D. 101, 128.

In *Lenoir v. Tannehill*, 660 F. Supp. 42, 44 (S.D. Miss. 1986), the court rejected defendants' argument that they had a "Rule 11 counterclaim," stating:

> The drafters' intent to avoid satellite litigation coupled with their explicit policy against discovery in sanctions matters is strong inferential proof that Rule 11 was not adopted to be used as a seedling which, with a little fertilization by creative legal minds, would grow into a hybrid of the bad faith tort.

Likewise, in *Indianapolis Colts v. Mayor & City Council of Baltimore*, 775 F.2d 177, 183 (7th Cir. 1985), the court affirmed

a denial of Rule 11 discovery with the words: "[w]e intend to end this vexatious litigation rather than encourage parties to pursue secondary and patently frivolous litigation over attorneys' fees."

Here, "satellite litigation" is an ongoing fact. Like the defendants in *Lenoir*, MPLT claims that it has a "Rule 11 counterclaim" and that "defendant Trust is entitled to have that counterclaim adjudicated by this court." *Motion for Sanctions, supra,* at 4. However, the underlying actions were dismissed from the bench on March 10, and an order of dismissal was entered on March 15. The Court allowed discovery to proceed until August 18. That should have been ample time to uncover evidence to support a Rule 11 motion.

2. Is the Discovery Sought Here Pertinent to Rule 11? Of the four parties whose bank records are sought, none were parties to either of these actions, and none signed any paper filed in the underlying lawsuits (other than motions seeking protection from discovery requests, as here). MPLT's motion for sanctions does not explicitly ask for sanctions against any of these parties; indeed, the motion on its face is limited to sanctions against plaintiff Lorenzo Ayuyu and attorney James Hollman. However, in its opposition to SRBD's motion for protective order, MPLT states:

> One of the specific purposes of the discovery being sought is to determine the true identity of the plaintiff, so that any sanctions for the filing of the complaint in this case will be imposed against the true plaintiff(s).

Opposition to SRBD's Motion For Protective Order, at 8. Later, MPLT's Opposition intimates (at 15) that this "real plaintiff" is Mr. Hillblom. *Id.* at 15.

MPLT cites no case which has ever imposed Rule 11 sanctions on a non-signatory/non-party to the underlying action. Instead, MPLT urges the Court to adopt the reasoning of the dissents in cases which expressly limit the reach of Rule 11 to the signers of pleadings. *See Pavelic & LeFlore v. Marvel Entertainment Group*, 110 S.Ct. 456 (1989) (no Rule 11 liability for law firm of attorney signing pleading); *In Re Rainbow Magazine, Inc.*, 136 B.R. 545, 552 (9th Cir. 1992) (no sanctions against corporate debtor's principal who was neither party nor attorney). *See MPLT's Motion for Sanctions*, at 18-19.

The Court must decline this invitation to expand Rule 11. First, the CNMI Supreme Court has construed Rule 11 liability as attaching to "signers" of pleadings. *See Lucky Development v. Tokai U.S.A., Inc.*, slip op. at 8-9 (Apr. 20, 1992); *Tenorio v. Superior Court*, 1 N.Mar.I. 12, 16 (Mar. 19, 1990). More importantly, *Lucky* and *Tenorio* clearly envision recourse to federal cases as guides in interpreting the Commonwealth's Rule 11: "[i]n interpreting local rules, this Court looks to the federal [...] rules for guidance in discerning what the purpose is behind a particular rule." *Tenorio, supra,* 1 N.Mar.I. at 16, citing *South Seas Corp. v. Sablan*, 1 CR 122 (D.NMI App. Div. 1981). Even if the Court adopted the view of Rule 11 expressed by the authorities MPLT cites, it still could not impose Rule 11 sanctions on Mr. Hillblom. Sanctioning an attorney's firm or a corporate party's president is still a far cry from sanctioning someone who is not officially affiliated in any way with either the attorney or the party.

Since Mr. Hillblom cannot be a potential target for Rule 11 sanctions in this case, discovery aimed at proving his identity as the "real plaintiff" cannot be proper. MPLT has cited no purpose for the discovery sought beyond the "real plaintiff" issue. Therefore, this Court will allow no further discovery in this matter under Rule 11.[2/]

B. MPLT'S "FRAUD UPON THE COURT" THEORY

1. Analysis of MPLT's Claim. MPLT's motion also asks for sanctions on the theory that Ayuyu and Hollman committed "fraud on the court." MPLT cites *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 64 S. Ct. 997, 1002 (1944), a patent case in which the court invoked its equitable power to invalidate a patent and overturn a judgment of infringement because the original patent had been obtained through fraud. The *Hazel* decision was later embodied in Fed. R. Civ. P. 60(b)(3) which authorizes a court to:

> relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: [...] fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

Commonwealth Rule 60(b) is identical to this Federal Rule.

As it has developed in federal courts, Rule 60(b) can be asserted either as a post-judgment motion or as an independent action to set aside a judgment. However, the rule does not encompass all types of fraud; it must be of such a magnitude as to impact the court's proceedings. In *Luttrell v. U.S.*, 644 F.2d

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[2/] In reaching this Conclusion, the Court makes no judgment on the merits of MPLT's Rule 11 claim against Messrs. Ayuyu or Hollman. That issue is deferred until the court hears MPLT's Motion for Sanctions itself.

1275, 1276 (9th Cir. 1980) the Ninth Circuit held that the "fraud on court" doctrine is reserved for instances where, because of fraud, "the injured party is prevented from fairly presenting his claim or defenses or from introducing relevant or material evidence." *See also In Re Intermagnetics America, Inc.*, 926 F.2d 912, 916 (9th Cir. 1991) (judgment set aside where opposing party introduced false evidence critical to prior proceeding). The cases also require the existence of a final judgment which the moving party wishes to have overturned. *St. Mary's Health Center v. Bowen*, 821 F.2d 493, 497-8 (8th Cir. 1987); 7 *Moore's Federal Practice* § 60.33.

Here, two issues make the procedure of Rule 60(b) inapplicable to the facts before the Court. First, MPLT does not seek relief from any judgment, but rather money damages for Ayuyu's alleged fraud in not disclosing the "real plaintiff" to the suit. MPLT cites no authority for the proposition that Rule 60(b) can be used to obtain any relief independently from an action or motion to overturn a judgment, and research has disclosed none.[3/] Second, MPLT's motion does not explain how Ayuyu's alleged failure to disclose the "real plaintiff" prevented MPLT from presenting its defenses or the Court from properly adjudicating the claims before it. Indeed, at oral argument MPLT

[3/] *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 525, 66 S. Ct. 1176 (1946) (*see Motion for Sanctions, supra* at 32) does not support the proposition MPLT asserts. In *Universal*, an appeals court judge was bribed into affirming a patent infringement judgment. The court, in addition to setting aside the fraudulently obtained judgment, awarded the prevailing party its fees incurred in proving the fraud. *Universal* did not involve a claim for damages standing alone.

expressed full support for this Court's dismissal of the underlying lawsuits here.

Assuming, arguendo, that Mr. Hillblom did finance the suit without himself acting as plaintiff, the only conceivable harm done to MPLT would be its inability to seek Rule 11 sanctions against him personally because he was neither attorney nor named plaintiff. However, this situation is not materially different from the facts of *Pavelic, supra*, 100 S. Ct. at 460, where an attorney alone bore the brunt of sanctions, not the firm for which he worked. Acknowledging that the law firm would probably be better able than the individual attorney to compensate the party for losses incurred, the United States Supreme Court wrote:

> The purpose of [Rule 11], however, is not reimbursement but "sanction"; and the purpose of Rule 11 as a whole is to bring home to the *individual signer* his personal, nondelegable responsibility. [...] The message thereby conveyed to the attorney, that this is not a team effort but in the last analysis *yours alone*, is precisely the point of Rule 11.

100 S. Ct. at 460 (emphasis added in part).

No "fraud" is committed by one who supports a suit from outside the narrow limitations of Rule 11. At common law in earlier times, such an arrangement might be considered champertous, but the common law offense of champerty has largely been abolished.[4/] At least as invoked in MPLT's motion for

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[4/] 139 *Annotation*, A.L.R. 620, 640; *see also Alexander v. Unification Church of America*, 634 F.2d 673 (2d Cir. 1980). In *Alexander*, plaintiffs were professional "deprogrammers" who sought to rescue cult members from the Unification Church. They alleged that various cult members, acting as pawns of the Church, had sued the deprogrammers "for the purpose of financially destroying" them. 634 F.2d at 675. The court found that there was no common law action for champerty in New York and the fact that the Unification Church may have financed the suits, did not give rise to a cause of action by itself. *Id.*

sanctions, the "fraud on the court" doctrine of Rule 60(b) does not support MPLT's claim for monetary damages.

2. Discovery Under MPLT's "Fraud Upon the Court" Claim. The Court has wide discretion under Rule 26 to control discovery. *Bauer v. Winkel*, 1 CR 137, 140 (D.N.M.I. 1981). Courts have denied discovery where the information sought will not alter the legal posture of the case. *See Rosin v. New York Stock Exchange, Inc.*, 484 F.2d 179 (7th Cir. 1973), *cert. den.*, 94 S. Ct. 1564 (discovery denied where no discovery would alter material facts necessary to court's decision on merits); *Westminster Investing Corp. v. C.G. Murphy Co.*, 434 F.2d 521, 526 (D.C. Cir. 1970) (prolongation of discovery would be wasteful and useless where plaintiff could prove no set of facts to substantiate its claim). In *Strait v. Mehlenbacher*, 526 F. Supp. 581 (W.D. N.Y. 1981), defendants to a civil rights action counterclaimed that farmworker plaintiffs were violating defendants' civil rights. Defendants served interrogatories seeking to discover whether plaintiffs or their Legal Aid attorneys had any relationship to a farmworkers' union. Describing defendants' claims a "conspiracy theory", the court stated:

> it appears that defendants are attempting to utilize the discovery rules as a "fishing expedition" to find some basis for their civil rights claim. This is plainly in violation of the Federal Rules.

526 F. Supp. at 584. Likewise, in *Apel v. Murphy*, 70 F.R.D. 651 (D.R.I. 1976), nonresident fishermen seeking to enjoin a state fishing regulation sought discovery to prove that the regulations had a "feigned purpose," and were therefore invalid. The court held that such ulterior motive by legislators supporting the

regulation, even if proven, was irrelevant to the legal inquiry at bar, and discovery was terminated.

Here, even if MPLT presented the court with convincing proof that Hillblom financed the plaintiff's in this litigation, that fact would not warrant relief for MPLT on the "fraud on the court" theory set forth in its motion for sanctions. Therefore, the Court adopts the reasoning of the authorities cited above and holds that no further discovery is proper here.

III. RIGHTS TO PRIVACY

Given the Court's determination that MPLT's motion for sanctions does not support the discovery sought in the subpoena at issue, there is no need to determine whether MPLT is a "government authority" for the purposes of 12 U.S.C. § 3401 et seq. Likewise, the Court need not determine here whether the constitutional right to privacy attaches to a corporation, and if so, how that right should be balanced against the need for discovery in a civil suit.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS the motions of the Bank of Saipan and SRBD to quash the subpoena issued on the Bank on July 22, 1993. The Court further ORDERS that no discovery be taken in this case pursuant to MPLT's Motion for Sanctions, filed August 24, 1993.

So ORDERED this 3RD day of September, 1993.

Marty W.K. Taylor

MARTY W.K. TAYLOR, Associate Judge