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Selected docket entries for case 22-16929

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Filed	Document Description	Page	Docket Text
12/15/2023	<u>29</u>		FILED MEMORANDUM (J. CLIFFORD WALLACE, KENNETH K. LEE and PATRICK J. BUMATAY)
	<u>29</u> Memorandum	2	Sakuma's motion to supplement the record (Docket Entry No. 23) is denied. Sakuma's motions at Docket Entries Nos. 24 and 27 are granted to the extent she seeks to file the reply briefs submitted on July 10, 2023. AFFIRMED. FILED AND ENTERED JUDGMENT. [12838003] (CPA)
	29 Post Judgment Form DOCUMENT COULD NOT BE RETRIEVED!		

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 15 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATSY N. SAKUMA, an individual,

No. 22-16929

Plaintiff-Appellant,

D.C. No. 1:16-cv-00274-DKW-
KJM

v.

ASSOCIATION OF APARTMENT
OWNERS OF THE TROPICS AT
WAIKELE, an incorporated association, by
its board of directors; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the District of Hawaii
Derrick Kahala Watson, District Judge, Presiding

Submitted December 12, 2023**

Before: WALLACE, LEE, and BUMATAY, Circuit Judges.

Patsy N. Sakuma appeals pro se from the district court's order denying her post-judgment motion for relief under Federal Rules of Civil Procedure 60(b)(1) and 60(b)(6). We have jurisdiction under 28 U.S.C. § 1291. We review for an

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

abuse of discretion. *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion in denying Sakuma's motion for relief from judgment because Sakuma failed to establish any basis for such relief. *See Henson v. Fidelity Nat'l Fin., Inc.*, 943 F.3d 434, 443-44 (9th Cir. 2019) ("A movant seeking relief under Rule 60(b)(6) must show extraordinary circumstances justifying the reopening of a final judgment." (citation, internal quotation marks, and alteration omitted)); *id.* at 444-446 (discussing the factors for determining whether a change in law qualifies for relief under Rule 60(b)(6)); *Engleson v. Burlington N. R. Co.*, 972 F.2d 1038, 1043-44 (9th Cir. 1992) (discussing grounds for equitable relief under Rule 60(b)(1)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Sakuma's motion to supplement the record (Docket Entry No. 23) is denied.

Sakuma's motions at Docket Entries Nos. 24 and 27 are granted to the extent she seeks to file the reply briefs submitted on July 10, 2023. The Clerk will file the reply briefs at Docket Entry Nos. 25 and 26.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

PATSY NAOMI SAKUMA,

Plaintiff,

vs.

ASSOCIATION OF APARTMENT
OWNERS OF THE TROPICS AT
WAIKELE, *et al.*,

Defendants.

Case No. 16-cv-00274-DKW-KJM

**ORDER (1) GRANTING MOTION
FOR LEAVE TO FILE AMENDED
RENEWED MOTION FOR
RELIEF FROM JUDGMENT, AND
(2) DENYING AMENDED
RENEWED MOTION FOR
RELIEF FROM JUDGMENT¹**

In another attempt to resurrect this civil action, Plaintiff Patsy Naomi Sakuma, proceeding pro se, moves for reconsideration of a June 14, 2019 Order of this Court and a January 26, 2021 Order of the Ninth Circuit Court of Appeals affirming the June 14, 2019 Order. For the following reasons, Sakuma's motion, Dkt. No. 138, is DENIED.²

¹Pursuant to Local Rule 7.1(c), the Court elects to decide these matters without a hearing and without additional briefing.

²Sakuma has filed an original and amended renewed motion for relief from judgment. Dkt. Nos. 137-138. While the motion for leave to amend is largely incomprehensible, liberally construed, arguably, Sakuma seeks to "amend" her original motion due to a service issue with the original. Sakuma does not appear, though, to seek to make any substantive changes to the renewed motion for relief from judgment. Accordingly, the motion for leave to amend is GRANTED to the extent that the Court will consider the amended renewed motion, as opposed to the original renewed motion, in weighing Sakuma's entitlement to relief. As a result, the original renewed motion for relief from judgment, Dkt. No. 137, is DENIED AS MOOT.

First, with respect to the January 26, 2021 Order, this Court has no authority to reconsider a decision of the Ninth Circuit: that is simply not how the legal system or the rules of civil or appellate procedure work.

Second, with respect to the June 14, 2019 Order, although Sakuma's motion has been liberally construed, there is simply no basis provided therein to reconsider the Order. Specifically, in the June 14, 2019 Order, the Court denied an earlier motion for reconsideration Sakuma filed because none of the purported errors Sakuma identified materially affected the dismissal of her claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) for failure to allege a plausible claim.³ Similarly, now in the instant motion, although Sakuma appears to contend that an intervening change in the law should result in reconsideration,⁴ she once again fails to explain how that purported change in the law affects the Court's finding that her RICO claim was not plausibly alleged.⁵

³Among other things, Sakuma primarily challenged the Court's finding that her RICO claim was *also* subject to dismissal due to a lack of subject matter jurisdiction under *Rooker-Feldman*—an argument that did not address the lack of plausibility to the claim. See Dkt. No. 117 at 4-5.

⁴The purported change in the law cited by Sakuma is *Kemp v. United States*, 142 S.Ct. 1856 (2022).

⁵Rather, Sakuma appears to believe that the purported change in the law somehow affects events that took place while she was litigating before the Ninth Circuit. See Dkt. No. 138-5 at 15-16. To the extent Sakuma does invoke any of *this* Court's decisions, *see id.* at 20-21, she fails to explain how *Kemp* affects the finding that her RICO claim was not plausibly alleged, *see id.*, (citing to a case that is not *Kemp* and arguing that her RICO claim should be saved from dismissal because *Rooker-Feldman* did not apply), a failure that is not surprising, given that *Kemp* has nothing to do with RICO. Moreover, even if Sakuma now contends that she plausibly alleged a RICO claim, *see id.* at 22, this is not a reason for reconsideration. See *Stephens v. Cty.*

Finally, Sakuma's motion is untimely, whether brought under Federal Rule of Civil Procedure 60(b)(1) or (b)(6)—the two grounds on which Sakuma purports to rely. Pursuant to Rule 60(c)(1), a motion for reconsideration brought under Rule 60(b)(1) may be filed no more than one year “after the entry of the judgment or order or the date of the proceeding.” Here, both the June 14, 2019 Order and the January 26, 2021 Order were entered more than one year before the filing of the original renewed motion on November 10, 2022. A motion for reconsideration brought under Rule 60(b)(6) must be brought within a reasonable time. Fed.R.Civ.P. 60(c)(1). Here, there is nothing reasonable about Sakuma's continued efforts to re-open this proceeding while relying on case law that has no effect on the reasons for dismissal.

Accordingly, the amended renewed motion for relief from judgment, Dkt. No. 138, is DENIED.

IT IS SO ORDERED.

Dated: November 28, 2022 at Honolulu, Hawai'i.



/s/ Derrick K. Watson

Derrick K. Watson
Chief United States District Judge

of Haw. Police Dep't, 584 F. App'x 506, 507 (Mem) (9th Cir. Aug. 14, 2014) (stating that mere “disagreement” with a district court's order is not a valid basis for reconsideration); *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001) (same).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 12 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATSY N. SAKUMA, an individual,

Plaintiff-Appellant,

v.

ASSOCIATION OF APARTMENT
OWNERS OF THE TROPICS AT
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Defendants-Appellees.

No. 22-16929

D.C. No. 1:16-cv-00274-DKW-KJM
District of Hawaii,
Honolulu

ORDER

Before: WALLACE, LEE, and BUMATAY, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Sakuma's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 32) are denied.

No further filings will be entertained in this closed case.