UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILIP C. BELLFY, pro per; MONICA CADY, pro per JAMES LeBLANC, pro per; DIEDRE J. MALLOY, pro per; NATHAN J. WRIGHT, pro per; John Does; and Mary Does,

Plaintiffs, pro se litigants

v

KEITH CREAGH,

Defendant.

No. 1:15-cv-00282

HON. PAUL L. MALONEY

MAG. ELLEN S. CARMODY

ORAL ARGUMENT REQUESTED

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MOTION FOR RELIEF FROM THE COURT'S ORDER TO DISMISS

ORAL ARGUMENT REQUESTED

Plaintiffs state in support of this Motion: Based on newly discovered evidence, fraud, misrepresentation, or other misconduct, Plaintiffs, pursuant to L.C.R. 7.4(a), and F.R.C.P. Rule 60(b)(2),(3), move this honorable Court to relieve Plaintiffs from this Court's Order of Dismissal, dated October 28, 2015. Docket #52.

F.R.C.P. RULE 60 SUMMARY

Jurisdiction and venue are proper in this Court. *United States, ex rel. Standing Bear v. Crook* (CC Neb, 1879), 25 F Cas. *Wharton v. Wise*, 153 U.S. 155 (1894).

Motions under Rule 60(b)(2), or (3) (based on newly discovered evidence and/or fraud), must be made within a reasonable time of not more than a year in federal court.

Rule 60(b)(2) permits the court to grant relief from a judgment or order on the basis of newly discovered evidence only if the existence of this "new" evidence, had it been presented to the court, would have been likely to affect the outcome of the action before the Court; and that this new evidence could not have been discovered in time through due diligence. The evidence also must have been in existence at the time of the trial. *Moody v. State ex rel. Payne*, 344 So. 2d 160 (Ala. 1977). The newly discovered evidence must be material, not merely cumulative or impeaching, and "such as will probably change the result. . . " *Strange v. Gregerson's Foods, Inc.*, 608 So.2d 721, 722 (Ala. 1992).

Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party are express grounds for relief by Motion under subdivision 60(b)(3). *Moore's Federal Practice* (1938) 3267 *et seq*.

FACTUAL BACKGROUND

Plaintiffs relied on the contents of LTA, released to the public for comment, that was negotiated between the Defendant and Graymont, LLC, and presented to this Court, as the basis for this suit; namely, that the proposed sale/transfer of approximately 11,700 acres of "public land" wholly within the external boundaries of the 1836 Ceded Territory would permanently remove those acres from the "public domain," and, as a consequence, such a sale by the Defendant would forever abrogate Plaintiffs' "usual privileges of occupancy" rights as guaranteed to them under Article XIII of the 1836 Treaty of Washington.

Plaintiffs argue that such an abrogation can only be effectuated by an Act of Congress. *Lone Wolf v. the United States*, 187 U. S., 553; *Worcester v. Georgia*, 6 Pet. 575; *U. S. v. Cook*, 19 Wall. 593; *Minnesota v. Hitchcock*, 185 U. S. 37.

FACTS IN SUPPORT OF MOTION

As reported by Interlochen Public Radio on September 2, 2015, the Defendant, through his Public Information Officer, Ed Golder, in reference to this Court's October 28, 2015, Order of Dismissal, stated that: "after many consultations with tribes, the Graymont deal was reduced from roughly 10,000 acres to around 2,000 acres." See Exhibit A.

This public statement by the Defendant initiated a series of FOIA requests, submitted by to the Defendant/DNR by Plaintiff Bellfy in this case. Among the hundreds of pages of irrelevant documents received by Dr. Bellfy was a letter, dated February 13, 2015, sent by the Defendant, to Ms. Lori Ann Sherman, Natural Resources Director of the Keweenaw Bay Indian Community, wherein Mr. Creagh states: "The maximum impact to Tribal treaty rights is 2681 acres, if no lands in the 1836 Ceded Territory are identified for replacement purchase or exchange." Exhibit B.

ARGUMENT

This Court's Order of Dismissal should be vacated because of misrepresentation and deceptive conduct by the Defendant, to wit:

First, the publicly debated LTA, submitted to this Court, and approved by the Defendant on March 19, 2015, details the approximately 11,700 acres that are to be "transferred" to Graymont; yet, the post-Order public statement by the Defendant states that "the Graymont deal ... had been reduced to around 2,000 acres." Given these two divergent "Graymont deal" acreage counts, it is quite obvious that the Defendant misrepresented the extent of "the Graymont deal" to this Court.

Secondly, the Defendant's Letter to Ms. Sherman claims that the "maximum impact [on Plaintiff's Treaty rights] is 2681 acres." Throughout the course of this action before the Court, Defendant, through his attorneys, stated that he negotiated with Graymont to insure the public's right of access to the entire 10,700 acres would not be impaired by the proposed "transfer." This new evidence clearly shows that the Defendant's repeated assurances of "public access" to all 10,700 acres made to this Court were less than reliable.

Plaintiffs pray this honorable Court will also note that the Defendant's Letter to Ms. Sherman was dated several months prior to his submission of the LTA to this Court, and is, therefore, the new, "Treaty impact" evidence that was never disclosed to this honorable Court, fulfilling the "new evidence" requirement of Rule 60.

CONCLUSION

Plaintiffs requests relief under L.C.R. 7.4(a), and FRCP 60(b)(2) & (3), justified due to the Defendant's and his attorneys' misrepresentations before this Court, discovered post-Order through FOIA, which are detailed above.

RELIEF SOUGHT

-1. Reversal of the Court's October 28, 2015, Order of Dismissal.

-2. If any of the 11,700 acres, or any of the 2,681 acres have been sold (given the Defendant's misconduct, it's impossible to know what acreage "the deal" consists of), Plaintiff's pray this honorable Court will reverse such a sale in order to give the Court, the Plaintiffs, and the public, time to determine which acres of the Ceded Territory, and how many, will be transferred to Graymont, LLC, clearly "impacting [Plaintiffs'] Treaty rights" to exercise their "usual privileges of occupancy" on those unidentified acres.

-3. If "the Graymont deal [has] been reduced to around 2,000 acres," Plaintiffs ask the Court to require the Defendant to submit this "reduced-acreage" LTA to the Court, and to require the Defendant to bring this "reduced-acreage deal" to the attention of the public through a series of public meetings in order to allow for a period of "public comment" before such a "reduced-acreage deal" is approved by the Defendant, in keeping with State policy.

-4. Any other relief the Court feels is fair and equitable, including the imposition of sanctions under F.R.C.P. Rule 11, and/or the Court's inherent authority. Full disclosure: Plaintiffs sent a "safe harbor" email to the Defendant's attorneys on December 2, 2015, as suggested by the Notes of Advisory Committee on Rules--1993 Amendment accompanying Rule 11.

Respectfully Submitted on January 26, 2016

/s/

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