



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 75-1996  
 :  
 U.S. DEPARTMENT OF JUSTICE, :  
 :  
 Defendant. :

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE  
DEPARTMENT OF JUSTICE'S MOTION FOR RECONSIDERATION OR,  
IN THE ALTERNATIVE, FOR REOPENING OF ACTION

On May 29, 1981, this Court dismissed the above action without prejudice. The basis for doing so was stated in the first paragraph of the Order which indicated that the Court had been advised by counsel for the parties that the case had been settled. On June 9, 1981, the Court sua sponte amended its order to read "The Court having been advised by counsel for the plaintiff that the above action has been settled..." (emphasis added), clearly indicating that counsel for the plaintiff had on some recent occasion stated to the Court that he has settled the above case with someone representing defendant U.S. Department of Justice. The dismissal without prejudice was permitted to stand.

After contacting U.S. Department of Justice and Federal Bureau of Investigation personnel involved in this case, it is clear to defendant's counsel that no one representing defendant Department of Justice has reached a settlement with plaintiff or even discussed settlement with plaintiff or plaintiff's counsel. Instead, since the Department of Justice is firmly of the belief that this Court has already adjudicated all outstanding issues in this case, defendant's pending motion for summary judgment continues to be the Department's suggested means of disposing of this case.

Defendant strongly opposes a dismissal without prejudice in this case. <sup>\*</sup>/ Such a dismissal would allow the revival of this

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<sup>\*</sup>/ Defendant would not oppose a dismissal with prejudice in this case.

lawsuit. Thus, the practical effect of such a dismissal is to waste five years of litigative efforts and expenses by the Department of Justice and the FBI and leave open the very real possibility of lengthy re-litigation of the same issues in the future.

Rule 41(a)(2) of the Federal Rules of Civil Procedures permits dismissal at the plaintiff's instance only "upon order of the court and upon such terms and conditions as the court deems proper." It is hard to conceive of a more improper dismissal than one which is based on erroneous information. It is also hard to conceive of a result less likely to "secure the just, speedy and inexpensive determination" of this action, as required by Rule 1 of the Rules.

On the other hand, Rule 60(b) permits this Court to vacate an order for fraud, misrepresentation or other misconduct of an adverse party, (Rule 60(b)(3)); See Conerly v. Flower, 410 F.2d 941 (8th Cir., 1969), and 7 Moore's Federal Practice, ¶ 60.24, for reason of mistake (Rule 60(b)(1)); or for any other reason justifying relief from the operation of the judgment (Rule 60(b)(6)). Plaintiff's apparent representation to this Court that he has settled with defendant certainly falls within one of these categories and renders the order based on that representation subject to Rule 60(b) relief.

For the above reasons, defendant requests reconsideration of its order of May 29, 1981 as amended on June 8, 1981. In the alternative, defendant requests that the action be reopened in accord with the second paragraph of the May 29, 1981 Order since no settlement has been consummated.

Respectfully submitted,

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v.

U.S. DEPARTMENT OF JUSTICE,

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Civil Action No. 75-1996

ORDER

Upon consideration of defendant United States Department of Justice's motion to reconsider this Court's order of May 29, 1981 as amended by its order of June 8, 1981, it is hereby ORDERED that that order is hereby vacated.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE



CERTIFICATE OF SERVICE

I hereby certify that the foregoing copy of Memorandum of Points and Authorities In Support Of The Department of Justice's Motion for Reconsideration Or, In The Alternative, For Reopening of Action, was served by mailing, United States Mail, postage prepaid to:

James H. Lesar  
2101 L Street, N.W.  
Suite 203  
Washington, D.C. 20037

this 30<sup>th</sup> day of June, 1981.

  
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WILLIAM G. COLE