

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DOCTOR'S ASSOCIATES, INC.,	:
Plaintiff,	:
	:
-vs-	: Civil No. 3:00cv1126 (PCD)
	:
ROBERT C. MARINELLO &	:
GLORIA J. MARINELLO,	:
Defendants.	:

RULING ON MOTION FOR RELIEF FROM JUDGMENT

Defendants move pursuant to FED. R. CIV. P. 60(b) for relief from judgment from the order confirming an April 20, 2000 arbitration award in favor of plaintiff. For the reasons set forth herein, defendants' motion for relief from judgment is denied.

I. BACKGROUND

On March 18, 1992, defendants entered into a written franchise agreement that authorized operation of a Subway shop in Massachusetts and provided for arbitration of "[a]ny controversy or claim arising out of or relating to this contract or the breach thereof." Defendants sought, but were denied, the opportunity to include claims involving lease disputes in the franchise matters before the arbitration panel. Defendants and Subway Real Estate Corp. ("SRE"), not plaintiff, were parties to the lease agreement. On April 20, 2000, the arbitrator found in favor of plaintiff. On September 28, 2001, defendants' motion to vacate the arbitration award was denied and plaintiff's motion to confirm the arbitration award was granted. Defendants now provide, as newly discovered evidence, an assignment of lease from SRE to plaintiff dated September 30, 1997.

II. STANDARD

FED. R. CIV. P. 60(b) provides: “On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; [or] (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)” “[S]ince 60(b) allows extraordinary judicial relief, it is invoked only if the moving party meets its burden of demonstrating ‘exceptional circumstances.’ *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir.1986).” *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1142 (2d Cir. 1994).

This motion is brought by pro se defendants. A pro se party is afforded “some degree of flexibility in pleading his action.” *Boguslavsky v. Kaplan*, 159 F.3d 715, 720 (2d Cir. 1998). “Indeed, courts may look to submissions beyond the complaint to determine what claims are presented by an uncounseled party.” *Id.* Supporting papers therefore will be read liberally and interpreted “to raise the strongest arguments that they suggest.” *Id.*

III. DISCUSSION

Construing defendants’ motion liberally, they argue that the assignment of their lease from SRE to plaintiff requires inclusion of lease-related claims in arbitration proceedings on violations of the franchise agreement. By refusing to include the defendants’ claims involving lease violations by plaintiff, the arbitrator engaged in misconduct sufficient to vacate the arbitration award and the order confirming the same award. *See* 9 U.S.C. § 10(a)(3).

Defendants’ basis for contesting the validity of the arbitration award arises from the arbitrator’s refusal to include counterclaims involving lease agreement disputes with SRE in arbitration proceedings

on the franchise agreement with plaintiff. Defendants' offer of an assignment of lease from SRE to plaintiff does not invalidate the order confirming the arbitration award, nor does the assignment of lease align the facts of their case with those of *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324 (5th Cir. 1999). *Forte* was cited in the order confirming the arbitration award as illustrative of the variety of agreements involved in franchise relationships with plaintiff, as well as for the proposition that SRE and plaintiff are separate entities, *see id.* at 426. Assuming *arguendo* that plaintiff is both lessor and franchisor, defendants have not established the "exceptional circumstances" required under FED. R. CIV. P. 60(b) for relief from judgment.

"Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *John Hancock Life Ins. Co. v. Wilson*, 254 F.3d 48, 58 (2d Cir. 2001) (internal quotation marks omitted). The newly discovered evidence provided by defendants does not establish an agreement to submit lease issues to arbitration. Absent evidence of such an agreement, the arbitrators' decision to exclude the counterclaims from proceedings on the franchise agreement was not improper, as the counterclaims excluded were not "pertinent and material," 9 U.S.C. § 10(a)(3), to the franchise agreement arbitration.¹

¹ Denial of defendants' motions should not be construed as an assessment of the merits of the alleged lease infractions. Under the facts as presented, defendants were not precluded from seeking redress for the alleged lease violations in a separate forum. Defendants, however, were not entitled to bring the counterclaims in an arbitration proceeding on violations of the franchise agreement without evidence of an agreement providing for inclusion of those claims.

IV. CONCLUSION

Defendants' motion for relief from judgment (Doc. ___) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, November ___, 2001..

Peter C. Dorsey
United States District Judge