UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONGREGATION MISCHKNOIS LAVIER YAKOV, INC., RABBI ABRAHAM KATZ, JOEL GROSS, CHANE GROSS, and MOSHE WEINBERGER,

Plaintiffs,

v.

BOARD OF TRUSTEES FOR THE VILLAGE OF AIRMONT, NEW YORK, PLANNING BOARD FOR THE VILLAGE OF AIRMONT, NEW YORK, BUILDING INSPECTOR FOR THE VILLAGE OF AIRMONT, NEW YORK, SALVATORE CORALLO, as Acting Commissioner for the Rockland County Department of Planning, and THE ROCKLAND COUNTY DEPARTMENT OF PLANNING,

Defendants.

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02 Civ. 5642 (SCR)

MEMORANDUM DECISION AND ORDER

STEPHEN C. ROBINSON, United States District Judge:

Congregation Mischknois Lavier Yakov, Inc., Rabbi Abraham Katz, Joel Gross, Chane Gross, and Moshe Weinberger (collectively "Plaintiffs") entered into a settlement agreement ("Settlement") with the Board of Trustees for the Village of Airmont, the Planning Board for the Village of Airmont, the Building Inspector for the Village of Airmont, Salvatore Corallo, and the Rockland County Department of Planning (collectively "Defendants"). The Board of Trustees for the Village of Airmont, the Planning Board for the Village of Airmont, and the Building Inspector for the Village of Airmont (collectively "Airmont Defendants") now move to vacate the Settlement under Rule 60(b) of the Federal Rules of Civil Procedure. For the reasons set forth below, the Airmont Defendants's motion is denied.

I. Background

The following will only briefly describe the pertinent facts as familiarity with this case is assumed.

Plaintiffs seek to develop land in the Village of Airmont for a religious school. Plaintiffs wish to include a residential component in their school. While Airmont's zoning code permits both religious and secular schools, it prohibits boarding schools. Plaintiffs' land use application was denied by the Rockland County Department of Planning and by the Airmont Planning Board because it was inconsistent with the Code's prohibition on boarding schools. After the Congregation was not permitted to develop its property as it wished, it sought relief in this Court.

On or about January 3, 2005, the Congregation settled with Defendants. The Settlement, which this Court so ordered, directed Plaintiffs to submit a revised site plan for their property. The Airmont Defendants agreed to consider the revised site plan in an expeditious manner. The parties further agreed that the proposal could not be denied simply because it was for a religious boarding school. Plaintiffs' plan is currently moving through Airmont's land use approval process.

The Airmont Defendants now move to vacate the Settlement under Rules 60(b)(4) and 60(b)(6) of the Federal Rules of Civil Procedure.[1]

II. Discussion

A. Rule 60(b)(4)

"A judgment is void under Rule 60(b)(4) of the Federal Rules of Civil Procedure 'only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.'" *Grace v. Bank Leumi Trust Co.*, 443 F.3d 180, 193 (2d Cir. 2006) (quoting *Texlon Corp. v. Mfrs. Hanover Commercial Corp.*, 596 F.2d 1092, 1099 (2d Cir. 1979)). "The concept of a void judgment [under Rule 60(b)(4)] is extremely limited." *Wendt v. Leonard*, 431 F.3d 410 (4th Cir. 2005).

The Airmont Defendants argue that the Settlement violates New York law, and is therefore void. However, there is no indication that the Airmont defendants were not afforded their full due process rights when they entered into the Settlement.[2] From the commencement of the original litigation in July 2002, the Airmont Defendants were afforded all applicable procedural rights, and the defendants had capacity to enter into the Settlement, when they voluntarily chose to end the litigation in January 2005. *See McKinney's Village Law* § 1-102(5), (7) (2006) ("The village shall have power . . . [t]o contract and be contracted with, to sue and be sued, to complain and defend and to institute, prosecute, maintain, defend and intervene in, any action or proceeding in any

[1] The settlement is also being challenged on another front. The Hillside Avenue Preservation Association, Inc., a local community group, instituted an Article 78 proceeding in state court against Defendants and the Zoning Board of Appeals for the Village of Airmont to challenge the settlement. Plaintiffs intervened, and removed the case to this Court.

[2] There is no dispute that this Court had subject matter jurisdiction and personal jurisdiction over the underlying action.

court . . . [and] [t]o have and exercise all the rights, privileges, functions and powers prescribed and exercised by it under existing or subsequent laws and not inconsistent with the provisions of this chapter."); *McKinney's Town Law* § 68(1)(a) ("The town board of any town may compromise or settle . . . [a]n action or proceeding against the town, with the approval of the court in which such action or proceeding is pending."). Moreover, at all times, the Airmont Defendants were represented by able counsel. *Cf. Grace v. Bank Leumi Trust Co.*, 443 F.3d 180, 192-93 (2d Cir. 2006) (finding a judgment void under Rule 60(b)(4) because the court acted in a manner inconsistent with due process of law when it allowed an individual, who was not a lawyer, execute a stipulation of settlement on behalf of a corporation even though "it is settled law that a corporation may not appear in a lawsuit against it except through an attorney" (quoting *SEC v. Research Automation Corp.*, 521 F.2d 585 (2d Cir. 1975))); *see also Burke v. Smith*, 252 F.3d 1260, 1265-66 (11th Cir. 2001) (setting aside a settlement involving a minor in a diversity case under Rule 60(b)(4) because the court failed to conduct a fairness hearing for the minor, as required by Alabama state law and the principles of *Erie*).

In addition, the alleged illegality of the Settlement does not imply that the agreement does not comport with the requirements of due process. *See United States v. Beebe*, 180 U.S. 343, 350-51 (1901)(judgment not void where district attorney lacked authority to compromise absent express approval of Solicitor of the Treasury, though eventually vacating settlement because no attorney may settle a case without the consent of their client); *Baumlin & Ernst, Ltd. v. Gemini, Ltd.*, 637 F.2d 238, 241 (4th Cir. 1980)(alleged failure of consent judgment to abide by statutory requirements did not void the judgment because "a substantial difference between a judgment which is erroneous and one which is altogether void".) *Lubben v. Selective Service System Local Board No. 27*, 453 F.2d 645, 649 (1st Cir. 1972)("A void judgment is to be distinguished from an erroneous one, in that the latter is subject only to direct attack."); *United States v. Krilich*, 152 F. Supp. 2d 983, 991 (N.D. Ill. 2001)("The parties' contract being void is not the same as the judgment itself being void...The fact that a party to a consent judgment lacked authority to consent ...does not void the judgment itself.")

Since they were not denied due process law, the Airmont Defendants' motion is denied as to Rule 60(b)(4).

B. Rule 60(b)(6) – Any Other Reason Justifying Relief

Rule 60(b)(6) is a catch-all; it allows a court to vacate a judgment for "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(6). According to the Second Circuit, this provision "'confers broad discretion on the trial court to grant relief when appropriate to accomplish justice [and] it constitutes a grand reservoir of equitable power to do justice in a particular case.'" *Marrero Pichardo v. Ashcroft*, 374 F.3d 46, 55 (2d Cir. 2004) (quoting *Matarese v. LeFevre*, 801 F.2d 98, 106 (2d Cir. 1986)). A court may vacate a judgment under Rule 60(b)(6) "'where there are extraordinary circumstances, or where the judgment may work an extreme and undue

hardship." *Id.* at 56 (quoting *Matarese*, 801 F.2d at 106); *see also New York v. Green*, 420 F.3d 99, 108 n.3 (2d Cir. 2005).

The Airmont Defendants argue that it has established the requisite extraordinary circumstances to warrant vacating the Settlement under Rule 60(b)(6). Their argument is two-fold. First, they assert that the Settlement has brought "a profound change" to Airmont by allowing construction of a large project that is "out of character" with the surrounding properties and Airmont itself. (Defs. Mem. at 11.) Second, they argue that that the Settlement "plainly usurps the [Zoning Board of Appeal's] power to grant variances and robs the public of the opportunity to participate in amendments to its zoning rules." (Defs. Mem. at 11.)

Such circumstances are not so extraordinary as to warrant vacating the Settlement. That the Airmont Defendants now dislike the consequences of something they previously agreed to is not a ground upon which this Court can or would vacate a judgment. To hold otherwise would render settlement of litigation with a governmental entities impracticable – opposing parties would always run the risk that, after the next election, a the new government would simply move to vacate an existing settlement. Accordingly, the Airmont Defendants' motion is denied as to Rule 60(b)(6).

III. Conclusion

For the reasons set forth above, the Airmont Defendants' motion to vacate the Settlement is denied.

It is so ordered.

Dated: White Plains, New York
March 29, 2007

Stephen C. Robinson, U.S.D.J.