

DANIEL M. HERRIGAN

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SUMMIT COUNTY IN THE COURT OF COMMON PLEAS  
CLERK OF COURTS SUMMIT COUNTY, OHIO

STATE OF OHIO,	)	CASE NO. CV-2006-07-4740
	)	
Plaintiff,	)	
	)	
vs.	)	JUDGE ROWLANDS
	)	
9150 GROUP L.P., et. al.,	)	
	)	
Defendant.	)	<u>ORDER</u>

This matter comes before the Court on Edwin M. Roth's motion to vacate the default judgment against him in this matter. Upon consideration, this motion is not well taken and is denied.

Mr. Roth contends that this Court lacks personal jurisdiction over him as an individual in this matter. "When determining whether an Ohio court has personal jurisdiction over a non-resident defendant, the court must: (1) determine whether Ohio's long-arm statute and the applicable civil rule confer personal jurisdiction; and, if so, (2) whether granting jurisdiction under the statute and rule comports with the defendant's due process rights under the Fourteenth Amendment to the United States Constitution. Courts must engage in the two-step analysis because the long-arm statute does not give Ohio courts jurisdiction to the limits of the due process clause." *Joffe v. Cable Tech, Inc.*, 163 Ohio App.3d 479, 839 N.E.2d 67, 2005-Ohio-4930, citing *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 236, 638 N.E.2d 541, 1994-Ohio-229 (internal cites removed). Mr. Roth now resides in Colorado, and therefore asserts that the Court lacks personal jurisdiction over him.

Plaintiff<sup>1</sup> claims Mr. Roth, acting both individually and as officer of Defendants Aerosol Systems, Inc., and Specialty Chemical Resources, Inc., engaged in or directed the storage, generation, and disposal of hazardous waste, and was liable for the environmental violations at issue in this matter. Service was perfected upon Mr. Roth on December 4, 2007. Mr. Roth did not answer the complaint, and default judgment was entered against him on June 8, 2010.

Mr. Roth filed a motion to vacate on October 22, 2010, asserting a lack of personal jurisdiction, or alternately claiming excusable neglect and seeking vacation under Civ.R. 60(B). Plaintiff responded in opposition to this motion on November 15, 2010. Mr. Roth sought leave to file a reply brief *instantly* on November 29, 2010, and Plaintiff opposed this leave on December 13, 2010. This Court has reviewed these filings as well, and while the Court finds little new information in Mr. Roth's offered reply brief, the Court grants leave and accepts it as part of the record.

Mr. Roth does not dispute that he once resided in Summit County and was a corporate officer of Aerosol Systems, Inc., and Specialty Chemical Resources, Inc. at the times relevant to this claim. He also does not dispute that this Court has personal jurisdiction over these corporations or their officers. Mr. Roth's sole assertion regarding personal jurisdiction is that as an individual he cannot be held accountable for the actions of the corporation. However, a review of the pleadings indicates that Mr. Roth was sued both in his corporate and in his individual capacity. The same facts that give rise to jurisdiction over the corporations – that the parties engaged in the generation, storage, and disposal of hazardous waste in violation of environmental law within Summit County, Ohio – are the same facts which justify jurisdiction over Mr. Roth as an individual. Mr. Roth seeks to confuse an affirmative defense that he was

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<sup>1</sup> This judgment at issue is on a third-party complaint against Mr. Roth. For simplicity, the third-party plaintiff is addressed as the "Plaintiff" and Mr. Roth and other third-party defendants are at times addressed as "Defendants."

acting solely in his corporate capacity, with a claim of personal jurisdiction. This Court refuses to accept this argument. The actions giving rise to the claim against Mr. Roth took place in Ohio, and provide the minimum contacts required for specific jurisdiction in this matter. Therefore, Mr. Roth's jurisdictional claim is denied.

Mr. Roth's basis for relief under Civ.R. 60(B) is equally baseless. "To prevail on a motion brought under Civil Rule 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) – (5); and (3) the motion is made within a reasonable time." *Caruso-Ciresi, Inc. v. Lohman* (1983), 5 Ohio St.3d 64, 66, 448 N.E.2d 1365. Mr. Roth seeks relief for "excusable neglect" under Civ.R. 60(B)(1) or based on "for any other reason justifying relief." Civ.R. 60(B)(5). This Court finds no basis for relief under either of these sections.

Mr. Roth's asserted excuse for neglecting this matter is that he has not resided in Ohio for years, and had resigned his position with the corporate entities. However, the facts asserted in the complaint are sufficient to put a reasonable person on notice that the claims against him stem from a time when he was involved in those corporations, and actions occurring in Summit County, Ohio. At best, this seems a recasting of Mr. Roth's personal jurisdiction claim. He may have chosen to ignore this complaint based on his belief that this Court lacked jurisdiction over him. However, this mistaken belief does not constitute excusable neglect.

Nor do we find any other basis for relief under Civ.R. 60(B)(5). This is "a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment, but it is not to be used as a substitute for any of the other more specific provisions of Civ.R. 60(B)." *Michael D. Tully, Co. LPA v. Dollney* (1987), 42 Ohio App.3d 138, 141, 537

N.E.2d 242, quoting *Caruso-Ciresi, Inc.*, 5 Ohio St.3d at 65. Grounds for relief under this provision should be substantial, and relief based on Civ.R. 60(B)(5) should be granted judiciously. Id. "A party who willfully and deliberately chooses to ignore a complaint and has stated no reason for failing to appear or answer a complaint has not stated an adequate ground for relief from a default judgment pursuant to Civ.R. 60(B)(5)." *Mt. Olive Baptist Church v. Pipkins Paints & Home Improvement Ctr., Inc.* (1979), 64 Ohio App.2d 285, 288, 413 N.E.2d 850. Mr. Roth has offered no other grounds for relief beyond his personal jurisdiction claim. Therefore, this Court finds no basis for relief under Civ.R. 60(B)(5).

Mr. Roth has offered no basis for relief from judgment. Therefore, his motion is denied.

It is so ordered.

  
JUDGE MARY MARGARET ROWLANDS

cc: Attorney Brian A. Ball  
Attorney Robert J. Karl/Attorney Sherry L. Hesselbein  
Attorney E. Mark Young

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