

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

BRADLEY W. SMITH,

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RESCUE ONE FINANCIAL, LLC

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Case: 24-C-15-004789

Plaintiffs,

*

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v.

*

BRYAN LEVIN

*

Defendant.

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**PLAINTIFFS' MOTION TO VACATE CONSENT JUDGMENT PURSUANT TO
MARYLAND RULE 2-535(b) AND TO DISMISS PLAINTIFFS' COMPLAINT WITH
PREJUDICE**

Plaintiffs, **BRADLEY SMITH** and **RESCUE ONE FINANCIAL, LLC**, by and through undersigned counsel, and pursuant to Md. Rule 2-535(b) and the April 13, 2017, Order entered by the United States District Court for the District of Rhode Island, (see Ex. 1, attached hereto), file this Motion to Vacate the Consent Judgment entered on October 16, 2015, and thereafter to Dismiss Plaintiffs' Complaint With Prejudice, and as grounds therefor, state as follows:

I. INTRODUCTORY STATEMENT

On October 16, 2015, this Court entered a Consent Judgment in this matter against the Defendant, Bryan Levin, which Plaintiffs now seek to vacate because the Complaint was inappropriately filed, and the Consent Judgment was improvidently obtained in an irregular manner.

It is neither just nor equitable that the Consent Judgment has any, much less prospective, application. Granting this Motion pursuant to Md. Rule 2-535(b) will undo a miscarriage of justice.

II. MOTION

Pursuant to Md. Rule 2-535(b), Plaintiffs move to vacate the October 16, 2015, Consent Judgment entered in this matter, and thereafter to dismiss this case with prejudice.

III. PROCEDURAL HISTORY

1. On September 21, 2015, previous counsel, Bennett J. Wills, filed this action seeking, *inter alia*, a Permanent Injunction against the Defendant, Bryan Levin.

2. At the time of filing, Plaintiffs and Plaintiffs' counsel of record, Bennett J. Wills, were unaware that Bryan Levin may not have been a real party or person, and the signature and initials affixed to the Consent documents (Confidential Settlement Agreement and Mutual Release and the Consent Judgment itself) were not genuine or real. Attorney Wills was also unaware that Levin had not been served with process.

3. Plaintiffs' counsel of record, Bennett J. Wills, totally unaware of the true nature of these purported documents, submitted a proposed Order to this Court asking the Court to enter what appeared, on its face, to be a valid Consent Judgment. This Court, unaware that it, like Attorney Wills, was being misled, entered the Consent Judgment on October 16, 2015.

4. Plaintiffs' new, undersigned, counsel has reviewed this matter and, pursuant to a Court Order and Settlement Agreement (see Exs. 1 and 2, attached hereto) in a related matter, filed in the United States District Court for the District of Rhode Island, respectfully requests this Court to Vacate the Consent Judgment and thereafter to dismiss Plaintiffs' Complaint with prejudice.

5. As set forth below, the granting of this Motion will not prejudice any party involved in the matter and will in fact promote the interests of justice, and restore respect for, as well as the dignity of, this Court.

6. Undersigned counsel has conferred with Plaintiffs' primary, non-litigation, counsel, Robby Birnbaum (Florida Bar # 175889), who has confirmed Plaintiffs' concurrence with respect to this Motion to Vacate Consent Judgment, Pursuant to Md. Rule 2-535 and thereafter to Dismiss Plaintiffs' Complaint With Prejudice.

IV. MEMORANDUM OF LAW

Under Maryland law, a party at any time may file a motion to seek the court's revisory power and control over a judgment. Md. Rule 2-535(b). Maryland Rule 2-535(b) provides in relevant part:

(b) Fraud, Mistake, Irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity (emphasis added).

“Irregularity,” as provided for under this Rule, has a narrow judicial definition. Thacker v. Hale, 146 Md. App. 203 (2002). The Court in Thacker defined “irregularity” as follows:

An irregularity which will permit a court to exercise revisory powers over an enrolled judgment has been consistently defined as the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done[.] As a consequence, irregularity, in the contemplation of the Rule, usually means irregularity of process or procedure, and not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged.

Id.

As set forth below, the facts and circumstances surrounding the entry of the Consent Judgment at issue make clear that this Court should exercise its revisory power and control over the Judgment at

issue as it was, at a minimum, irregularly obtained. The process and procedure employed in this lawsuit was irregular in that the defendant in the lawsuit, to the extent he actually exists at all, not only did not have the opportunity to challenge the Consent Judgment, but was wholly unaware of the existence of the lawsuit itself. It is evidently clear that such process and procedure “ought not [have been] done,” as provided under the Rule. Md. Rule 2-535(b).

Furthermore, there is no prejudice to anyone, especially because it is the Plaintiffs as the apparent beneficiaries of the Consent Judgment who seek to have same vacated. The named Defendant will not be harmed or prejudiced in any way. Clearly, it is not equitable for this Consent Judgment to have any prospective application.

Facts and Circumstances

In April 2015, Rescue One Financial, LLC and its principal, Bradley Smith, hired an entity known as RIR/1984 LLC (RIR). The principal of RIR, Richart Ruddle (“Ruddle”), is an expert in the very technologically challenging online reputation management and repair business. Ruddle and RIR work at the removal of defamatory online statements. One of the energetic, but improperly and irregularly executed, strategies recommended by Ruddle for removing the statements involved in this matter was the filing of this lawsuit. In September 2015, Ruddle arranged and was financially responsible for Plaintiffs’ ostensible retention of Attorney Bennett J. Wills. Plaintiffs and Attorney Wills, totally unaware of the fact that this lawsuit was predicated on a contrived set of facts and an uninformed (or possibly non-existent) Bryan Levin, filed this lawsuit in good faith to obtain what they believed would be a legitimate Consent Judgment, which would then, ostensibly, result in certain online defamatory statements being “de-indexed” by relevant internet search engines, such as Google. Plaintiffs and Attorney Wills did not know that Levin’s “signature” and

“initials” on the Confidential Settlement Agreement and Mutual Release and Consent Judgment had been improperly affixed by an unknown party.

As noted above, the Consent Judgment was ultimately entered in this matter. The Consent Judgment contained a provision that required the “Defendant” to immediately remove from all websites, search engines, forums, blogs, lists, social media sites, and/or other forums of mass communication (collectively “Forums”), all negative comments about the Plaintiffs. “Defendant” was also ordered to take immediate action to request the removal of the alleged defamatory material from all Internet search engines, such as Google, Yahoo! and Bing. Google, respecting the Consent Judgment, which appeared valid on its face, de-indexed the defamatory online statements. Thus, the Consent Judgment obtained here was not only improperly obtained, but also conferred inappropriate relief upon Plaintiffs.

The Consent Judgment irregularly obtained in this matter indirectly relates to a separate Federal case, Smith v. Garcia, Case No. 1:16-cv-00144-S-LDA (the “Rhode Island Case”). In the Rhode Island Case, Chief United States District Judge William E. Smith entered an Order directing Ruddle to “promptly take steps to secure the lifting of the order[s]” that he obtained sub judice. (See Ex. 1 at 2). Once this Court vacates the Consent Judgment, there is no basis for this case to remain open, hence Plaintiffs also request this Court dismiss the Complaint with prejudice. This Motion is filed in good faith not only to comply with the District of Rhode Island Court Order, but also to correct an irregularity in the process and procedure utilized to obtain this Consent Judgment, and restore full dignity to, and respect for, this Court.

WHEREFORE, Plaintiffs, **BRADLEY SMITH AND RECUE ONE FINANCIAL, LLC**, pray this Honorable Court grant this Motion to Vacate the October 16, 2015, Consent Judgment previously entered in this matter, issue its Order vacating same, and simultaneously enter

its Order Dismissing Plaintiffs' Complaint With Prejudice, and further for the Plaintiffs to bear all court costs associated with this Motion.

Respectfully submitted,

Cardin & Gitomer, P.A.
Attorneys for Plaintiff
211 Saint Paul Place
Baltimore, MD 21202
Baltimore City
Telephone: 410-727-3868
jjgitomer@aol.com

By:

JAMES J. GITOMER

CERTIFICATION OF COUNSEL FOR PLAINTIFF

I hereby certify that the statements made in the foregoing Motion to Vacate Consent Judgment Pursuant to Maryland Rule 2-535(b) and to Dismiss Plaintiffs' Complaint With Prejudice are true and correct.

JAMES J. GITOMER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of April, 2017, a copy of the foregoing Motion to Vacate Consent Judgment Pursuant to Maryland Rule 2-535(b) and to Dismiss Plaintiffs' Complaint With Prejudice was **not** sent to "Bryan Levin" because, as set forth above, he is not a real party to this action, and, in any event, was never served with any prior pleadings, Orders, or Judgments in this matter.

JAMES J. GITOMER