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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION., Plaintiff, v. MERIDIAN HOLDINGS, INC., ANTHONY C. DIKE and MICHELLE V. NGUYEN, Defendants.	Case No. CV 07-06335 DDP (SSx) **Order Denying Defendants' Motion to Set Aside Final Judgment** [Motion filed on July 25, 2009]

Presently before the Court is Defendants Meridian Holdings, Inc. ("Meridian") and Anthony Dike's ("Dike") Motion to Set Aside Final Judgment.

I. BACKGROUND

Dike was formerly Chief Executive Officer ("CEO") of Meridian. In June 2000, Meridian purchased the assets of Sirius Computerized Technology of Israel, including Sirius Technology of America's ("STA") contracts and accounts receivable. On January 21, 2004, Meridian obtained a $30,687,926 default judgment against STA and Glen Crowe (one of STA's principals) in Los Angeles County Superior Court. At the time Defendants obtained the default judgment, STA

was a non-operational entity (its parent company was in bankruptcy), and Crowe's whereabouts were unknown.

Meridian entered the entire default judgment amount on the company's second and third quarter earnings reports for 2004. According to the SEC, the default judgment amounted to 85% of Meridian's listed assets at the time the disclosures were made.

The SEC brought an action against Defendants on September 28, 2007. The Complaint alleged that Defendants had no reasonable basis for believing that the default judgment was collectible, and thus, they should not have listed it as an asset on their 2004 financial statements. On December 30, 2008, Defendants filed consent agreements stipulating to entry of final judgment in favor of the SEC without admitting or denying the allegations in the Complaint. (Dkt. Nos. 28, 29.)

On January 5, 2009, the Court entered final judgment. (Dkt. Nos. 31, 32.) The judgment, in relevant part, imposed a five-year officer and director bar and a $25,000 civil penalty against Dike.

Defendants bring the present Motion to Set Aside Final Judgment pursuant to Federal Rule of Civil Procedure 60(b)(2), on the grounds that certain “newly discovered evidence” indicates that the default judgment is, in fact, collectible.

II. LEGAL STANDARD

"On motion and just terms, the court may relieve a party or its legal representative from a final judgment" in light of "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." Fed. R. Civ. P. 60(b)(2). Evidence is considered "newly discovered" within the meaning of Rule 60(b)(2) where it: (1) was

undiscovered at the time of the court's prior decision; (2) could not have been discovered through the exercise of reasonable diligence by the moving party; and (3) is of such a character that it would change the outcome of the court's prior decision. Jones v. Aero/Chem Corp., 921 F.2d 875, 878 (9th Cir. 1990).

III. DISCUSSION

Defendants' moving papers describe three strains of "newly discovered" evidence. First, they report that on December 29, 2008, they succeeded in garnishing $11,324.36 from Crowe's bank account. Next, they state that in April 2008 – nine months before the Court entered final judgment – they became senior lien holders on Crowe's condominium, which, according to Defendants, is worth approximately $350,000. Finally, Defendants state that, in December 2008, they received information suggesting that Crowe remains an active partner in several businesses that he earlier claimed to have transferred to his wife. His interest in these businesses, according to Defendants, is worth over $900,000.

The Court concludes that none of the evidence that Defendants rely on in their motion can be considered "newly discovered" within the meaning of Rule 60(b)(2). All of the information that, in Defendants' view, indicates that the default judgment is in fact collectible was – by their own admission – either known to them or available to them prior to the Court's entry of final judgment on January 5, 2009. Accordingly, Defendants have not shown that the evidence could "not have been discovered in time to move for a new trial under Rule 59(b)," as Rule 60(b)(2) expressly requires.[1]

[1] That the evidence was, allegedly, not available to (continued...)

IV. CONCLUSION

For the reasons set forth above, Defendants' Motion to Set Aside Final Judgment is DENIED.

IT IS SO ORDERED.

Dated: September 29, 2009

DEAN D. PREGERSON
United States District Judge

[1](...continued)
Defendants in November 2008, when they signed stipulations consenting to entry of final judgment in favor of the SEC, is of no consequence. Rule 60(b)(2) provides that evidence is not "newly discovered" if it was discoverable within the time for filing a motion for a new trial. Pursuant to Rule 59(e), "[a] motion for new trial must be filed no later than 10 days after the entry of judgment."