IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANKLIN MINT, CO., Plaintiff,	:	CIVIL ACTION
v.	:	
RUSSELL BOYD and HEATHER HEFFINGTON d/b/a THEMINT.COM and MINT INTERACTIVE, Defendants.	:	NO. 99-03823

M E M O R A N D U M

Newcomer, S.J. May , 2001

I. BACKGROUND

Presently before the Court is defendant Heather Heffington's fourth attempt to vacate a default judgment entered against her over fourteen (14) months ago. Defendant Heffington was represented by counsel when she attempted to vacate default judgment the first three times, but now she has filed the instant Motion pro se.

This case has a long and complex procedural history which this Court will only partially recount today. This Court first granted default judgment against defendants on February 8, 2000. Then, on June 2, 2000, defendants filed a Petition to Vacate the February 8, 2000 default judgment order. On July 18, 2000, this Court granted the defendants' Petition to Vacate as to defendant Boyd only, but not Heffington. On October 16, 2000, defendant Heffington filed a "Notice of Petition to Vacate Entry

of Default Judgment Against Defendant Heffington", which this Court denied on October 31, 2000. In the October 31, 2000 Order, this Court further ordered that the Clerk mark this case as closed, and on that day, the Clerk closed this case accordingly. On November 28, 2000, defendants moved this Court to reconsider its decision not to vacate default judgment against Heffington, but on December 1, 2000, the Court again denied defendants' request.

Further complicating matters, defendants filed a notice of appeal on January 2, 2001, over sixty days after this case was closed. Thus, defendants have filed their present Motion to Vacate over three months after they filed their notice of appeal. In light of this procedural background, the Court now turns to plaintiff's Motion to Vacate.[1]

II. DISCUSSION

The Court concludes that it lacks jurisdiction to consider the merits of plaintiff's Motion. If a party moves to vacate default judgment pursuant to Federal Rules of Civil Procedure 60(b)(1) or (3), they must file their motion within one year after the judgment.[2] See FED. R. CIV. P. 60(b). Thus, to

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[1]Heffington's pro se Motion to Vacate has been filed pursuant to Federal Rule of Civil Procedure 60(b).

[2]Under rule 60(b)(1) a party may move for relief from final judgment, order or proceeding based upon "mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(3) allows a party to move for relief on the grounds of fraud,

the extent defendant Heffington has filed her Motion pursuant to rules 60(b)(1) or (3), her Motion is untimely because she has filed it 14 months after this Court granted default judgment against her. Accordingly, the Court lacks jurisdiction to consider her claims under either of those rules. See FED. R. CIV. P. 60(b); Nucor Corp. v. Nebraska Public Power Dist., 999 F.2d 372, 376 (8th Cir. 1993); Nevitt v. U.S., 886 F.2d 1187, 1188 (9th Cir. 1989).

To the extent defendant Heffington has filed her Motion pursuant to rules 60(b)(4) or (6), motions filed under those rules must be filed within a reasonable time.[3] See FED. R. CIV. P. 60(b). One year represents an extreme limit, and the motion will be denied as untimely if not made within a reasonable time, even when the one year period has not expired. See Defeo v. Allstate Ins. Co., 1998 WL 328195, at *5 (E.D.Pa. Jun 19, 1998); CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE, Civil § 2866 (2d ed. 1987); see also Kagan v. Caterpiller Tractor Co., 795 F.2d 601, 610 (7th Cir. 1986).

Furthermore, what constitutes a "'reasonable time' depends upon the facts of each case, taking into consideration

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misrepresentation, "or other misconduct of an adverse party."

[3]Under rule 60(b)(4) a party may argue that "the judgment is void." Rule 60(b)(6) allows a party to move for relief because of "any other reason justifying relief from the operation of the judgment."

the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and [the consideration of] prejudice [if any] to other parties." Devon v. Vaughn, No. CIV.A.94-2534, 1995 WL 295431, at *2 (E.D.Pa. Apr. 27, 1995) (quoting Kagan, 795 F.2d at 610). Additionally, "as the delay in making the motion approaches one year there should be a corresponding increase in the burden that must be carried to show that the delay was 'reasonable'." Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation, 605 F.2d 648, 656 (2d Cir. 1979).

Here again, defendant Heffington has filed the instant Motion 14 months after this Court's Order granting default judgment, two months after the outer one year limit allowable under rule 60(b). Moreover, defendant Heffington fails to argue that she did not receive, or was otherwise unaware of any of the motions plaintiff filed or the Court's Orders in this matter. Additionally, the Court finds that the prejudice to plaintiff in allowing the present motion would be great. On March 19, 2000, plaintiff received the right to use the domain name "THEMINT.COM", the subject of this litigation. Since that time, plaintiff has used that domain name in connection with its business, and thus for over a year, consumers have become used to finding plaintiff's goods at "THEMINT.COM". Under these circumstances, the Court finds that plaintiff's Motion is

untimely insofar as it is filed pursuant to rules 60(b)(4) or (6), and this Court may not consider the merits of defendant Heffington's Motion.[4]

Finally, even if defendant Heffington had timely filed her Motion to Vacate, this Court may still lack jurisdiction to consider her Motion because she first filed a notice of appeal in this case. The Third Circuit has stated that a district court lacks jurisdiction to decide a rule 60(b) motion filed after a notice of appeal has been filed. See Killeen v. Travelers Ins. Co. 721 F.2d 87, 90 n.7 (3rd Cir. 1983). Here however, the state of the law remains unclear, and there can be no doubt that defendant Heffington has not timely filed her Motion to Vacate. Accordingly, the Court will deny defendant Heffington's Motion to Vacate.

An appropriate Order will follow.

Clarence C. Newcomer, S.J.

[4]Likewise, even if this Court were to construe defendant Heffington's Motion as one for reconsideration of this Court's July 18, 2000, October 30, 2000, and December 1, 2000 Orders, her Motion would still be untimely pursuant to Local Rule of Civil Procedure 7.1(g).