NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JONATHAN T. AMES, Plaintiff-Appellant, v. PACIFIC WESTERN FINANCIAL; BANK OF THE WEST; BANK OF SANTA CLARA; AMERICAN BANK AND TRUST; CALIFORNIA FIRST BANK; MERCURY SAVINGS & LOAN; CITICORP SAVINGS, SAN FRANCISCO FERAL SAVINGS; WORLD SAVINGS & LOAN ASSOCIATION; WELLS FARGO BANK; HOME FEDERAL SAVINGS & LOAN ASSOCIATION OF SAN FRANCISCO; COLUMBIA SAVINGS & LOAN; FIRST NATIONWIDE BANK; SECURITY PACIFIC NATIONAL BANK; BARCLAY'S BANK; RESOLUTION TRUST CORPORATION, as conservator for Mercury Savings & Loan; et al., Defendants-Appellees.	Nos. 89-15418 89-15835 D.C. No. CV-88-20482-SW MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Spencer M. Williams, District Judge, Presiding

Argued and Submitted December 12, 1990
Pasadena, California

Before: FLETCHER, TANG, and REINHARDT, Circuit Judges

Jonathan Ames appeals the district court's dismissal of his complaint without leave to amend and its denial of his reconsideration motion. Appellant also asserts that the district

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

judge erred by not recusing himself from the case and by imposing a sanction based on Ames' reconsideration motion. We have jurisdiction pursuant to 28 U.S.C. §1291.[1]

FACTS AND PROCEEDINGS BELOW

Ames is a co-owner of an eleven unit roominghouse in San Jose, California. In June 1988 he contacted banking institutions mostly by phone regarding a possible improvement loan on this property. Ames claims he was told by approximately 30 banking institutions that they would not lend on boardinghouses or roominghouses.

Ames brought a suit in July 1988 against approximately 20 banking institutions charging them with antitrust and civil rights violations. Although Ames' complaint notes that this lending practice adversely impacts the underprivileged, he has not alleged that the banks are discriminating against him or the underprivileged on the basis of race or any other prohibited characteristic.

Appellees filed a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The court granted this motion and dismissed the complaint with prejudice on February 27, 1989. On March 6, 1989 Ames filed a motion for reconsideration pursuant to Fed. R. Civ. P. 60(b)(1). On March 24, 1989 he filed a notice of appeal from the court's dismissal of

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[1] Appellee Security Pacific National Bank asserts that there is no appellate jurisdiction in this case because a final order has not been entered. This is incorrect. The dismissal of a complaint with prejudice and the denial of a 60(b) motion are final orders. Stranger v. City of Santa Cruz, 653 F.2d 1257 (9th Cir. 1980) (dismissal with prejudice); Russell v. Cunningham, 279 F.2d 797, 802 (9th Cir. 1960) (denial of Rule 60(b) motion).

his complaint. The district court notified all parties that the 60(b)(1) motion would be submitted on the pleadings. It then denied the motion, ruling that it no longer had jurisdiction over the case and that the motion was frivolous in any event. It also imposed a $200.00 sanction on Ames under Fed. R. Civ. P. 11. Ames filed a second notice of appeal based on this decision. The appeals were consolidated.

DISCUSSION

A. All Defendants are Appellees

Appellee Mercury Savings and Loan Association argues that this court has no jurisdiction over it since it was not named in Ames' notice of appeal from the district court's dismissal of his complaint with prejudice. Mercury argues that the Supreme Court's decision in Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988) requires this result. We disagree.

Ames filed a second notice of appeal after the district court denied his reconsideration motion. This notice was timely and properly named all the appellees giving each defendant notice of Ames' intention to appeal the judgment entered against him. See Foman v. Davis, 371 U.S. 178, 181 (1962) (notice filed after denial of 60(b)(1) motion may serve as "an effective, although inept, attempt to appeal from the judgment sought to be vacated"). Based on Foman we hold that the appeal was perfected against all of the named defendants.

B. Dismissal of Complaints For Failure to State a Claim Proper

The district court's dismissal of a complaint is reviewed de novo. Newman v. Universal Pictures, 813 F.2d 1519 (9th Cir.

1987), cert. denied, 486 U.S. 1059 (1988). A dismissal should be upheld only when "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Id. at 1521, quoting Hishon v. King & Spalding, 467 U.S. 69 (1984).

Ames' original complaint and his first amended complaint are clearly deficient.[2] None of the statutes or regulations Ames cites provide him with a cause of action. Ames asserts that the court should not have dismissed his complaints with prejudice. However, since Ames never made a loan application to any of the named defendants, Ames can allege no set of facts that could support a cause of action. Thus, any further amendment of Ames' complaint would be futile. See Albrecht v. Lund, 845 F.2d 193, 195 (9th Cir. 1988), amended 856 F.2d 111 (1988). We do not suggest by anything we say here that a future action alleging legally cognizable discrimination by refusal to grant credit to Ames or other persons upon proper application is foreclosed.

Ames argues that the district court violated his constitutional rights by (1) limiting his oral presentation at the hearing on appellees' motion to dismiss and (2) submitting appellant's Rule 60(b)(1) motion without oral argument pursuant to

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[2] Apparently appellant filed an amended complaint with the court on February 10, 1989. At the hearing on February 15, 1989 the court informed appellant that he would not consider this pleading and dismissed appellant's claim with prejudice. The court's order of February 25, 1989, however, indicated that it had considered appellant's amended complaint in its decision to dismiss the suit with prejudice. ER 33.

Local Rule 220-1. The promulgation of the local rule and its application to a specific case is reviewed for an abuse of discretion. Morrow v. Topping, 437 F.2d 1155 (9th Cir. 1971). These claims lack merit.

C. The District Judge Need not Recuse Himself

Ames asserts that the district judge erred by not recusing himself from this action. We reject this contention.

Appellant's motion to "impeach" the district judge is based on the district judge's characterization of the case as frivolous [illegible]ham. These are legal conclusions that do not suggest bias. See Pacific Coast Cheese, Inc. v. Wirtz, 314 F.2d 145 (9th Cir. 1963).

D. Motion for Reconsideration

Ames' motion for reconsideration on the merits was filed pursuant to Fed. R. Civ. P. 60(b)(1). We agree with the district court that it did not have jurisdiction to entertain this motion once Ames filed a notice of appeal. Scott v. Younger, 739 F.2d 1464, 1466 (9th Cir. 1984).

The court found in the alternative that appellant had failed to allege any mistake, inadvertence, excusable neglect, or clerical error sufficient to justify reconsideration under Rule 60(b)(1). This conclusion is reviewed for an abuse of discretion. Thompson v. Hous. Auth. of Los Angeles, 782 F.2d 829, 832 (9th Cir.) cert. denied 479 U.S. 829 (1986).

Ames' motion was based on allegations that he had found further caselaw in support of his claims and that he was ill with the flu around the time of the dismissal hearing and was having

transportation difficulties. None of these claims provide a basis for Rule 60(b) relief.

E. Sanctions

After denying Ames' reconsideration motion the district court imposed a $200.00 sanction on Ames pursuant to Fed. R. Civ. P. 11. The court found that Ames had "filed pleadings which are not well grounded in fact or warranted by existing law or good faith extension of existing law." Ames asserts that the imposition of these sanctions was error.

This court reviews the imposition of Rule 11 sanctions under an abuse of discretion standard. Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447 (1990). An abuse of discretion will be found if the district court "based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." Chuidian v. Philippine Nat. Bank, 912 F.2d 1095, 1107 (9th Cir. 1990), quoting Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447 at 2460.

"[I]t is now clear that the central purpose of Rule 11 is to deter baseless filings in District Court and thus, consistent with the Rule Enabling Act's grant of authority, streamline the administration and procedure of the federal courts. ... any interpretation must give effect to the rule's central goal of deterrence." Cooter & Gell, 110 S.Ct. 2447, 2454. Although Rule 11 is mandatory in its terms, nonetheless pro se litigants should not be judged by standards identical to those applicable to lawyers. See Hughes v. Rowe, 449 U.S. 5, 15 (1980) Per Curiam ("An unrepresented litigant should not be punished for his failure

to recognize subtle factual or legal deficiencies in his claim."); Haines v. Kerner, 404 U.S. 519, 520 (1972) Per Curiam (pro se complaint alleging civil rights violations held to "less stringent standards than formal pleadings drafted by lawyers"); Wood v. McEwen, 644 F.2d 797, 802 (9th Cir. 1981) cert. denied 455 U.S. 942 (while awarding costs and attorney's fees under Fed. R. App. P. 38, Court of Appeals expresses particular reluctance to impose penalties on litigant appearing pro se).

While the Advisory Committee Note on the 1983 Amendment to Rule 11 states that the rule applies to anyone who signs a pleading, motion or other paper and that the standard is the same for unrepresented parties as for attorneys, the Advisory Committee Note emphasizes that "the court has sufficient discretion to take account of the special circumstances that often arise in pro se situations."

There is a general rule in this circuit that courts provide a pro se plaintiff with a statement of the deficiencies of his or her pleadings. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Compare Matter of Yagman, 796 F.2d 1165, 1183-1184 (9th Cir. 1986) (Providing notice to a certifying attorney as early as possible when the court suspects that a complaint or other paper is frivolous and may lead to rule 11 sanctions serves "the paramount aim of deterrence and, simultaneously, eliminates the danger of an unsuspected punitive award.") In Noll we said

> Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors.... A statement of deficiencies need not provide great detail or require district courts to act as legal advisors to pro se plaintiffs. Rather, when dismissing a pro se complaint for

> failure to state a claim, district courts need draft only a few sentences explaining the deficiencies.

Id. at 1448-49.

The requirement that pro se plaintiffs be given notice of the deficiencies in their pleadings can thus be seen to serve essentially the same function as Rule 11 sanctions, albeit in a less onerous way.

We suspect that a simple explanation of the deficiencies in Ames' pleadings either at the hearing or in the order dismissing his complaint might well have been a more effective deterrent than Rule 11 sanctions, and might have saved the defendants and the court the time and expense of responding to this appeal and Ames' other motions. Viewed in this light, we conclude that an award of sanctions was inappropriate.

CONCLUSION

The dismissal of Ames' complaints with prejudice and the dismissal of Ames' motion for reconsideration are AFFIRMED. The award of sanctions is REVERSED. Each party shall bear its own costs on appeal.