UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GREAT AMERICAN LIFE INSURANCE COMPANY,	)	
Plaintiff,	)	**No. 1:16-CV-00699-MRB**
v.	)	
	)	**Judge Michael R. Barrett**
SECRETARY, UNITED STATES DEPARTMENT OF THE INTERIOR,	)	
Defendant.	)	

PLAINTIFF GREAT AMERICAN LIFE INSURANCE COMPANY'S REPLY IN SUPPORT OF ITS CROSS-MOTION TO VACATE THE COURT'S ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Great American Life Insurance Company ("GALIC") respectfully submits this Reply in Support of its Cross-Motion to Vacate the Court's Order Denying Plaintiff's Motion for Summary Judgment (Doc. No. 51).[1]

As we explained in our opening brief in support of that Cross-Motion, pursuant to Sixth Circuit authority this Court should vacate its March 29, 2024 decision denying GALIC's motion for summary judgment. Such an outcome also necessarily results from the Secretary's position that this Court lacked subject matter jurisdiction at the time that it issued its decision on GALIC's

[1] GALIC's brief at Doc. No. 51, filed on July 31, also included a Cross-Motion to Transfer this case to the Court of Federal Claims, as opposed to dismissing the case outright as the Secretary initially argued in their Motion to Dismiss (Doc. No. 49). That portion of GALIC's July 31 filing also served as GALIC's Opposition to the Secretary's Motion to Dismiss and, pursuant to the Court's May 8, 2024 order, will be the only brief that GALIC will submit on the issue of whether this case should be dismissed based on a lack of subject matter jurisdiction. Furthermore, the Secretary subsequently agreed that this case should be transferred instead of dismissed (see Doc. No. 52 at pp. 4, 8), and so that issue is now resolved. As such, this reply brief relates solely to GALIC's Cross-Motion to Vacate, and is submitted pursuant to Local Rule 7.2(a)(2), which allows for the filing of a reply memoranda in support of any motion.

summary judgment motion, since it was a decision that went to the merits of GALIC's claims. See Lowes v. Baldwin, 2019 WL 7290504, at *8 (S.D. Ohio 2019) (relying on Sixth Circuit caselaw vacating decisions entered by district courts that lacked subject matter jurisdiction and finding that "***[a]lthough the [defendant] has sought summary judgment on this claim, a lack of jurisdiction means this Court has no authority to determine summary judgment, which would be a ruling on the merits***.") (citing Freeland v. Liberty Mut. Fire Ins. Co., 632 F.3d 250, 255 (6th Cir. 2011) and Valinski v. Detroit Edison, 197 Fed. App'x 403, 403-04 (6th Cir. 2006) (emphasis added)).

Notwithstanding all of that, the Secretary opposes GALIC's Cross-Motion to Vacate. See Doc. No. 52 (hereinafter the "Opposition"). However, none of the arguments that the Secretary advances in that Opposition withstand scrutiny.

I. THE SECRETARY'S RELIANCE ON RULE 60(B)(4) IS UNAVAILING, BECAUSE THAT RULE ONLY APPLIES TO 'FINAL' JUDGMENTS AND NOT TO INTERLOCUTORY DECISIONS LIKE THIS COURT'S RULING DENYING SUMMARY JUDGMENT

The Secretary's principal argument is that vacatur is not appropriate under Fed.R.Civ.P. 60(b)(4), which the Secretary simply assumes is the basis on which GALIC relies for its Cross-Motion. See Opposition at p. 5 (Doc. No. 52). But that assumption is incorrect. As the Secretary also notes in the Opposition, our opening brief did not actually cite Rule 60(b)(4). And for good reason, because Rule 60(4)(4) has no application here.

Rule 60(b)(4) – and in fact Rule 60(b) in its entirety – applies ***only*** to a request for relief "from a ***final*** judgment, order, or proceeding." Fed.R.Civ.P. 60(b) (emphasis added). This Court's decision denying GALIC's motion for summary judgment clearly was not a "final" judgment or order, but rather was an interlocutory ruling, and "Rule 60(b) does not apply to interlocutory orders." Memphis-Shelby County Airport Authority v. Illinois Valley Paving Co., 2007 WL 2042309, at *3 (W.D. Tenn. 2007) (citing Feathers v. Chevron USA, Inc. 141 F.3d 264, 268 (6th

Cir. 1998)); see also Santamarina v. Sears, Roebuck & Co., 466 F.3d 570, 571 (7th Cir. 2006) ("Rule 60(b), by its terms limited to 'final' judgments or orders, is inapplicable to interlocutory orders."). It was precisely for that reason that GALIC did not file a motion under Rule 60(b). Nor did GALIC need to bring the Cross-Motion under that or any other specific rule, because it is well settled that a district court has "inherent power to reconsider interlocutory orders and reopen any part of a case before entry of a final judgment." In re Saffady, 524 F.3d 799, 803 (6th Cir. 2008).

As a result, the decisions that the Secretary cites in support of the argument that vacatur is inappropriate – which all involve Rule 60(b)(4) – have absolutely no relevance. Those decisions dealt with requests for relief from a "final" judgment and held that under Rule 60(b)(4) a final judgment will not be considered "void" (and therefore subject to vacatur) unless there were "glaring and fundamental jurisdictional infirmity[ies]" at the time of the judgment. In re Horvath, 572 B.R. 864, 876 (Bankr. N.D. Ohio 2017) (cited at page 6 of the Opposition). The reason for this strict standard is due to the "value and importance of finality," id., and also because a motion to set aside a "void judgment" under Rule 60(b)(4) is not subject to the express, one-year deadline that applies to motions for relief under other subparts of Rule 60(b). See Fed.R.Civ.P. 60(c).

With respect to the latter, the cases that the Secretary relies upon focus heavily on the risk that parties may improperly use Rule 60(b)(4) to overturn a judgment after having failed to file a timely appeal. See, e.g., In re G.A.D., Inc., 340 F.3d 331, 337 (6th Cir. 2003) ("A party may not use a Rule 60(b)(4) motion as a substitute for a timely appeal."); In re Horvath, 572 B.R. at 876 (same). But such concerns about the "value and importance of finality" – and the potential that such finality is undermined if parties are allowed to use Rule 60(b)(4) as a vehicle to attack a judgment long after the time to appeal has passed – are not even remotely applicable here, where

GALIC seeks to vacate a non-final, interlocutory decision that (by the Secretary's own reckoning) the Court was without jurisdiction to issue.

II. VACATUR IS REQUIRED UNDER BINDING SIXTH CIRCUIT AUTHORITY

GALIC also respectfully submits that vacatur of the March 29, 2024 summary judgment ruling would be an appropriate – and indeed a required – use of this Court's "inherent power to reconsider interlocutory orders . . ." In re Saffady, 524 F.3d at 803. According to the Secretary, the Supreme Court's decision in Lightfoot v. Cendant Mort. Corp, 580 U.S. 82 (2017) – which came down seven years before this Court's summary judgment ruling – "clarified that this Court lacks jurisdiction"[2] over the claims for breach of contract and declaratory judgment that were the subject of GALIC's motion for summary judgment. If that be the case, then as set forth in the Sixth Circuit decisions identified in our opening brief this Court was without authority to rule on the merits of GALIC's claims, and the decision on GALIC's motion for summary judgment ***must*** be vacated. See GALIC Cross-Motion to Vacate at pp. 10-11 (Doc. No. 51) (citing Sixth Circuit cases mandating the vacatur of orders issued by district courts that lacked jurisdiction).

The Secretary argues that this Sixth Circuit authority is inapplicable for three reasons. None of those arguments have merit. First, the Secretary claims that those Sixth Circuit cases "include no analysis of Rule 60(b)(4)." See Opposition at p. 7 (Doc. No. 52). But as just explained above, Rule 60(b)(4) is inapplicable here, so this first objection plainly fails.

Second, the Secretary claims that these cases are inapposite because they "do not involve a § 1631 transfer." Id. Notably though, the Secretary does not even bother to explain why that is relevant. That is because it is not. 28 U.S.C. § 1631 simply provides that if a court finds that there is a "want of jurisdiction" in any case before it, then "the court shall, if it is in the interest of justice,

[2] See Opposition at p. 6 (Doc. No. 52)

transfer such action" to a court that does. Thus, by definition, a Section 1631 transfer occurs only in those cases where the transferring court does not have jurisdiction. And if, as the Secretary contends, this Court did not have subject matter jurisdiction at the time of its summary judgment decision, that decision must be vacated under Sixth Circuit authority, and there is nothing in that authority that states or even suggests that this rule does not apply in a case that is being transferred under Section 1631. To the contrary, the only pertinent consideration is whether the court lacked jurisdiction at the time of its ruling; if it did, then vacatur is required. See, e.g. Medlen v. Est. of Meyers, 273 F.Appx 464, 466 (6th Cir. 2008) ("Because the district court erred in finding federal question jurisdiction ... and because the parties lack the requisite complete diversity to establish diversity jurisdiction, ***we must*** vacate the district court's judgment . . .) (emphasis added)); see also Hanna v. Adducci, 912 F.3d 869, 871 (6th Cir. 2018) ("Because we find the district court lacked [ ] jurisdiction ..., we VACATE the preliminary injunctions . . .).

Furthermore, in analogous circumstances, other district courts have vacated prior rulings in cases involving a Section 1631 transfer. See, e.g., Boyer v. Wilkie, 2020 WL 733181, at *2 (N.D. Ala. 2020) (court transferred a case to another district court under 28 U.S.C. § 1631 and also held that "[b]ecause the court lacks jurisdiction over the claim, the [prior] memorandum opinion and order (Doc. 16) is VACATED"); Persaud v. Bureau of Immigration and Customs Enforcement, 2004 WL 1936213, at *1 (E.D.N.Y. 2004) (similarly transferring an action to a different federal court under Section 1631 and further stating that "[a]s this Court lacks jurisdiction over the matter, the Order granting Persaud permission to amend his petition is hereby vacated"); Kahn v. Ashcroft, 2004 WL 1888749, at *1 (E.D.N.Y. 2004) (likewise granting transfer to another federal court under Section 1631 and finding that "[b]ecause this Court lacks jurisdiction . . . [the prior] Order to Show Cause is hereby vacated."). This Court should join this body of authority

and both transfer this case to the Court of Federal Claims (as the Secretary now concedes should be done in lieu of dismissal, see *supra* at p. 1 n. 1) ***and*** also vacate the summary judgment ruling.

Third, the Secretary argues that the Sixth Circuit cases cited in the opening brief are supposedly distinguishable because they "concluded there was no federal jurisdiction to begin with." See Opposition at p. 7 (Doc. No. 52). But as with the Secretary's Section 1631 argument, this also is a distinction without a difference. For the purposes of vacatur, the relevant query is ***not*** whether there would be a complete lack of jurisdiction in ***any*** federal court, but is instead whether the district court that actually issued the order in question had jurisdiction. If it did not, then the order should be vacated.

Indeed, in the decisions cited above concerning Section 1631 transfers, the courts vacated their prior orders because they lacked jurisdiction at the time those orders were issued, even though another federal court (i.e., the transferee court) did have jurisdiction. Similarly, here the Secretary maintains that another federal court – namely the Court of Federal Claims – has exclusive jurisdiction over GALIC's claims for breach of contract and declaratory judgment, and that a Supreme Court case issued several years before this Court's summary judgment ruling "clarified that this Court lacks jurisdiction." Based on the Secretary's position, this Court was therefore without jurisdiction at the time it issued that decision on the merits, and so it should be vacated.

Finally, while the Sixth Circuit authority previously cited should conclusively establish that the summary judgment decision must be vacated, numerous federal courts, in Ohio and elsewhere, have ***literally*** held that the vacatur of prior rulings is mandatory if the court subsequently determines that it lacked jurisdiction. See, e.g., Beanstalk Innovation Inc. v. SRG Technology, LLC, 2019 WL 2288921, at *2 (S.D. Ohio 2019) ("[A]ll prior orders are void because this Court's 'exercise of jurisdiction over this matter exceeded its power' and therefore must be

vacated.") (citing Quorum Health Res., LLC v. Levington Ins. Co., 2015 WL 1350211, at * 3 (M.D. Tenn. 2015)); Zangara v. Travelers Indem. Co. of America, 2006 WL 825231, at *4 (N.D. Ohio 2006) ("Because the Court determines that it lacks subject matter jurisdiction" over the case "all prior orders must be VACATED."); see also Walters v. Edgar, 163 F.3d 430, 437 (7th Cir. 1998) (since it lacked jurisdiction "all previous rulings in this litigation in the district court should be vacated.") (citing U.S. v. Munsingwear, 340 U.S. 36 (1950)); Mims v. The Renal Care Group, Inc., 399 F.Supp.2d 740, 747 (S.D. Miss. 2005) ("IT IS FURTHER ORDERED that the Court's previous Order Denying Summary Judgment . . . is hereby VACATED inasmuch as the Court lacked subject matter jurisdiction to rule on dispositive matters in this case."). This Court should reach the same result and grant GALIC's Cross-Motion to Vacate.

CONCLUSION

For all of the foregoing reasons, the Court should vacate its March 29, 2024 summary judgment decision at Doc. No. 46.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this document with the Clerk of the Court using CM/ECF on August 26, 2024, which will automatically generate and serve Notices of Electronic Filing on all counsel of record.

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