UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

IN RE: **TAMIO L. STEHRENBERGER and ANNA C. STEHRENBERGER,** **Debtors.**	**Case No. 20-00833-NGH**
MICHIKO STEHRENBERGER, **Plaintiff,** **v.** **TAMIO L. STEHRENBERGER and ANNA C. STEHRENBERGER,** **Defendants.**	**Adv. No. 20-06044-NGH**

SUMMARY ORDER

On April 15, 2026, the Court entered a judgment in favor of plaintiff Michiko Stehrenberger against defendant Tamio Stehrenberger and dismissed the claims against Anna Stehrenberger.[1] Doc. No. 527. On April 29, Michiko filed a "Rule 9023 Motion to Alter or Amend 2026 Decision and Judgment." Doc. No. 534 (the "9023 Motion"). Michiko cites Civil Rule 59(e), made applicable to this proceeding by Rule 9023, as the

[1] Given the parties' shared surname, the Court will refer to them using their first names (Michiko, Anna, and Tamio) when discussing them individually. No disrespect is intended.

basis for relief.[2] On May 19, Michiko filed a document captioned "Rule 9024 Motion and Motion for Leave to File Rule 7019 Motion Regarding Order Dismissing Star Mountain Enterprises as a Defendant," in which she cites Civil Rule 60, made applicable by Rule 9024, as the basis for relief. Doc. No. 544 (the "9024 Motion"). Because there are overlapping issues in the two motions, the Court will dispose of them together in this summary order.

Pertinent here, a court may grant a motion to alter or amend a judgment under Civil Rule 59(e) if "the motion is 'necessary to correct manifest errors of law or fact upon which the judgment is based.'" *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (emphasis removed) (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1254 n.1 (9th Cir. 1999)). "A manifest error of fact or law must be one 'that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.'" *Wallace v. Hayes (In re Wallace)*, 2013 WL 782721, at *2 (Bankr. D. Idaho Feb. 27, 2013) (quoting *In re Oak Park Calabasas Condo. Ass'n*, 302 B.R. 682, 683 (Bankr. C.D. Cal. 2003)). Moreover, a motion under 59(e) "will not be granted 'absent highly unusual circumstances,' and reconsideration of a judgment or order after its entry by the court 'is an extraordinary remedy which should be used sparingly.'" *Id.* (quoting *McDowell*, 197 F.3d at 1254 n.1). Such motion "may not be used to simply ask the Court to rethink matters already decided, to reargue matters

[2] Unless otherwise indicated, all statutory citations are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. Additionally, all citations to "Rule" are to the Federal Rules of Bankruptcy Procedure and all citations to "Civil Rule" are to the Federal Rules of Civil Procedure.

already submitted, or to attempt to cure deficiencies in earlier submissions that were found to be inadequate." *In re Wilson*, 349 B.R. 831, 834 (Bankr. D. Idaho 2006) (quoting *In re Negrete*, 183 B.R. 195, 197 (9th Cir. BAP 1995), *aff'd*, 103 F.3d 139 (9th Cir. 1996)).

Civil Rule 60(a) provides that a "court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record" sua sponte or on motion. However, this rule is "limited to clarification of matters intended to be implied or subsumed by the original judgment, rather than a change of course or a modification to the intended legal effect of a judgment." *Garamendi v. Henin*, 683 F.3d 1069, 1077 (9th Cir. 2012). And, in pertinent part, Civil Rule 60(b)(5) provides that a court may relieve a party from a final judgment or order if "the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable" or, under (b)(6), if "any other reason that justifies relief." This catch-all provision, though seemingly quite broad, has been narrowly construed. *See In re Shingleton*, 2007 WL 2743503, at *3 (Bankr. D. Idaho Sep. 18, 2007). Courts have applied Civil Rule 60(b)(6) only "to prevent manifest injustice" and "only where extraordinary circumstances prevented a party from taking timely action." *Decembre v. Nations First Cap., LLC (In re Nations First Cap., LLC)*, 851 F. App'x 32, 34-35 (9th Cir. 2021) (quoting *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007)). In other words, Civil Rule 60(b)(6) is used sparingly.

1. Tamio's Liability

In the 9023 Motion, Michiko asserts Tamio omitted material facts in connection with the sale of the promissory notes and argues the Court erred in its application of Utah Code section 61-1-1(2). Michiko's position rests on an incomplete reading of section 61-1-1(2). Section 61-1-1(2) specifies that it is unlawful for any person in connection with the offer or sale of a security to "make any untrue statement of a material fact or omit to state a material fact *necessary to make the statements made, in the light of the circumstances under which they are made, not misleading*." (emphasis added). *See State v. Harry*, 873 P.2d 1149, 1156 (Utah Ct. App. 1994) (affirming finding that defendant violated "section 61-1-1's prohibition against omitting material facts that are necessary in order to make previous statements . . . not misleading"); *State v. Schwenke*, 222 P.3d 768, 773 (Utah Ct. App. 2009) (rejecting contention that there was insufficient evidence that defendant "made predicate statements that were rendered misleading through his omissions"); *see also Retail Wholesale & Dep't Store Union Local 338 Retirement Fund v. Hewlett-Packard Co.*, 845 F.3d 1268, 1278 (9th Cir. 2017) (analyzing identical provision of SEC Rule 10b-5). While Michiko alleged Tamio omitted material facts, Michiko did not meet her burden to show that Tamio made statements that were rendered misleading due to his alleged omissions.

Michiko also asserts the Court committed a manifest error of law or fact in declining to award treble damages under Utah Code section 61-1-22-(2), which provides that a court may award treble damages if the violation is "intentional or reckless." An award of treble damages under the UUSA is "punitive in nature," intended to punish wrongful conduct. *Steenblik v. Lichfield*, 906 P.2d 872, 881 (Utah 1995). Michiko misstates the Court's findings and analysis and has failed to demonstrate a manifest error of law or fact. Furthermore, even accepting Michiko's assertions as true, the Court has indicated it would decline to award treble damages in the exercise of its discretion.

As to Tamio's liability, Michiko has failed to demonstrate reconsideration is appropriate to correct a manifest error of law or fact.

2. Anna's Liability

The Court held Michiko did not have a private cause of action against Anna under the Utah Uniform Securities Act ("UUSA") because Anna did not offer and/or sell securities to Michiko, Yeh, or Hsieh. In the 9023 Motion, Michiko argues the Court erred by considering only whether Anna "sold" securities and not whether Anna "offered" securities. This assertion is without merit. The Court assessed Anna's interactions with Michiko, Yeh, and Hsieh and specifically found Anna did not offer or sell the promissory notes.

Michiko also contends the Court committed a manifest error of law or fact when it declined to impose strict joint and several liability on Anna as a manager of Star Mountain. Michiko asserts the findings of fact and conclusions of law entered by the Utah state court is entitled to preclusive effect and conclusively determines Star Mountain's liability for violating the UUSA, Anna's status as a manager of Star Mountain, and the appropriateness of treble damages. The Court already determined that the Utah state court document containing findings of fact and conclusions of law, Ex. 23, does not constitute a final judgment or order and thus lacks preclusive effect. *See* Doc.

No. 313 at 19. As such, this document does not serve as a basis on which to hold Anna strictly liable for Star Mountain's alleged violations of the UUSA. Furthermore, Michiko's reliance on *Taylor v. Sturgell*, 553 U.S. 880 (2008), is misplaced. *Taylor* identifies limited circumstances in which a nonparty may be bound by a judgment entered in a prior case. It does not identify circumstances in which a court may determine a nonparty's liability. Whether the judgment entered in this case may have preclusive effect as to Star Mountain in subsequent litigation is not before the Court.

In the 9024 Motion Michiko seeks relief from the order entered on September 9, 2021, in which the Court dismissed Star Mountain as a party due to lack of subject matter jurisdiction (the "Dismissal Order"). Doc. No. 84. However, Michiko did not challenge such dismissal on her initial appeal. *See Stehrenberger v. Stehrenberger (In re Stehrenberger)*, 665 B.R. 402, 408 n.3 (9th Cir. BAP 2024). She seeks now to include Star Mountain in this action so that the Court may determine Star Mountain's liability[3] and Anna may be held secondarily liable. However, because the Court declined to give the state court document preclusive effect, Michiko now seeks relief pursuant to 60(a) and (b) following the BAP's determination that the order underlying a § 523(a)(19) claim can emanate from the bankruptcy court.

The remedy Michiko seeks plainly falls outside the limited scope of 60(a) as Michiko seeks to vacate the Dismissal Order, thereby terminating its legal effect. As to

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[3] To the extent Michiko argues Star Mountain is liable under the UUSA by employing Aichu Yeh as an unlicensed agent in violation of section 61-1-3(2), the UUSA does not provide a private cause of action for violations of section 61-1-3(2).

relief under 60(b)(5), Michiko argues continued application of the order is inequitable as the "jurisdictional framework" has shifted. However, the Court's determination that it lacked subject matter jurisdiction over Star Mountain did not rest on its conclusion that the order underlying § 523(a)(19) must emanate from a court other than the bankruptcy court, and the BAP's decision did not (and could not) extend the Court's subject matter jurisdiction to Star Mountain. Finally, Michiko argues there are extraordinary circumstances to justify relief under (b)(6) because without Star Mountain, Anna cannot be held jointly and severally liable. Throughout this proceeding Michiko has asserted and relied on her argument that the state court document was entitled to preclusive effect and established Star Mountain's, and thus Anna and Tamio's, liability. Her error in doing is not a "manifest injustice" that would warrant relief from the Dismissal Order.

Moreover, a motion under Civil Rule 60(b) "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). "What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981). Considering the facts of this case, Michiko did not seek relief within a reasonable time. To note, Michiko had notice of the state court document's lack of preclusive effect and the BAP's decision well over a year before seeking relief and offered no explanation as to the reason for delay.

Furthermore, even if the Court were to vacate the Dismissal Order or hold Star Mountain liable notwithstanding its absence, the Court would not find Anna liable to

Michiko under section 61-1-22(4)(a). This provision imposes liability on those who (1) directly or indirectly control a seller, (2) "every partner, officer, or director of such seller" and (3) "every person occupying a similar status or performing similar functions" as a partner, officer, or director, (4) every employee who materially aids in the sale, and (5) "every broker-dealer or agent who materially aids in the sale." Michiko appears to assert Anna is liable as a control person and/or a person occupying a similar status or performing similar functions as a partner, officer, or director. As the Utah Supreme Court explained, the UUSA "applies to those who are able to exert control and influence over the policies and decisions of others." *Steenblik v. Lichfield*, 906 P.2d 872, 876-77 (Utah 1995). Unlike the Federal Securities Act of 1934, with respect to a partner, officer, or director,

> [A] plaintiff need not demonstrate that such a person was able to control the transaction. If it is established that the defendant functioned in or occupied one of these positions, the defendant has the burden of proving that they did not know and, in the exercise of reasonable care, could not have known of the violation of the Act.

Id. "Whether a person is an officer or director, a controlling person, or an employee is a question of fact governed by common law." *Kirchoff v. Selby*, 703 N.E.2d 644, 651 (Ind. 1998) (analyzing similar provision of Indiana Securities Act). Anna would be liable to Michiko only if she directly or indirectly controlled Star Mountain or occupied a role similar to that of a partner, officer, or director, and if she did not demonstrate that she did not know or, in the exercise of reasonable care, could not have known of the facts giving rise to the liability.

As in effect at the time, the Utah Revised Limited Liability Company Act (the "2001 LLC Act") states that an LLC may be "member-managed" or "manager-managed" as designated in the articles of organization. Utah Code § 48-2c-801 (2001). If an LLC is designated as manager-managed, a member of the LLC may also be a manager, but a member is not a manager solely by virtue of being a member. The 2001 LLC Act sets forth the default management provisions applicable to a manager-managed LLC. *See* Utah Code § 48-2c-804 (2001). This includes the requirement that the initial managers be designated in the articles of organization. *Id.* Unlike the current version of the Utah Revised Uniform LLC Act, there is no default provision in the 2001 LLC Act concerning equal management rights among managers. *See* Utah Code § 48-3a-407(3)(b) (2014) ("Each manager has equal rights in the management and conduct of the limited liability company's activities and affairs.").

Star Mountain's articles of organization provided it was "manager-managed" and lists Tamio and Anna as the managers. While Anna and Tamio did not recall if Star Mountain had a written operating agreement, they testified that Anna's role and duties were limited to routine clerical and administrative tasks, and Anna had no authority to transact business, access accounts, or direct Star Mountain's activities, notwithstanding the designation in the articles of organization. Although by being listed in the articles of organization as a manager Anna may have had statutory apparent authority to bind the

LLC, the evidence demonstrates Tamio, not Anna, was the manager vested with actual authority and responsibility to manage and direct Star Mountain's activities and policies.[4]

The UUSA also imposes liability on those who occupy positions similar to that of a partner, officer, or director, regardless of their ability to exercise control over a seller, and a manager of an LLC is such a position. Even so, a defense to liability exists if the person "did not know, and in exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist."[5] Utah Code § 61-1-22(4)(a). The inquiry does not center on a defendant's actual knowledge of the facts. Rather, the exercise of reasonable care requires that a defendant "at a minimum, must apprise himself of facts reasonably within his grasp." *Hines v. Data Line Sys., Inc.*, 787 P.2d 8, 18 (Wash. 1990) (en banc). As stated by the Washington Supreme Court in analyzing the Washington Securities Act, "[i]gnorance will be bliss only to the extent that the director can prove that even by the exercise of reasonable care he would have remained ignorant of the true state of affairs." *Id.* (citing *Robertson v. White*, 635 F. Supp. 851, 865 (W.D. Ark. 1986)). *See Robertson*, 635 F. Supp. at 865 ("[T]he director must be able to prove either (a) that he did not know demand notes [i.e., securities] were

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[4] *See* Utah Code § 48-2c-802 (2001) (in a manager-managed LLC, a manager is "an agent of the company for the purpose of its business," however "an act of a manager, including the signing of a document in the company name, for apparently carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company unless the manager had no authority to act for the company in the particular matter and the lack of authority was expressly described in the articles of organization or the person with whom the manager was dealing knew or otherwise had notice that the manager lacked authority"). Therefore, even without an express limitation in the articles of organization, Anna's statutory apparent authority was not infinite.

[5] To the extent Michiko argues Anna has waived this defense by not raising it in her pleadings, the Court rejects such an argument given how this cause of action arose during the course of trial.

being sold, or (b) that he believed that the notes were registered or exempt. Furthermore, he must show that his belief was reasonable—*i.e.,* not arrived at negligently."). The UUSA imposes liability on those who know, or reasonably could know, the facts—reliance on counsel regarding the materiality of known facts is not a defense. *See Hines*, 787 P.2d at 19; *Arnold v. Dirrim*, 398 N.E.2d 426, 435 (Ind. Ct. App. 1979).

The credible evidence in the record demonstrates that Anna took action on behalf of Star Mountain only at Tamio's explicit direction; Anna did not have the ability to access Star Mountain's accounts or investment-related documents; Anna was not privy to investor information or communications; Anna did not attend meetings related to Star Mountain; there was no evidence Anna received reports of Star Mountain's activities or accountings or partook in business-related decisions.[6] Tamio consulted an attorney specializing in securities who assured them registration and licensure was not necessary under the exemptions. Considering their respective roles, with Tamio actively managing and directing Star Mountain's activities, it was reasonable for Anna to rely on Tamio's representations, based on conversations with the attorney, regarding the legality of Star Mountain's operations, including the transaction's exempt status. Given that Anna was not privy to and did not have access to investor information, the promissory notes, and Star Mountain's investment accounts, Anna did not know and, in the exercise of

[6] In the course of this case, there has been some conflicting testimony regarding Anna's access to Star Mountain's accounts. The Court, as the trier of fact, has weighed all evidence in the record.

reasonable care, could not have known if the transactions complied with the exemption requirements.[7]

3. Other Arguments

The Court has considered all arguments raised by Michiko in the 9023 Motion and the 9024 Motion. Any arguments made by Michiko in the motions that are not specifically addressed are irrelevant, frivolous, and/or without merit.

CONCLUSION

Therefore, for the reasons set forth above, the 9023 Motion, Doc. No. 534, and the 9024 Motion, Doc. No. 544, are DENIED.

DATED: June 12, 2026

NOAH G. HILLEN
U.S. Bankruptcy Judge

[7] To be clear, the Court did not find that Star Mountain or Tamio did not comply with the exemption requirements, it only found that Tamio, who held the burden of demonstrating compliance, failed to meet this burden. However, it is clear from the testimony that the information required to know if the exemptions would apply was not in Anna's possession or control and reasonable care on her part would not have revealed that information to her given how Star Mountain was structured and run. The one exception to that holding may have been Anna's awareness of income from Star Mountain given the joint tax returns. However, Tamio credibly testified that any funds he received from Star Mountain was compensation for managerial services and unrelated to the offer or sale of securities or solicitation of prospective purchasers, thus the Court concludes no commissions were paid to Tamio for his sale of the promissory notes to Michiko, Yeh, or Hsieh.