

**NORTHERN HIGHLANDS I, II, LLC, Arizona LLC's; et al., Plaintiffs - Appellants, v. COMERICA BANK, a federally chartered national bank, Detroit Michigan, domiciled; et al., Defendants - Appellees.**

**No. 08-15035**

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

*328 Fed. Appx. 358; 2009 U.S. App. LEXIS 9178*

**April 17, 2009 \*\* , Submitted, San Francisco, California**

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

**April 30, 2009, Filed**

**NOTICE:** PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**PRIOR HISTORY: [\*\*1]**

Appeal from the United States District Court for the District of Arizona. D.C. No. CV-07-00163-DCB. David C. Bury, District Judge, Presiding.

**DISPOSITION:** AFFIRMED.

**COUNSEL:** For NORTHERN HIGHLANDS I, II, LLC, Arizona LLC's, STIRLING BRIDGE, LLC, NORTHERN HIGHLANDS I TRIAD STIRLING BRIDGE, LLC, a Delaware LLC, WEST HIGHLAND WATER & POWER, LLC, a Delaware LLC, TRIAD CAPTIVE COMPANY, INC., an Arizona "C" corp., GHB, INC., an Arizona LLC, GRANT H. GOODMAN, TERI B. GOODMAN, individually, equity holders, shareholders, interest holders, creditors, derivatively, and guarantors/sureties, Plaintiffs - Appellants: Grant H.

Goodman, Esquire, Attorney, GRANT H. GOODMAN, PLLC, Phoenix, AZ.

For COMERICA BANK, a federally chartered national bank, Detroit Michigan, domiciled, Defendant - Appellee: Todd A. Burgess, Attorney, GREENBERG TRAUERIG, LLP, Phoenix, AZ.

ARPL-DRAKE CEMENT, a foreign Peruvian company, DOES 1-20, Executive officers, Directors, Corporate Governance Ethics, Regulatory Client Conflict Avoidance and Adverse Representation Committees, & Procedures, Compliance Committees, Alter-Ego Does I-XX, UNKNOWN, Black Corps, Joint Ventures, companies, foreign offshore/outside USA, entities or companies LLC's, LLP's, PLLC's, [\*\*2] PA's, JANE DOE RUBIN, wife, TERRI PORTER, wife, Defendants - Appellees: No Appearance.

For TAIHEIYO CEMENT USA, INC., a wholly owned subsidiary controlled through Taiheiyo Japan (3-8-1) Nishi-Kanda Chiyoduku, Tokyo Japan through an interlocking directorate comprised of Japanese (Tokyo) foreign

nationals, CALIFORNIA PORTLAND CEMENT COMPANY, a California corporation wholly owned by Taiheiyo Cement USA Inc., JOHN RENNINGER, husband, individually and on behalf of the marital communities as Officers of the court, JANE DOE RENNINGER, wife, individually and on behalf of the marital communities as Officers of the court, Defendants - Appellees: Michael Steven Rubin, Esquire, Attorney, MARISCAL WEEKS MCINTYRE & FRIEDLANDER, PA, Phoenix, AZ.

For CEMENTOS DE AMIGOS, LLC, an Arizona LLC, Defendant - Appellee: William J. Maledon, Esquire, Attorney, OSBORN MALEDON PA, Phoenix, AZ; John David Everroad, Esquire, FENNEMORE CRAIG, P.C., Phoenix, AZ.

For GREENBERG TRAUERIG, LLP, a foreign professional partnership, Defendant - Appellee: Julie R. Barton, Attorney, Todd A. Burgess, Attorney, Jennifer Meredith Debray, Esquire, Attorney, Jennifer M. Dubay, Esquire, GREENBERG TRAUERIG, LLP, Phoenix, AZ.

For MARISCAL [\*\*3] WEEKS MCINTYRE & FRIEDLANDER, P.A., an Arizona professional association, MICHAEL S. RUBIN, husband, GARY L. BIRNBAUM, related to MWM&F defendants, Defendants - Appellees: Joseph Eugene Mais, Esquire, Attorney, Perkins Coie Brown & Bain P.A., Phoenix, AZ.

For ROBERT S. PORTER, Attorney, husband, Defendant - Appellee: Kent E. Turley, Esquire, Attorney, TURLEY, SWAN & CHILDERS, P.C., Phoenix, AZ.

For JOHN R. CLEMENCY, husband, CAROL CLEMENCY, wife, JENNIFER DUBAY, related to Greenberg Traurig LLP, JANE DOE VERBIN, Defendants - Appellees: Julie R. Barton, Attorney, Jennifer Meredith Debray,

Esquire, Attorney, Jennifer M. Dubay, Esquire, GREENBERG TRAUERIG, LLP, Phoenix, AZ.

For MICROSUPPORT, INC., Defendant - Appellee: Philip Douglas Folk, Heather Kristine Seiferth, Esquire, Attorney, FOLK & ASSOCIATES, Phoenix, AZ.

For COLIN F. CAMPBELL, MARCUS REINKENSMEYER, Maricopa County Court Administrator, in his personal capacity acting under color of state law, Defendants - Appellees: Eryn McCarthy, Esquire, ARIZONA ATTORNEY GENERAL'S OFFICE, Phoenix, AZ; Charles Arnold Grube, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Phoenix, AZ.

For KENNETH FIELDS, Judges of the Maricopa County Superior [\*\*4] Court, in their personal capacities and acting under color of state law, Defendant - Appellee: Charles Arnold Grube, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Phoenix, AZ.

KENNETH FIELDS, Judges of the Maricopa County Superior Court, in their personal capacities and acting under color of state law, Defendant - Appellee: No Appearance.

For DRAKE CEMENT, LLC, a Delaware LLC controlled by ARPL through an interlocking directorate, Defendant - Appellee: Thomas Arminius Loquvam, Esquire, Attorney, FENNEMORE CRAIG, Phoenix, AZ; John David Everroad, Esquire, FENNEMORE CRAIG, P.C., Phoenix, AZ.

For DRAKE INVESTMENTS LLC, an offshore entity Grand Cayman British West Indies LLC, by merger with Drake Cement, Defendant - Appellee: John David Everroad, Esquire, FENNEMORE CRAIG, P.C., Phoenix, AZ.

DRAKE INVESTMENTS LLC, an offshore entity Grand Cayman British West Indies LLC, by merger with Drake Cement, Defendant - Appellee: No Appearance.

For JEFFREY RELATED TO GREENBERG TRAURIG LLP, Defendant - Appellee: Jennifer Meredith Debray, Esquire, Attorney, GREENBERG TRAURIG, LLP, Phoenix, AZ.

For AGENT OF SKIYA INC., GENT OF SKANON INVESTMENTS, INC., AGENT OF ARPL-DRAKE CEMENT; JACK ABRAMOFF, [\*\*5] AGENT OF ARPL-DRAKE CEMENT; SKANON INVESTMENTS, INC., AN ARIZONA CORPORATION; TAIHEIYO OF JAPAN; JANE DOE BIRNBAUM; JANE DOE ABRAMOFF; JOHN DOE DUBAY, Defendant - Appellee: John David Everroad, Esquire, FENNEMORE CRAIG, P.C., Phoenix, AZ.

AGENT OF SKIYA INC., GENT OF SKANON INVESTMENTS, INC., AGENT OF ARPL-DRAKE CEMENT; JACK ABRAMOFF, AGENT OF ARPL-DRAKE CEMENT; SKANON INVESTMENTS, INC., AN ARIZONA CORPORATION; TAIHEIYO OF JAPAN; JANE DOE BIRNBAUM; JANE DOE ABRAMOFF; JOHN DOE DUBAY, Defendant - Appellee, No Appearance.

**JUDGES:** Before: T.G. NELSON and M. SMITH, Circuit Judges, and KING, \*\*\* District Judge.

\*\*\* The Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

## OPINION

[\*359] MEMORANDUM \*

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: T.G. NELSON and M. SMITH, Circuit Judges, and KING,\*\*\* District Judge.

Appellants appeal the district court's dismissal of Appellants' suit with prejudice [\*360] under *Fed R. Civ. P. 12(b)(1)* and *12(b)(6)*. As the facts and procedural history are familiar to the parties, we do not recite them here except as necessary to explain our disposition. We review [\*\*6] de novo a *Rule 12(b)(6)* dismissal. *Terracom v. Valley Nat'l Bank*, 49 F.3d 555, 558 (9th Cir. 1995). We assume the truth of well-pleaded factual allegations in the complaint, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929 (2007), but need not assume the truth of opinions, factual and legal conclusions, or arguments, *Anderson v. Clow*, 89 F.3d 1399, 1403 (9th Cir. 1996).

1. Where, as here, the purchaser of assets in a corporation assumes control of corporate decisions instead of merely paying others to control funds and business decisions, the federal securities laws are not implicated. See *Frederiksen v. Poloway*, 637 F.2d 1147, 1153-54 (7th Cir. 1981); *Allard v. Arthur Andersen & Co. (USA)*, 924 F. Supp. 488, 496-97 (S.D.N.Y. 1996). Moreover, the securities laws are not implicated where, as in the transactions at issue here, a transaction is motivated by a commercial rather than an investment purpose. *Frederiksen*, 637 F.2d at 1152. Finally, the claim is barred by the statute of limitations because Appellants had inquiry notice no later than February 2005, when they filed the Stirling Bridge action. 28 U.S.C.  $\beta$  1658(b); *Betz v. Trainer Wortham & Co.*, 519 F.3d 863, 874 (9th Cir. 2008).

Appellants [\*\*7] lacked standing to assert the antitrust claims because they have failed to show that they are either consumers or competitors in the relevant market. *Vinci v. Waste*

*Mgmt., Inc.*, 80 F.3d 1372, 1375 (9th Cir. 1996).

Appellants' purported 42 U.S.C. § 1983 claim against various judicial officials, including state judges and a court administrator, fails because there is no present case or controversy, and thus, no action to enjoin. See *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976). Moreover, no claim validly lies against the state court administrator for alleged manipulation of the judge selection process, because even if, as Appellants allege, the administrator had assigned judges to Appellants' case non-randomly, litigants have no right to any particular judge. See *United States v. Colon-Munoz*, 292 F.3d 18, 22 (1st Cir. 2002).

Because Fed. R. Civ. P. 60 permits a party to move for "Relief from a Judgement or Order" entered by the district court to which the motion is made, but does not apply to challenges to state courts' final judgments, Appellants' Rule 60 "independent action" fails. See Fed. R. Civ. P. 60(b).

Appellants do not allege that any of the named attorney-defendants [\*\*8] had an attorney-client relationship on any matter related to this law suit with any of Appellants, and thus fail to establish the requisite elements for malpractice. See *Phillips v. Clancy*, 152 Ariz. 415, 733 P.2d 300, 303 (Ariz. App. 1986). Further, as opposing counsel for Comerica, the law firm Greenberg Traurig and its attorneys cannot be liable to Appellants for malpractice based on counsel's litigation conduct. See *Linder v. Brown & Herrick*, 189 Ariz. 398, 943 P.2d 758, 765 (Ariz. App. 1997). In addition, Appellants failed to submit a certification as to whether expert testimony would be required on the pertinent standard of care. See *Ariz. Rev. Code § 12-2602(A) et seq.*

Appellants' claims for violation of the Computer Fraud & Abuse Act, the Stored Communications Act, the Uniform Fraudulent

Transfer Act, the Uniform Limited Liability Act, and the Deceptive Trade Practices Act contain only highly [\*\*361] generalized assertions that do not include the requisite elements (e.g., that Appellees had access to Appellants' electronic data) for any of the claims, and the allegations provide virtually no factual support.

2. Appellants are using the federal forum to attack the validity of the state court outcome, a tactic prohibited [\*\*9] by the *Rooker-Feldman* doctrine. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005); see also *Noel v. Hall*, 341 F.3d 1148, 1161 (9th Cir. 2003).

3. The record shows that the issues raised before the district court were the same that Appellants raised in the state court and bankruptcy litigation. Those proceedings ended with a final judgment on the merits. Moreover, the parties against whom collateral estoppel is sought are the same. Therefore, the district court did not err in holding that collateral estoppel bars Appellants' claims. See *Wilson v. Belleque*, 554 F.3d 816, 830 (9th Cir. 2009); *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000).

4. For the reasons described above, it is clear that any conceivable further amendments to the complaint would "fail to cure [the] fatally defective allegations," i.e., they would be futile, see *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540-41 (9th Cir. 1989). Accordingly, the district court did not abuse its discretion in denying leave to amend. See *United Union of Roofers, Waterproofers & Allied Trades No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1399 (9th Cir. 1990).

5. Having properly concluded that [\*\*10] the federal claims should be dismissed, the district court did not abuse its discretion in declining to exercise supplemental jurisdiction over the state claims. See 28 U.S.C. § 1367(a), (c)(3); *McCarthy v. Mayo*, 827 F.2d 1310, 1317 (9th Cir. 1987) ("It is usually appropriate to

dismiss pendent state claims when federal  
claims are dismissed before trial.")

**AFFIRMED.**