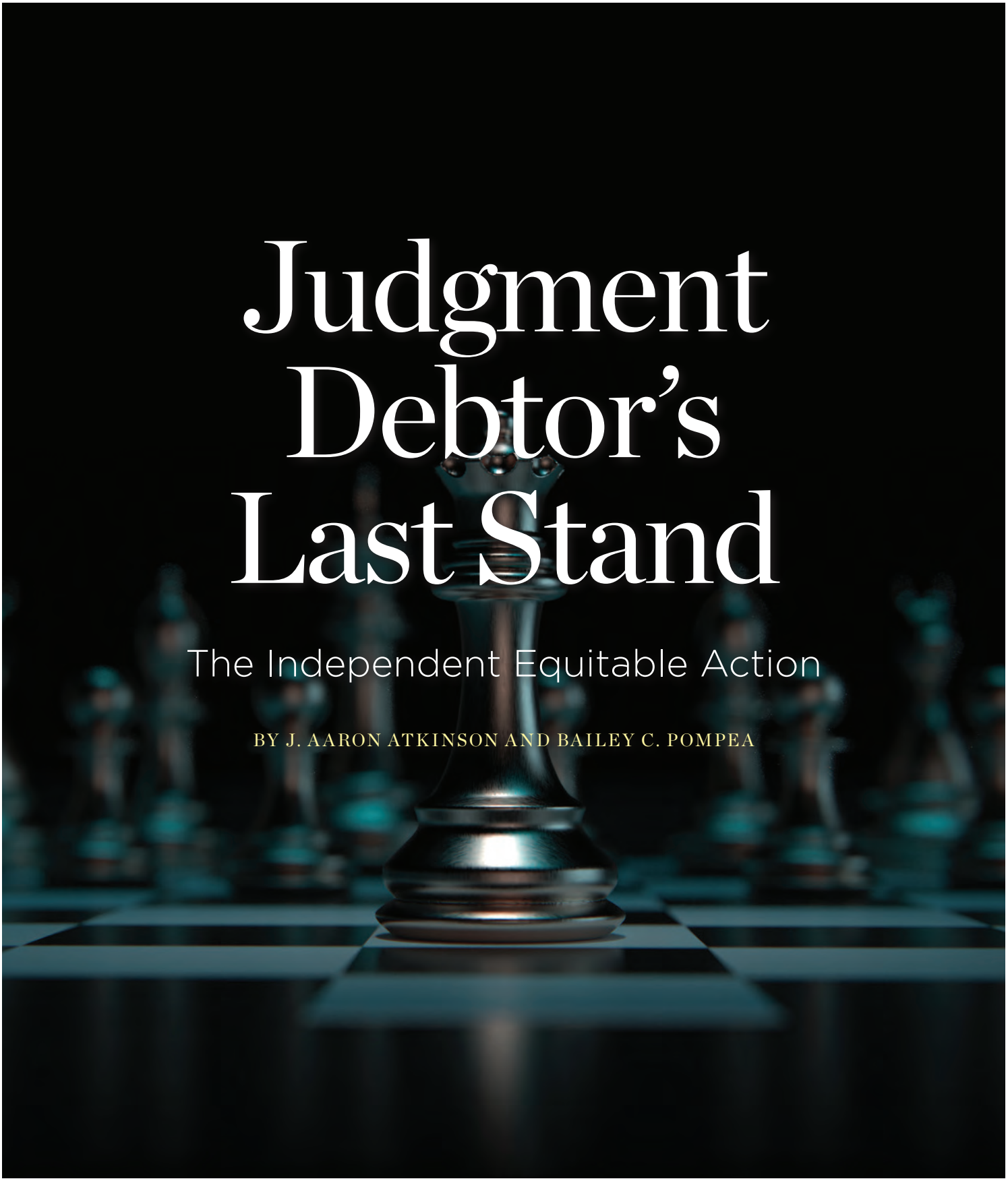

Judgment Debtor's Last Stand

The Independent Equitable Action

BY J. AARON ATKINSON AND BAILEY C. POMPEA

This article explains independent actions for relief from final judgment under Colorado Rule of Civil Procedure 60(b).

When the trial court enters a final judgment against the judgment debtor, the debtor has limited options. Typically, debtors may opt to suffer collections, appeal the judgment to the reviewing court, or file post-trial motions with the trial court. For post-trial motions, CRCP 60(b) empowers trial courts to relieve judgment debtors from a final judgment under limited circumstances. Generally, Rule 60(b) motions are subject to a 182-day deadline, so if a judgment debtor moves for relief beyond that deadline, the court lacks jurisdiction to grant relief.

But when all else fails, Rule 60(b) offers another often overlooked option; it provides that "[the] Rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding. . . ." And this part of Rule 60 is not subject to the 182-day deadline.

The provision for an independent equitable action can (and has) caused substantial confusion among litigants, especially in the context of default judgments. This article delves into the origins of the independent equitable action, outlines current case law interpreting a party's right to institute such action, and offers practical considerations regarding the effect of this rarely interpreted Rule 60 provision.

The Rule 60(b) Independent Equitable Action

Rule 60(b) is the basis for the trial court's power to review and vacate a final judgment.[1] There are two potential avenues to relief from a prior judgment or order, by motion or by an independent action. A motion is most commonly used within the 182-day or "reasonable time" deadlines. If those deadlines lapse, a judgment debtor can bring an independent equitable action under limited circumstances. This independent action is "intended to be used as a 'last ditch remedy'"[2] for a "direct attack on a prior judgment."[3]

"But when all else fails, Rule 60(b) offers another often overlooked option; it provides that '[the] Rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding. . . .'"

An independent action is a "fresh and direct attack" permitted under Rule 60(b) but not necessarily subject to its standards or limitations.[4] Accordingly, an independent action is a new civil action that may be commenced "in the same manner as any other civil action,"[5] meaning judgment debtors can file them either in the trial court presiding over the underlying action or in a new trial court.[6] Further, so long as venue and jurisdiction are proper in the new trial court, a judgment debtor may seek relief in a new venue.[7]

Rule 60(b)'s independent action clause is often referred to as the "savings clause."[8] But even the "savings clause" has limitations; "an independent action 'should be available only to prevent a grave miscarriage of justice.'"[9]

Origins of the Action

Courts have long recognized various avenues by which judgment debtors could obtain relief from a prior judgment.[10] "Throughout legal history, losing parties have sought procedural vehicles through which to bring complaints about the accuracy of judgments or the adequacy of the proceedings that led to those judgments."[11] While early courts recognized various methods of obtaining relief from a prior judgment, the kinds of relief recognized at common law before enactment of the Federal Rules of Civil Procedure (FRCP) led to varied and inconsistent decisions.[12] Accordingly, in 1937 "Federal Rule of Civil Procedure 60 was adopted in an attempt to unify post-judgment relief practice in the federal courts."[13] It "largely replaced [the] patchwork [of remedial devices] with specific procedures and limits for granting relief from judgment."[14] By outlining specific procedures, this rule changed how courts approached remedial measures and simplified the process.

After much debate and several unsuccessful iterations of Rule 60, the Federal Rules Advisory Committee (FRAC) amended the rule in 1946.[15] This revision helped resolve the problems that plagued the rule's first draft by specifically articulating the substantive remedies that remained available to judgment debtors.[16] In addition, the revised rule allowed judgment debtors to plead both intrinsic and extrinsic fraud as justifications to vacate a judgment[17] and included provisions allowing for relief from a judgment based on newly discovered evidence, a void judgment, or any other reason (a catch-all provision).[18] Because many thought the six-month limitation on bringing motions

was too short, the FRAC also extended this limitation to one year, opening the door to more claims.[19] Revised Rule 60 also specifically abolished the common law vehicles to obtain relief from a prior judgment, including "[w]rits coram notis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review."[20] Lastly, the revision provided for independent actions and allowed the court to set aside judgments for fraud on the court, so "[e]ven after the adoption of modern Rule 60 . . . the independent action at equity continues to provide an avenue for relief from judgments obtained by fraud."[21]

In 2007, the FRAC updated Rule 60 once more to its current version.[22] This update largely consisted of organizational and stylistic changes, including the addition of subheadings,[23] to make the rule more easily understandable, but it did not change the rule's substance.[24] Colorado and several other states followed suit by adopting similar rules in their own civil procedure canons.

Evolution in Colorado

Early on, Colorado case law recognized the ancient remedies outlined above, including independent equitable actions to attack a judgment.[25] In 1898, for example, the Colorado Court of Appeals in *Smith v. Morrill* reversed an order dismissing an independent equitable action to set aside a default judgment, based on failure to properly serve the judgment debtor.[26] The Court determined that the judgment debtor could make this equitable request separately from the recognized grounds of mistake, inadvertence, surprise, or neglect under the code of procedure then in force.[27] And in 1912, the Colorado Supreme Court in *Kavanagh v. Hamilton* recognized that a party could obtain relief from a prior judgment through a motion, answer, cross-complaint, or equitable action.[28]

The Colorado Supreme Court also eventually adopted CRCP 60, which was based on and largely had the same effects as FRCP 60. CRCP 60 was most recently updated in 2017 when the Colorado Civil Rules Committee extended the time limitation from six months to 182 days for bringing claims of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or fraud. This change clarified the rule but did not change its substance.

Principle of Finality versus Interests of Justice

In allowing independent equitable actions to obtain relief from prior judgments, courts try to strike a balance between the principle of finality and the interests of justice.[29] Rule 60(b) "defines when a court can redress substantive errors in a final judgment," and courts operate within their limitations to strike a balance between the interests of finality and justice,[30] allowing independent actions for relief from a final judgment only in "extreme situations or extraordinary circumstances," which are discussed below.[31]

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Finality is the primary limiting factor[32] and is the idea that, once a case has been decided, the decision is final and should only be overturned in extraordinary circumstances.[33] Otherwise, disputes would never end and issues could never truly be resolved.[34] As the court in *Davidson v. McClellan* put it, "[i]t is essential for practical reasons as well as for fundamental fairness, that there be a point at which litigation reaches a conclusion and that parties be permitted to rely on the outcome."[35] In most cases, even if a prior decision was obviously unsound, reopening it is generally not permitted because it would violate the principle of finality,[36] so independent actions are only permitted in extreme circumstances.[37] Further, the principle of finality is more strictly enforced as time passes after a case has been decided.[38]

Independent actions for relief from a prior judgment inherently "allow departure from 'rigid adherence to the doctrine of res judicata,'"[39] so independent actions are only permitted if there is a feasible and direct attack on the prior action.[40] Accordingly, many courts have dismissed independent equitable actions under the finality principle based on res judicata and collateral estoppel.[41] On the other hand, independent actions may not "be used to obtain further review of final orders in the earlier case."[42] For example, in *Mishkin v. Young*, a tenant sued a landlord who had retained his security deposit.[43] After the trial court found in favor of the tenant, the landlord challenged the judgment several times. When the trial court rebuffed these challenges, the landlord initiated an independent action for relief from the initial judgment "'to correct the mistaken' rulings of the district court in the underlying action."[44] Ultimately, the reviewing court determined that the independent action was barred under claim preclusion, because the debtor was using the new action simply for further review of the initial judgment.

However, although preserving finality is a valid concern, "it is also clear that under certain limited circumstances even the principle of finality must give way to overriding concerns for truth and equity."[45] As the court in *Matarese v. LeFevre* stated, Rule 60(b) provides a "grand reservoir of equitable power to do justice in a particular case."[46] Thus, courts have discretion to allow relief from a final judgment for public policy reasons. This broad grant to do justice also licenses creative lawyering on the side of the losing party[47] in bringing arguments based on the interests of justice, an abuse

of discretion, newly discovered evidence, or other equitable principles. Courts entertain independent equitable actions to "invoke the court's inherent power 'to prevent the use of a judgment at law by one who had obtained it against conscience.'"[48] These exceptions to the rule of finality attempt "to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice should be done."'[49]

Courts analyze the "interests of justice" according to whether the action will "'prevent a *grave miscarriage* of justice'"[50] and consider whether the negligence that caused the judgment is "excusable, whether the moving party has alleged a meritorious defense, and whether relief from the challenged order would be consistent with equitable considerations."[51]

Cases Construing Independent Equitable Actions

Dudley v. Keller is the primary authority on independent equitable actions in Colorado, especially where an attorney's gross negligence causes a default judgment.[52] In *Dudley*, Keller sued Dudley to recover on a promissory note and for breach of contract. Keller properly served Dudley with a summons and complaint, and after a series of motions, including a motion for extension of time to file an answer, Dudley's counsel failed to appear or otherwise file an answer. Accordingly, the trial court entered default judgment against Dudley, even though notices of default were sent only to his counsel. While Dudley had kept in touch with his counsel and relied on his attorneys, he did not receive notice of the default judgment hearing or the entry of default until six months later when his bank account was attached upon execution of the judgment. As soon as he became aware of the default judgment, Dudley retained new counsel, who then filed the independent action. The trial court permitted Dudley to bring an independent action due to his attorney's gross negligence, which had precluded him from properly challenging the judgment under Rule 60(b), and it set aside the default judgment.

The Court of Appeals outlined specific elements to consider in determining whether a judgment debtor will be permitted to bring an independent action, as discussed below.[53] While these elements make it difficult to successfully plead the action, they permit an independent action under exceptional circumstances and are designed to lead to a more fair and equitable outcome.[54] Because Dudley reasonably relied on his counsel, whose negligence led to the judgment by default, the Court found no abuse of discretion in the trial court's actions.[55]

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Many Colorado courts have since applied the *Dudley* elements and clarified the analysis of procedural requirements for independent actions for relief from judgment in Colorado.

Standard of Review

The judgment debtor must show "clear, strong, and satisfactory proof"[56] of each element described below. Upon such proof, whether the independent action may proceed is "left to the sound discretion of the [court] and will not be disturbed on appeal unless an abuse of discretion or error of law is shown."[57] While this is a stringent standard, "the discretion of the court in considering any application to vacate a default is controlled by fixed legal principles, to be exercised in conformity with the spirit of the law . . . ."[58]

The Elements

The elements of a successful independent equitable action are

> 1) that the judgment ought not, in equity and good conscience, be enforced; 2) that there can be asserted a meritorious defense to the cause of action on which the judgment is founded; 3) that fraud, accident, or mistake prevented the defendant in the action from obtaining the benefit of his defense; 4) that there is an absence of fault or negligence on the part of defendant; 5) and that there exists no adequate remedy at law.[59]

Usually, for a party to be successful in setting aside a default judgment, "it must prove that each of these [contemplated] criteria are present."[60]

The analysis begins with equitable principles.[61] Because this standard is strict, courts generally elect to enforce the judgment rather than set it aside. But an independent action may proceed if it is the only way "to prevent a

grave miscarriage of justice."[62] In determining whether a judgment should not be enforced, courts scrutinize *why* the judgment debtor seeks to overturn the judgment.[63] For example, in *Tostige v. Ragsdale*, the Michigan Court of Appeals determined that a default judgment should not be enforced based on principles of equity because the plaintiffs made a material misrepresentation in their complaint.[64]

Next, courts consider whether the judgment debtor had a meritorious defense to the opposing party's claims in the underlying case[65] and look at whether the moving party can "establish by factual averments and not simply legal conclusions that the claim previously dismissed was indeed meritorious and substantial."[66] The judgment debtor must "state the defense 'with such particularity that the court can see that it is a substantial and meritorious defense, and not merely a technical or frivolous one.'"[67]

Under the third element, courts analyze whether fraud, accident, or mistake prevented the judgment debtor in the underlying action from being successful. As to fraud, courts permit an independent action for relief from a prior judgment if the original judgment was based on extrinsic fraud,[68] so they consider whether the fraud was extrinsic as opposed to intrinsic.[69] Extrinsic fraud "operates to deprive the person against whom the judgment was rendered of an opportunity to fully or fairly defend."[70] Courts allow independent actions based on extrinsic fraud "because such fraud corrupts the judicial power and serves to turn a court of law into an instrument of injustice."[71] Fraud upon the court is a narrower version of extrinsic fraud,[72] which includes fraud "that interferes with the judicial machinery itself."[73] Common examples of fraud upon the court include bribery, corruption in the court, or an attorney allowing fraud to occur without doing anything to stop it.[74] In examining fraud upon the court, courts consider the fraud's effect on the prior decision rather than the extent of the fraud.[75] For example, the judgment debtor must show that the fraud involved "more than injury to a single litigant" because fraud upon the court "is limited to fraud that 'seriously' affects the integrity of the normal process of adjudication."[76]

On the other hand, courts do not permit an independent action based on intrinsic fraud,[77] which "occurs where the fraud pertains to an issue in the original action or where the acts constituting the fraud were or could have been litigated in the original action."[78] Examples of intrinsic fraud include perjury, nondisclosure, and false testimony.[79]

Courts permit a judgment debtor to bring an independent equitable action if the underlying judgment was based on an accident or mistake,[80] but the mistake, for example, must be substantial.[81] For instance, in *Green v. Hartel-Green*, a husband and wife had signed a separation agreement and obtained a divorce.[82] The separation agreement stated that the husband would pay his ex-wife monthly maintenance and contained a provision stating that the agreement could not be modified. The trial court determined that inclusion of the non-modification provision was a mistake. However, the Court of Appeals found that the "mistake was not such as to entitle him to relief"[83] because he had failed to obtain a lawyer or to consider the plain meaning of the non-modification provision. So, although a mistake had been made, the mistake was not grave enough to justify an independent equitable action in light of the husband's own negligence and failures.[84]

As to the fourth element, courts examine the prior judgment, which "must be 'in no way attributable to the negligence of the party seeking equitable relief.'"[85] This means the judgment debtor who brings an independent equitable action must have "clean hands."[86] For example, in *Hudson v. United States*, the trial court prohibited plaintiff from bringing an independent action because he was unable to prove that the alleged mistake was not his own fault and was not caused by his own neglect when he

did not understand the government's reply to his motion to vacate.[87] The court reasoned that plaintiff's lack of understanding did not prove he had clean hands because the response and his opportunity to contest the response were explained to him in plain language.[88] On the other hand, the court in *Armour v. Monsanto Co.* debated whether the absence of fault or negligence applied to the original case or to the independent action.[89] The court did not reach a conclusion regarding this debate, thereby leaving this question unanswered.[90]

In *Dudley*, the court determined that the debtor had not been negligent because "[g]ross negligence on the part of counsel resulting in a default judgment is considered excusable neglect on the part of the client entitling him to have the judgment set aside."[91] Under this holding, as long as the attorney rather than the judgment debtor was negligent, the judgment debtor has clean hands. Thus, in addition to permitting judgment debtors to bring a malpractice suit against their attorneys, the court may also permit a suit to set aside the judgment caused by the malpractice.

Lastly, courts consider whether the judgment debtor could have otherwise obtained an adequate remedy at law.[92] For instance, if the judgment debtor fails to exhaust every possible avenue in the underlying case, the court will dismiss the independent action.[93] Under FRCP 60(b), "[i]f the right to make a motion is lost by the expiration of the time limits fixed in these rules, the only other procedural remedy is by new or independent action to set aside a judgment upon those principles which have heretofore been applied in such an action."[94] Generally, if the judgment debtor had an opportunity to appeal or to move under Rule 60 in the underlying case, the court will determine that an adequate remedy was available and will not permit the independent action.[95] This is again because "a party may not use an independent equitable action to accomplish what he could have accomplished by appeal."[96] But a malpractice suit against former counsel for negligence does not constitute an adequate remedy at law[97] because the judgment debtor "seeks an opportunity to defend against appellant's suit, not merely reimbursement for the money expended to satisfy the judgment. Any potential monetary liability of former counsel, assuming the same can be satisfied, may well be insufficient to relieve judgment debtor from the former judgment."[98] Courts will only conclude that there was no adequate remedy at law in "'extreme situation[s]' in which relief is warranted under C.R.C.P. 60(b)(5) . . . and is unavailable under other clauses of the rule."[99]

"While Rule 60(b) motions have specific time limitations, there are none specified for independent equitable actions. Accordingly, it has been variously argued that the 182-day limitation applies, that there is a 'reasonable' time limitation, and that there is no limitation."

Time Limitations

While Rule 60(b) motions have specific time limitations, there are none specified for independent equitable actions. Accordingly, it has been variously argued that the 182-day limitation applies, that there is a "reasonable" time limitation, and that there is no limitation. The rule's lack of specificity is problematic, given that a judgment debtor may, under some interpretations, enjoy an unlimited time to file an independent equitable action.

Colorado courts have come to differing conclusions regarding time limitations for independent actions. For example, in *Dudley*, the Court of Appeals permitted plaintiff to bring an independent equitable action, even though the action had been filed more than six months after the underlying judgment.[100] The Court decided that the six-month (now 182-day) limitation did not govern independent actions based on statutory interpretation, stating that "[a]lthough the six month requirement at the end of [the rule] may appear to apply to the independent action, a careful reading of [the rule] particularly in light of the placement of the semicolon, clearly indicates that the six month time limitation applies only to proceedings instituted to vacate a judgment entered against defendants not personally served in the original action."[101]

Similarly, in *Terry v. Terry*, the Colorado Supreme Court concluded that the 60-day (now 182-day) limitation does not apply to independent actions.[102] There, the Court determined that Rule 60 itself "clearly recognizes that . . . '[t]his rule does not limit the power of a court [] to entertain an independent action to relieve a party from a judgment, order, or proceeding.'"[103]

Further, in *Atlas Construction Co. v. District Court*, the Colorado Supreme Court held that, because an independent action to obtain relief from a prior judgment is a new action rather than a continuation of the same action brought under Rule 60, it should be "commenced in the same manner as any other civil action."[104] The Court specifically ruled that "[n]othing in this opinion shall be interpreted to prevent a proper filing by plaintiff of an independent equitable action, so long as it is filed within a reasonable time."[105]

However, the Colorado Court of Appeals later held that while independent actions are not subject to the time limitations outlined in Rule 60, there is no time limit on bringing an independent equitable action for relief from a prior judgment.[106] More specifically, the Court

in *Dudley* held that independent equitable actions are "not restricted by the six month time limitation imposed on motions made under sub-sections (1) and (2) of C.R.C.P. 60(b) or the reasonable time requirements imposed upon motions made under sub-sections (3), (4) and (5) of that rule."[107] In *Sloat v. City of Newport*, a Rhode Island court even decided that an independent action may be able to proceed if it is filed more than a year after entry of the initial judgment.[108] Rather than looking for a time limitation as a restriction on when independent actions would be permissible, the courts in these two cases looked to the *Dudley* elements as the only limitations on bringing an independent equitable action.[109]

Even without a specified time limitation, a judgment creditor defending against an independent action may raise laches and the statute of limitations on the underlying claim as affirmative defenses.[110] For laches to apply, a defendant must show both that the plaintiff unreasonably delayed and that the delay resulted in prejudice or injury.[111] Prejudice or injury can be a change in position based on or in reliance on the underlying judgment.[112] For example, if there was a long delay between the decision in the initial action and the filing of the independent action, the judgment creditor could argue laches as an avenue to dismissal of the independent action.

The statute of limitations defense to the independent action was considered in *United States v. Beggerly*, where the US Supreme Court acknowledged that the time limitation for an independent action is greater than that for a motion. It stated that when "the right to make a motion is lost by the expiration of the time limits fixed in these rules, the only other procedural remedy is by a new or independent action to set aside a judgment . . . ."[113] In *Beggerly*, the United States entered into a settlement agreement to quiet title to disputed land for a federal park. More than 12 years later, respondents sued to set aside the settlement agreement. The district court dismissed the complaint, but the Fifth Circuit determined that the applicable statute of limitations was subject to equitable tolling, and therefore the suit was not barred. *Beggerly* made clear that the statute of limitations is a limiting factor on the time in which the debtor may bring an independent action,[114] and the 12-year statute of limitations for bringing a title dispute against the United States was ample time to file the claim at issue. Accordingly, the Court found that extension of the statutory period was not warranted and reversed.[115]

Ironically, the lack of clarity on the time limit for filing an independent equitable action may offer judgment debtors and the judiciary one more basis for considering whether a miscarriage of justice has occurred.

Conclusion

The *Dudley* elements clarified the circumstances under which a judgment debtor is permitted to pursue an independent equitable action in Colorado, and practitioners must pay attention to proving the action's elements. But the Rule 60(b) time limitation for prosecuting an independent equitable action remains unclear. Accordingly, when assessing time limits on filing, practitioners should carefully consider each case in accordance with the circumstances analyzed in Colorado appellate cases. CL


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NOTES

1. *Mishkin v. Young*, 198 P.3d 1269, 1271 (Colo.App. 2008).
2. *Sanders v. Estate of Sanders*, 927 P.2d 23, 28 (N.M.App. 1996) (internal citations omitted).
3. *Dudley v. Keller*, 521 P.2d 175, 177 (Colo.App. 1974).
4. *Atlas Const. Co. v. Dist. Court*, 589 P.2d 953, 955 (Colo. 1979).
5. *Id.*
6. Fed. R. Civ. P. 60(b) Advisory Committee note—1946 Amendment.
7. There is also no dispute that an original court retains ancillary jurisdiction over an independent action concerning a judgment entered therein. *See United States v. Beggerly*, 524 U.S. 38, 46 (1998). Otherwise, a court would need an independent basis for subject matter jurisdiction and proper venue in an independent equitable action. *See Palkow v. CSX Transp., Inc.*, 431 F.3d 543, 555–56 (6th Cir. 2005). Along those lines, the Colorado Supreme Court has held that relief from foreign judgments is available under CRCP 60(b), further indicating that different jurisdictions and venues may be used to attack foreign judgments in certain situations. *See Marworth, Inc. v. McGuire*, 810 P.2d 653, 656 (Colo. 1991). However, this article does not address conflicts of laws between a trial court and a separate court that hears an independent equitable action.
8. *Mishkin*, 198 P.3d at 1272.
9. *Id.* (internal citations omitted).
10. Benham, "Twombly and Iqbal Should (Finally!) Put the Distinction between Intrinsic and Extrinsic Fraud out of Its Misery," 64 *SMU L. Rev.* 649, 652 (2011).
11. *Id.* at 651.
12. *See* Dodson, "Rethinking Extraordinary Circumstances," 106 *Nw. U.L.R.* 111, 112 (2011).
13. Benham, *supra* note 10 at 652.
14. Dodson, *supra* note 12 at 112.
15. Benham, *supra* note 10 at 662.
16. *Id.* at 663.
17. *Id.*
18. *Id.* at 663–64.
19. *Id.*
20. *Id.* at 663.
21. *Id.* at 652, 664.

22. *Id.* at 664.

23. *Id.* at 664–65.

24. *Id.*

25. *Mishkin*, 198 P.3d at 1272.

26. *Smith v. Morrill*, 55 P. 824, 826–28 (Colo. App. 1898).

27. *Id.*

28. *Kavanagh v. Hamilton*, 125 P. 512, 515 (Colo. 1912).

29. *Mishkin*, 198 P.3d at 1272.

30. *Id.*

31. *Davidson v. McClellan*, 16 P.3d 233, 237 (Colo. 2001).

32. *See id.* at 236.

33. *See id.* at 236–37.

34. *See id.*

35. *Id.* at 236.

36. *Mishkin*, 198 P.3d at 1271–72.

37. Goldman and Maxwell, "It Ain't Over Till It's Over: Reopening Final Judgments Under Federal Rule 60(b)(6)," at 1 (Commercial Litig. Advisor Oct. 2015).

38. *In re Marriage of Gance*, 36 P.3d 114, 118 (Colo.App. 2001) (internal citations omitted).

39. *Mishkin*, 198 P.3d at 1272 (quoting *Beggerly*, 524 U.S. at 46).

40. *Id.*

41. *Id.* at 1271–72; *In re Marriage of Mallon*, 956 P.2d 642, 646 (Colo.App. 1998).

42. *Mishkin*, 198 P.3d at 1271.

43. *Id.*

44. *Id.*

45. *Davidson*, 16 P.3d at 237.

46. *Matarese v. LeFevre*, 801 F.2d 98, 106 (2d Cir. 1986) (internal citations omitted).

47. Goldman and Maxwell, *supra* note 37 at 1.

48. *Kelso v. Rickenbaugh Cadillac Co.*, 262 P.3d 1001, 1004 (Colo.App. 2011) (internal citations omitted).

49. *State Farm Mut. Auto. Ins. Co. v. McMillan*, 925 P.2d 785, 790 (Colo. 1996) (internal citations omitted).

50. *Mishkin*, 198 P.3d at 1272 (emphasis added) (quoting *Beggerly*, 524 U.S. at 47).

51. *Plaisted v. Colo. Springs Sch. Dist. No. 11*, 702 P.2d 761, 762 (Colo.App. 1985).

52. *Dudley*, 521 P.2d at 175.

53. *Id.* at 177.

54. *See* Goldman and Maxwell, *supra* note 37 at 1.

55. *See Dudley*, 521 P.2d at 177–78.

56. *Meyer v. Haskett*, 251 P.3d 1287, 1294 (Colo. App. 2010) (internal citations omitted).

57. *Sloat v. City of Newport*, 19 A.3d 1217, 1221 (R.I. 2011) (internal citations omitted).

58. *Dudley*, 521 P.2d at 177.

59. *Id.*

60. *Plaisted*, 702 P.2d at 762 (referring to similar criteria under Rule 60(b) motions to set aside default judgments).

61. *Dudley*, 521 P.2d at 177.

62. *Mishkin*, 198 P.3d at 1272 (internal citations omitted).

63. *Armour v. Monsanto Co.*, 995 F.Supp.2d 1273, 1281 (N.D.Ala. 2014).

64. *Tostige v. Ragsdale*, No. 334094, 2017 WL 6502684 at *4 (Mich.Ct.App. Dec. 19, 2017). Ultimately, however, the court declined to set aside the default judgment based on the other applicable factors.

65. *Dudley*, 521 P.2d at 177.

66. *Buckmiller v. Safeway Stores, Inc.*, 727 P.2d 1112, 1116 (Colo. 1986).

67. *Meyer*, 251 P.3d at 1294 (internal citations omitted).

68. *Foxley v. Foxley*, 939 P.2d 455, 459 (Colo. App. 1996).

69. *Gance*, 36 P.3d at 117.

70. *Id.*

71. *Id.* (internal citations omitted).

72. *Id.* at 118.

73. *Id.*

74. *Foxley*, 939 P.2d at 459.

75. *Id.*

76. *Gance*, 36 P.3d at 118 (internal citation omitted).

77. *Id.* at 117.

78. *Id.*

79. *Id.* at 118.

80. *Dudley*, 521 P.2d at 177.

81. *Green v. Hartel-Green*, 761 P.2d 222, 223 (Colo.App. 1988).

82. *Id.*

83. *Id.*

84. *Id.*

85. *Sloat*, 19 A.3d at 1222 (internal citations omitted).

86. *Id.*

87. *Hudson v. United States*, 2018 WL 1413189 at *2 (W.D.N.C. Mar. 21, 2018).

88. *Id.*

89. *Armour v. Monsanto Co.*, 995 F.Supp.2d 1273, 1282 (N.D.Ala. 2014).

90. *Id.*

91. *Dudley*, 521 P.2d at 177 (internal citations omitted).

92. *Id.*

93. *Mishkin*, 198 P.3d at 1272.

94. Fed. R. Civ. P. 60(b) Advisory Committee note—1946 Amendment.

95. *Id.*

96. *Kelso*, 262 P.3d at 1004.

97. *Dudley*, 521 P.2d at 178.

98. *Id.*

99. *Guevara v. Foxhoven*, 928 P.2d 793, 795 (Colo.App. 1996) (internal citations omitted).

100. *Dudley*, 521 P.2d at 176 (stating that an independent equitable action "is not restricted by the six month time limitation imposed on motions made under sub-sections [1] and [2] of C.R.C.P. 60[b]").

101. *Id.* at n.1.

102. *Terry v. Terry*, 387 P.2d 902, 903 (Colo. 1963).

103. *Id.*

104. *See Atlas*, 589 P.2d at 955.

105. *Id.* at 956.

106. *See Mishkin*, 198 P.3d at 1272.

107. *Dudley*, 521 P.2d at 176–77.

108. *Sloat*, 19 A.3d at 1222.

109. *Mishkin*, 198 P.3d at 1272; *Sloat*, 19 A.3d at 1222.

110. *Terry*, 387 P.2d at 903 (when "an independent action to obtain relief from a judgment is resorted to, the limitations of time are those of laches and the statute of limitations[.]").

111. *Caldwell v. Dist. Court*, 644 P.2d 26, 30 (Colo. 1982).

112. *Lin Ron, Inc. v. Mann's World of Arts & Crafts, Inc.*, 624 P.2d 1343, 1345 (Colo.App. 1981).

113. *Beggerly*, 524 U.S. at 45 (citing the Fed. R. Civ. P. Advisory Committee's notes).

114. *Id.* at 48–49.

115. *Id.*