IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JEFF WINTERS, et al.,	*	
		NO. 4:05-cv-00068-RP-RAW
Plaintiffs,	*	
vs.	*	**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION**
KEN BURGER,	*	**TO STRIKE JURY DEMAND**
Defendant.	*	

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INTRODUCTION

Successors to prison administrators at the Iowa State Penitentiary (ISP) filed Motions for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b)(5) in two old cases where the court had enjoined the prison to recognize the Church of the New Song and accord it equal treatment under the First Amendment. The

court consolidated the motions filed in the separate cases and recast the caption to reflect the true parties in this proceeding. In their response to the allegations in the motions, the Plaintiffs demanded a jury trial. The Defendant moves to strike the jury demand.

I. THERE IS NO RIGHT TO A JURY TRIAL IN PROCEEDINGS UNDER RULE 60(b)(5).

Nothing in Federal Rule of Civil Procedure 60(b) suggests that there is a right to a jury in motions filed pursuant to 60(b)(5). The rule provides:

> On motion and upon such terms as are just, *the court* may relieve a party or parties' legal representative from a final judgment, order, or proceeding for the following reasons . . .
>
> 5. The judgment has been satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

The use of the term "court" in this context appears to mean judge, not jury. See *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 346 (1998), 118 S.Ct. 1279, 1283. The topic addressed is relief from a prior judgment for injunctive relief and does not reach relief from a legal remedy such as damages. The common law writs abolished by Rule 60 all were in the nature of an attack on a judgment. For example, *Coram Nobis* was a writ to correct a judgment in the same court in which it was rendered

on the ground of error of fact. *Black's Law Dictionary, 3rd Ed.*, p. 1861 (1933). *Coram Vobis* was issued from the Court of King's Bench to a judgment of the Court of Common Pleas, (as distinguished from the *Coram Nobis* which was issued from the King's bench to a judgment of that court.) *Black's Law Dictionary, id.* Bills of Review and Bills in the Nature of a Bill of Review involved "an old chancery practice to procure a reversal, modification, or explanation of a decree in a former suit". *Black's Law Dictionary, 3rd Ed.*, p. 217; citing *Barz v. Souer*, 141 N.W. 319, 321, 159 Iowa 481. Finally, a writ of *Audita Querela* was a writ constituting the initial process in an action brought by a judgment defendant to obtain relief against the consequences of the judgment, on account of some matter of defense or discharge arising since its rendition and which could not be taken advantage of otherwise. *Black's Law Dictionary, 3rd Ed.*, at 169.

The relief the Defendants seek here clearly is equitable in nature. In 1973 the Court granted equitable relief in the form of an injunction requiring the Defendants to recognize the Church of the New Song as a legitimate religion and accord it equal treatment pursuant to the First Amendment rights of a religion in the Iowa State Penitentiary. If there was a monetary award in either the *Remmers-Loney cases*, or the later *Goff* case reiterating the injunction (as there could have been pursuant to

Section 1983), the defendant does not seek, and Rule 60(b)(5) does not permit, setting aside that aspect of the judgment now. Rule 60(b)(5) addresses only the injunctive, or equitable, aspects of the prior judgment. The defendant, the current warden at ISP, seeks relief on the ground that it is no longer equitable that the judgment should have prospective application as the factual basis for the decision has changed, so that the equitable decree no longer protects valuable First Amendment rights, and in fact, has been misused. Whether the equitable decree continues to serve the court's remedial purpose is not a legal question for a jury, but a question for the court under the terms of Rule 60(b)(5).

II. THERE IS NO CONSTITUTIONAL RIGHT TO A JURY IN A MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b)(5).

The Supreme Court has said:

> The Seventh Amendment provides that in suits at common law, where the value and controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .
>
> Consistent with the textual mandate that the jury right be preserved, our interpretation of the amendment has been guided by historical analysis comprising two principle inquiries. "We ask, first, whether we are dealing with a cause of action that either was tried at law at the time of the founding or at least analogous to one that was. *Markman v. Western Instruments, Inc.*, 517 U.S. 370, 376, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). If the action in question

> belongs in the law category we then ask whether the particular trial decision must fall to the jury in order to preserve the substance of the common law right as it existed in 1791." *Ibid.*

City of Monterey v. Del Monte Dunes at Monterey Ltd., 526 U.S. 687, 708, 119 S.Ct. 1624, 1638 (1999); *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. at 347, 348, 118 S.Ct., at 1284; *Granfinanciera v. Nordberg*, 492 U.S. 33, 40-41, 109 S.Ct. 2782, 2789-90 (1989).

> "The phrase "suits at common law" has been consistently interpreted to refer to "suits in which *legal* rights were to be ascertained and determined, in contra-distinction to those where equitable rights alone were recognized and equitable remedies were administered. *Parsons v. Bedford*, 3 Pet. 433, 447, 7 L.Ed.732 (1830)".

City of Monterey, 526 U.S. at 708 - 709, 119 S.Ct. at 1638; *Feltner*, 523 U.S. at 348, 118 S.Ct. 1279, at 1284; *Granfinanciera*, 492 U.S. 33 at 41, 109 S.Ct. 2782, at 2790.

The Seventh Amendment also applies to actions brought to enforce statutory rights that are analogous to common law causes of action ordinarily decided in English law courts in the late eighteen century as opposed to those customarily heard by courts of equity or admiralty. *City of Monterey, supra,* at 709, 119 S.Ct., at 1638, citing *Feltner, supra*, at 348, 118 S.Ct. 1279, in turn quoting *Granfinanciera v. Nordberg*, 492 U.S. 33, 42, 109 S.Ct. 2782. See *Toll v. United States*, 481 U.S. 412, 417-418, 107

S.Ct. 1831, 1835 (1987).("To determine whether a statute creates a right to a jury trial under the Seventh Amendment, the Court compares the statutory action to the Eighteenth Century actions brought in the courts of England prior to the merger of the courts of law and equity and second, examines the remedy sought and determines whether it is legal or equitable in nature").

With that framework in mind, it is clear that whether filed as a motion or a separate action, a filing seeking relief under Rule 60(b)(5) does not involve an issue which would have been tried to a jury at the time of founding of our country but instead involves relief which would have been granted by a court in equity. Furthermore, the language of the Rule explaining its purpose makes the equitable nature of the relief available clear. The rule preserves the right of a defendant, either through motion or by filing an independent action, to obtain a change, correct a mistake, or overturn a prior judgment. None of these functions were commonly given to a jury. The rule outlines its scope:

> This rule does not limit the power of the court to entertain an independent action or relieve a party from judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. § 6055, or to set aside a judgment for fraud upon the court. Writs of *Coram Nobis, Coram Vobis, Audita Querela,* and Bills of Review and Bills in the Nature of a Bill of Review are abolished, and the procedure for obtaining any relief from a

> judgment shall be by motion as prescribed in these rules or by an independent action.

Fed. R. Civ. P. 60.

It is clear that the nature of an action filed under Rule 60(b) does not involve an action at law to which the common law courts would have required a trial to a jury. Rights involved in a Rule (60)(b) motion involve equitable rights alone and only equitable remedies can be administered.

III. THE JURY DEMAND IS NOT TIMELY.

Finally, under Federal Rule of Civil Procedure 38(b), any party may demand a trial by jury of any issue triable of right by jury by serving upon the other party as a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days later than the service of the last pleading directed to such issue. Such a demand may be endorsed upon a pleading of the party. Rule 38(b). The rule requires that the demand be within ten (10) days within the service of the last *pleading* directed to such issue. This action began as a motion filed pursuant to Federal Rule of Civil Procedure 60(b)(5). The original action in this case, the action in which the judgment was granted (*Remmers*), was filed in 1972. The subsequent action which granted equitable relief based upon the *Remmers* case, *Goff*, was filed in 1982. There was no jury trial

in the underlying actions and no request for a jury was made at either time to the knowledge of counsel.

Secondly, the request for relief from judgment in these cases was initiated by motion and not a pleading within the definition of Rule 38(b). See Fed. R. Civ. P. 7. Thus, the Plaintiffs have not preserved their right of a jury trial on any issues in this motion for relief from judgment.

CONCLUSION

Because neither the rule nor the Seventh Amendment envisions a jury trial on a motion for relief from judgment under Fed. R. Civ. P. 60(b)(5), the Plaintiffs' demand for a jury trial should be stricken.

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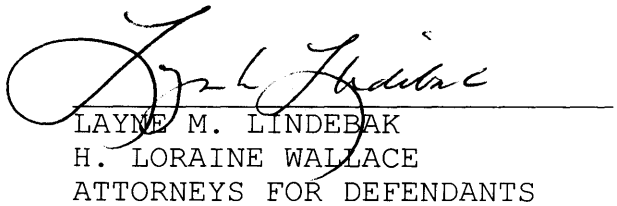

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