

AUG 27 2004

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CONNECTICUT GENERAL LIFE
INSURANCE COMPANY; EQUITABLE
LIFE ASSURANCE SOCIETY OF THE
UNITED STATES; CIGNA EMPLOYEE
BENEFITS SERVICES, INC.; AETNA
U.S. HEALTHCARE, INC.; UNITED
HEALTHCARE CORPORATION, fka
United Health Group Incorporated dba
United Health Group; HUMANA, INC.;
AETNA LIFE INSURANCE COMPANY,

Plaintiffs - Appellees,

v.

NEW IMAGES OF BEVERLY HILLS,
et al.,

Defendants,

and

HAYA ZILKA,

Defendant - Appellant.

No. 03-56237

D.C. No. CV-99-08197-TJH

MEMORANDUM*

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, Chief District Judge, Presiding

Submitted August 24, 2004**
San Francisco, California

Before: B. FLETCHER, HAWKINS, and BERZON, Circuit Judges.

We affirm the district court's entry of final judgment against appellant Haya Zilka. Although Zilka correctly asserts that, despite the default judgment, she is entitled to contest the sufficiency of the complaint, see Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392-93 (9th Cir. 1989), her arguments regarding the complaint are without merit.

We assume without deciding that Rule 9(b) applies where a default judgment is entered as a result of terminating sanctions, even where no Rule 9(b) objection was raised before the answer was filed. Plaintiffs alleged sufficient facts in the second amended complaint to satisfy the Rule 9(b) particularity requirement with respect to its allegations of fraud. See Cooper v. Pickett, 137 F.3d 616, 625 (9th Cir. 1997). Plaintiffs also sufficiently alleged that Zilka participated in the "operation or management" of the fraudulent enterprise to satisfy Reves v. Ernst & Young, 507

** The panel finds this case appropriate for submission without oral argument pursuant to Fed. R. App. P. 34(a)(2).

U.S. 170, 185 (1993). The complaint also contains sufficient allegations of the elements of common law fraud.

The complaint likewise contains sufficient allegations to support the violation of California Business and Professions Code § 17200, as this statute “works by borrowing violations of other laws and treating those transgressions, when committed as a business activity, as unlawful business practices.” Stevens v. Super. Ct., 89 Cal. Rptr. 370, 375 (Cal. Ct. App. 1999) (internal citations and quotations omitted). Hence, the allegations regarding violations of RICO and California criminal and civil statutes in turn support the § 17200 claim.

Although Zilka’s brief indicates she is also challenging whether the permanent injunction entered against her is overbroad and ambiguous, she failed to present any argument in support of this claim for relief. Accordingly, she has waived this argument. See Greenwood v. FAA, 28 F.3d 971, 977 (9th Cir. 1994); Fed. R. App. P. 28(a).

Zilka’s motion to augment the record on appeal is denied.

AFFIRMED.