UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUNPING MA,

Plaintiff,

v.

QINGMING FANG et al.,

Defendants.

Case No. 8:21-cv-00441-MCS-ADS

ORDER RE: MOTION FOR RELIEF FROM JUDGMENT (ECF NO. 70)

Respondent and Judgment Debtor Qingming Fang moves for relief from judgment under Federal Rule of Civil Procedure 60(b)(5). (Mot., ECF No. 70.) Respondent Lei Wang joins the motion. (Joinder, ECF No. 72.) Petitioner and Judgment Creditor Junping Ma filed a brief opposing the motion, (Opp'n, ECF No. 76), and Fang filed a reply, (Reply, ECF No. 83). The Court heard oral argument on June 23, 2025.

I. BACKGROUND

This is a postjudgment action for confirmation of a foreign arbitral award. As recounted in a prior order, the parties' original dispute concerns an unpaid 50 million yuan loan from Ma to Wang, Fang, and associated business organizations. (Order 1, ECF No. 52.) In the underlying foreign arbitral proceeding before the Xiamen

Arbitration Commission ("XMAC"), in which Fang, Wang, and their associated organizations did not participate, an arbitration panel awarded Ma the principal balance of the loan, interest thereon, and arbitration fees. (*Id.* at 1–2.) Ma brought this action to confirm the award, and Fang and Wang resisted confirmation, arguing they had insufficient notice of the arbitral proceeding. (*Id.*) The Court refused to recognize and enforce the award with respect to Wang but rejected Fang's arguments. (*Id.* at 8.)

The Court entered judgment confirming the award against Fang in 2022. (J., ECF No. 54.) Shortly thereafter, Fang provided notice that he initiated bankruptcy proceedings. (Notice, ECF No. 59.) Three years later, Ma's counsel provided notice that the bankruptcy court lifted the automatic bankruptcy stay pursuant to 11 U.S.C. 362(d)(1) "solely for the limited purpose for the federal District Court to determine whether the amount of the judgment . . . should be modified pursuant to Federal Rule of Civil Procedure 60(b)(5) and if so the amount of that judgment." (Wu Decl. Ex. 1, ECF No. 61.) This motion followed.

II. LEGAL STANDARD

Relief under Federal Rule of Civil Procedure 60(b) "is an extraordinary remedy and is granted only in exceptional circumstances." *Karraker v. Rent-A-Center, Inc.*, 411 F.3d 831, 837 (7th Cir. 2005) (internal quotation marks omitted). Under Rule 60(b), "the court may relieve a party or its legal representative from a final judgment, order, or proceeding" on the basis that "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," among other reasons not relevant here.

III. DISCUSSION

Fang asks the Court to vacate the judgment based on evidence he offers that tends to show he in fact paid off Ma's loan. (Mot. 2–4, 13–16.) Fang did not present this evidence to XMAC in the arbitral proceeding or to the Court before entry of judgment

confirming the award. Nor did he petition XMAC or a competent authority in China for relief from the arbitral award. At the hearing, Fang's counsel represented that the statute of limitations to challenge the award before the relevant authorities in the primary jurisdiction lapsed. In other words, Fang asks the Court to grant the exceptional remedy of relief from a final judgment by making factual findings regarding his repayment of the loan, which would undermine the XMAC decision that resolved that dispute and absolve Fang of his failure to timely seek relief from an authority in the primary jurisdiction. The Court will not exercise its discretion to do so.

The parties have not identified any precedents in which a district court has used Rule 60(b) to offset, modify, or vacate a judgment confirming a foreign arbitral award where the arbitral body in the primary jurisdiction has not set aside the award. Several circuit courts have recognized that Rule 60(b)(5) is an appropriate vehicle "to vacate a judgment enforcing an arbitral award *that has since been annulled in the primary jurisdiction*." *Thao-Lao Lignite (Thai.) Co. v. Gov't of Lao People's Democratic Republic*, 864 F.3d 172, 176 (2d Cir. 2017) (emphasis added); *see also Compañía De Inversiones Mercantiles S.A. v. Grupo Cementos De Chihuahua S.A.B. De C.V.*, 58 F.4th 429, 446–49 (10th Cir. 2023) (reviewing the few circuit decisions that "have addressed whether a U.S. court may confirm an arbitral award *that a primary jurisdiction has annulled*" (emphasis added)). So limiting the power of a federal court to depart from the award of a foreign arbitral body makes sense under the framework of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517 ("New York Convention"), and its implementing statutes, 9 U.S.C. §§ 201–08. The New York Convention vests the power to set aside or suspend an award in "a competent authority of the country in which, or under the law of which, that award was made." New York Convention art. V, § 1(e). Conversely, the authority where recognition and enforcement of the award is sought—here, the district court—may refuse to uphold the award only upon proof that the authority in the primary jurisdiction set aside the award (among other grounds for refusal not relevant here). *Id.*

art. V, § 1; *see* 9 U.S.C. § 207. In other words, a federal court has no authority to second-guess the merits of the arbitral award in the first instance; it can refuse confirmation only upon *proof* that an authority in the primary jurisdiction revisited the award.

Fang relies heavily on an Eleventh Circuit decision that affirmed Rule 60(b)(5) relief from a confirmed arbitral award, *AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc.*, 579 F.3d 1268 (11th Cir. 2009). There, the judgment debtor had stipulated in a domestic arbitration proceeding that it had not paid the judgment creditor taxes in 2002. 579 F.3d at 1270. Its position was mistaken; it had paid some 2002 taxes directly to the tax authority. *Id.* The district court confirmed the arbitral award but granted Rule 60(b)(5) relief to offset the judgment by the amount remitted to the tax authority. *Id.* A divided panel affirmed, reasoning that 9 U.S.C. § 13 "provides that a judgment which has confirmed an award is to be treated no better or worse than any other civil judgment," so the district court did not abuse its discretion by extending Rule 60(b)(5) precedents to offset the award after confirmation. *Id.* at 1273–74.

A Second Circuit panel extended *AIG Baker*'s reasoning to hold that Rule 60(b) is an appropriate instrument for relief from a judgment upon a foreign arbitral award, as 9 U.S.C. § 208 applies 9 U.S.C. § 13 to judgments entered under the New York Convention to the extent § 13 is not in conflict with the Convention or its implementing statutes. *Thai-Lao Lignite*, 864 F.3d 185–86. The panel reasoned that "Section 13 of the FAA and Article III of the Convention tend to reinforce each other," *id.* at 186, and that Article V allows courts to refuse to recognize an award set aside by an authority in the primary jurisdiction, *id.* at 183–84. The panel did not confront the issue presented here, where a judgment debtor asks for Rule 60(b) relief from an award not set aside in the primary jurisdiction, a request that stands in tension with Article V. The Court questions whether § 13 is applicable in this scenario given the apparent conflict with Article V, but it stops short of determining that Rule 60(b)(5) relief is categorically unavailable.

Instead, the Court simply declines to exercise its discretion. The Court is under no obligation to follow the Eleventh Circuit's decision in *AIG Baker*, which in any event

does not teach whether the district court would have abused its discretion by *denying* Rule 60(b) relief. There are two strong reasons not to provide relief here.

First and foremost is the concern for international comity that was simply not present in *AIG Baker*, where the underlying dispute was arbitrated domestically. "The goal of the [New York] Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974); *see also Thai-Lao Lignite*, 864 F.3d at 186 (recognizing "the prudential concern for international comity" as a factor to consider with respect to a Rule 60(b) motion for relief from a judgment entered on a foreign arbitral award). Crediting Fang's arguments to disturb the judgment confirming the award would require the Court to opine on the merits of the dispute ventilated in the underlying foreign arbitration. Acknowledging that the XMAC proceeding resolved without Fang or Wang's participation, the Court hesitates to substitute its judgment on the merits of the parties' dispute for the undisturbed final judgment of the foreign arbitral authority. Further, as counsel admitted at the hearing, Fang let his opportunity to challenge the award in the primary jurisdiction lapse. Allowing him to circumvent the procedural rules of the primary jurisdiction by invoking an extraordinary procedural mechanism in the secondary jurisdiction would disrespect the primary jurisdiction's rules, derogate international comity, and be imprudent.

Second, prudential considerations caution against adjudicating the dispute on the merits in federal court. The parties offer conflicting facts and arguments on, among other issues, the critical question of whether Fang's payments to nonparty Muxing Huang satisfied the payment obligations under Ma's loan. (Mot. 1–4, 13–16; Opp'n 1–2, 12–14.) Fang proposes that the Court hold an evidentiary hearing to resolve the dispute, which would involve compelling Ma and Huang to appear personally to testify.

(Mot. 16.) But Fang's proposal leaves uncertain the substantive and procedural mechanics that might be used to resolve the parties' factual disputes in federal court. What is the burden of proof?[1] Does federal, state, or foreign procedural and substantive law govern the evidentiary proceeding and the analysis? Are the parties entitled to have a jury decide the facts? Are the parties obliged to arbitrate their factual disputes before a foreign or domestic arbitral body? Must the Court accept the truth of factual determinations by XMAC? How could the Court compel nonparty Huang to appear for an evidentiary hearing?[2] As persuasively stated in the *AIG Baker* dissent, "[t]he fact that [Fang's] evidence is not practically conclusive" indicates relief under Rule 60(b) is inappropriate. 579 F.3d at 1278 (Kravitch, J., concurring in part and dissenting in part) (internal quotation marks omitted) (collecting circuit court cases).

For these reasons, the Court declines to exercise its discretion to revisit the judgment. The Court does not reach Ma's other arguments for denying the motion.

IV. CONCLUSION

The motion is denied.

IT IS SO ORDERED.

Dated: June 24, 2025

MARK C. SCARSI
UNITED STATES DISTRICT JUDGE

[1] At the hearing, Fang's counsel proffered that the applicable standard is preponderance of the evidence. No case he cites in his brief for this proposition is binding or dealt with a motion for relief from a domestic or foreign arbitral award. (Mot. 11.) The sole published circuit court case he offers discussed the standard for modification of a consent decree. *DNC v. RNC*, 673 F.3d 192, 202 (3d Cir. 2012).

[2] At the hearing, Fang's counsel argued that Huang might be compelled to testify because he initiated his own case for confirmation of a foreign arbitral award in this district. That does not necessarily place him within the scope of the Court's subpoena power in this proceeding. *See* Fed. R. Civ. P. 45(c)(1).