UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARJORIE PARISE and ROBERT PARISE, Plaintiffs, v. DANIEL VAN PELT, *et al.*, Defendants.	Civil Action No. 3:17-cv-13434-BRM-DEA **ORDER**

THIS MATTER is opened to the Court by Plaintiffs Marjorie and Robert Parise's ("Plaintiffs") Motion for Relief pursuant to Federal Rule of Civil Procedure 60(b)(1) (ECF No. 278), following this Court's November 20 and November 23, 2018 Orders granting each Defendants' Motion to Dismiss the Complaint with prejudice. (ECF Nos. 230-236, 246-251, 254-262, 264-266, 268, 271).

"Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his [or her] case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence," *Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005), as well as "inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). "The remedy provided by Rule 60(b) is extraordinary, and special circumstances must justify grating relief under it." *Jones v. Citigroup, Inc.*, No. 14-6547, 2015 WL 3385938, at *3 (D.N.J. May 26, 2015) (quoting *Moolenaar v. Gov't of the Virgin Islands*, 822 F.2d 1342, 1346 (3d Cir. 1987)). A Rule 60(b) motion "may not be used as a substitute for appeal, and . . . legal error, without more cannot justify granting a Rule 60(b) motion." *Holland v. Holt*, 409

F. App'x 494, 497 (3d Cir. 2010) (quoting *Smith v. Evans*, 853 F.2d 155, 158 (3d Cir. 1988)). A motion under Rule 60(b) may not be granted where the moving party could have raised the same legal arguments by means of a direct appeal. *Id.*

The Court has reviewed the submissions[1] filed in connection with Plaintiffs' Motion and enters its decision without oral argument pursuant to Federal Rule of Civil Procedure 78(b).

IT APPEARING THAT:

1. Plaintiffs argue their Motion to Reopen should be granted and the various orders of dismissal be vacated contending (1) *res judicata*, collateral estoppel, the *Rooker-Feldman* Doctrine, the *Younger* Abstention Doctrine, and the Entire Controversy Doctrine do not apply, (2) the Continuing Violation Doctrine tolls the statute of limitations, and (3) Plaintiffs are entitled to discovery (ECF No. 278 at 5-11); and
2. Plaintiffs do not meet the standard for applying Rule 60(b) as they do not allege fraud, mistake, or newly discovered evidence, but merely raise arguments that they could have raised on a direct appeal; and
3. Plaintiffs merely recite arguments already rejected by this Court; and
4. Plaintiffs' Complaint was dismissed for failure to state a claim with respect to the four

[1] On December 18, 2018, Plaintiffs filed a Motion to Reopen this matter with an accompanying memorandum of law. (ECF No. 278.) Several Defendants filed briefs of letters in opposition to Plaintiffs' Motion to Reopen: Defendant Rubin (ECF No. 280), Defendant Hartman (ECF No. 281), Defendant Shackleton & Hazeltine (ECF No. 283), Defendant Adams (ECF No. 284), Defendant Bucci (ECF No. 285), Defendant Sloanes (ECF No. 286), Defendants Howard S. Teitelbaum, LLC and McCarthy (ECF No. 287), Defendant T&M Associates (ECF No. 288), Defendant Van Pelt (ECF No. 289), Defendant Little Egg Harbor Township (ECF No. 290), Defendant Rue (ECF No. 291), Defendant Goodstadt (ECF No. 292), Defendant Shore Community Bank (ECF No. 293), Defendant Gannon (ECF No. 294), Defendant McKenna (ECF No. 295), Defendant DiPierro (ECF No. 296), Defendant Avedissian (ECF No. 297), Defendant Benardo (ECF No. 298), Defendant Szaferman Lakind (ECF No. 299), and Defendant Katz & Dougherty (ECF No. 300).

causes of action asserted – RICO violations, tortious interference, malicious abuse of process, and unjust enrichment – and not on the grounds of *res judicata*, collateral estoppel, the *Rooker-Feldman* Doctrine, the *Younger* Abstention Doctrine, or the Entire Controversy Doctrine; and

5. Nevertheless, *res judicata*, collateral estoppel, the *Rooker-Feldman* Doctrine, the *Younger* Abstention Doctrine, and the Entire Controversy Doctrine apply to bar the claims against certain Defendants; and
6. The Continuing Violation Doctrine does not apply to toll the applicable statute of limitations as Plaintiffs have not alleged a persistent, ongoing pattern of illicit conduct taking place and continuing within the charge filing period, *see Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002); and
7. For the same reasons that the Continuing Violation Doctrine does not apply, no other equitable tolling of the applicable statute of limitations is warranted; and
8. Plaintiffs have identified no grounds upon which the discovery rule, or any rule in equity allowing for discovery on their claims, should be applied in this situation;

Accordingly, for the reasons set forth above and for good cause appearing,

IT IS on this 25th day of January 2019,

ORDERED that Plaintiffs' Motion for Relief (ECF No. 278) from this Court's Orders of Dismissal of November 20 and 23, 2018 is **DENIED**.

/s/ Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE