

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 13 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FLETCHER H. HYLER; SHERYL ROOT
HYLER,

Plaintiffs - Appellants,

v.

INVESTMENT GRADE LOANS, INC.;
LINCOLN TRUST COMPANY FBO;
DOUG PICKERING; CHERN S. LIN;
FELICIA LIN; JANICE TEMPEY; ROY
S. WOLF; THOMAS C. O'CONNELL,
Jr.; JANICE K. O'GRADY; PENSICO
TRUST COMPANY AS CUSTODIAN
FBO JOHN A. SNYDER IRA; PENSICO
TRUST COMPANY AS CUSTODIAN
FBO PHIL AHLFELDT IRA; JOHN
STEVENS,

Defendants - Appellees.

No. 08-17260

D.C. No. 3:07-cv-03180-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Argued and Submitted December 11, 2009
San Francisco, California

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Before: SCHROEDER and CALLAHAN, Circuit Judges, and LYNN, ** District Judge.

Fletcher Hyler and Sheryl Hyler appeal the denial of their Fed. R. Civ. P. 60(b) motion to set aside a judgment entered after they settled their claims against defendants Investment Grade Loans et al. brought under the Truth in Lending Act. 15 U.S.C. § 1601 *et seq.* They contend that information they received after the judgment showed that statements by defendants' counsel during the course of the litigation were false and that the judgment was therefore procured by fraud.

We review for abuse of discretion. *U.S. v. Asarco Inc.*, 430 F.3d 972, 978 (9th Cir. 2005). The district court did not abuse its discretion in denying the motion and in refusing to set aside the settlement. The statements amounted at worst to legal arguments about facts that may have been incorrect. As the district court noted, "fraud requires more," *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 621 (9th Cir. 2004), and nothing prevented the plaintiffs from pursuing rather than settling their claim.

We deny the defendants' request for sanctions; they have not properly invoked the provisions of any applicable rule.

AFFIRMED.

** The Honorable Barbara M. Lynn, U.S. District Judge for the Northern District of Texas, sitting by designation.