

NOV 08 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NASSIM BAYAT, an individual residing  
in the State of California; et al.,

Plaintiffs - Appellants,

v.

LYNN DALE BOGART, an individual  
residing in the State of California, et al.,

Defendants,

and

CB RICHARD ELLIS, INC., a Delaware  
corporation,

Defendant - Appellee.

No. 12-56388

D.C. No. 2:10-cv-07317-JFW-JC

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
John F. Walter, District Judge, Presiding

Argued and Submitted November 5, 2013  
Pasadena, California

Before: O'SCANNLAIN, GRABER, and BEA, Circuit Judges.

---

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

Plaintiffs are investors, and their decedents, who allegedly were duped into purchasing worthless bonds from Defendant Stefan Misiraca. The district court granted summary judgment to Defendant CB Richard Ellis ("CBRE") and denied Plaintiffs' motion under Federal Rule of Civil Procedure 60(b) to set aside the judgment. Reviewing for abuse of discretion the court's denial of the Rule 60(b) motion, Bateman v. U.S. Postal Serv., 231 F.3d 1220, 1223 (9th Cir. 2000), we affirm.

We need not decide whether the district court abused its discretion, because any error was harmless. See Fed. R. Civ. P. 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). Plaintiffs' sole request was to have time to depose Misiraca before responding to CBRE's motion for summary judgment. Plaintiffs now have deposed Misiraca, but they have not identified any triable issue of fact created by the deposition. On this record, there is insufficient evidence that Misiraca's alleged fraud was within the scope of his employment with CBRE to withstand summary judgment.

**AFFIRMED.**