

499 Fed.Appx. 655

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter

See Fed. Rule of Appellate Procedure 32.1

generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth

Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,

Ninth Circuit.

UNIVERSAL TRADING & INVESTMENT

CO., INC., Plaintiff–Appellant,

v.

Petro Mikolayevich KIRITCHENKO, aka Petro

Kirechenko, aka Petr Kirechenko, aka Peter

Kirichenko, aka Petr Kirichenko, aka Petr Petro

Mikolayev Kirichenko, aka Peter Kiritchenko,

aka Petro Kiritchenko, aka Petro Kyrchenko;

Izabella Kiritchenko, aka Izabella Kirichenko; Pavlo

Ivanovich Lazarenko, aka Paul Lazarenko, aka

Pavel Lazarenko; Tamara Petrovna Lazarenko, aka

Tamara Lazarenko; Bancross U.S. Holdings, Inc., a

California corporation; Xanadu Property Holdings,

LLC, a California limited liability company; **BRC**

Property Holdings, LLC, a California limited

liability company; **Dugsbery, Inc.**, a California

corporation; Ludmila Kiritchenko, aka Lyudmila

Kiritchenko; Alex Liverant; Michael Menko;

Bancross (Cayman) Ltd; **Bancross Ltd**, an Isle

of Man corporation; Eurofed Bank Limited,

erroneously sued as European Federal; ABS

Enterprises Ltd; Johnny E. Johnson; Selective

Assets Ltd, a British Virgin Islands corporation;

Orby International Ltd, a British Virgin Islands

corporation; **Torq Development Corporation**, a

California corporation; **Lady Lake Ltd**, an Antiqua

and Barbuda corporation; Nemuro Industrial Group

Ltd, an Antiqua and Barbuda corporation; **Fairmont**

Group, Ltd, an Antiqua and Barbuda corporation;

Firstar Securities Ltd, an Antiqua and Barbuda

corporation; Guardian Investment Group Ltd, an

Antiqua and Barbuda corporation; ABS Trading Inc.,

a California corporation, aka ABS Enterprises, Inc.,

DBA ABS Trading Co., Inc., Defendants–Appellees.

No. 10–17706.

Submitted Nov. 6, 2012. *

* The panel unanimously finds this case suitable for decision without oral argument. [Fed. R.App. P. 34\(a\)\(2\)](#).

Filed Nov. 20, 2012.

Attorneys and Law Firms

[George A. Lambert](#), Esquire, Law Office Lambert and Associates, Washington, DC, for Plaintiff–Appellant.

[Tracy M. Clements](#), Esquire, [Chad D. Finke](#), Esquire, [Michael David Lisi](#), [Stanley G. Roman](#), Esquire, [Garth Aaron Rosengren](#), [Thomas H. Sloan, Jr.](#), Esquire, Krieg, Keller, Sloan, Reilley & Roman, LLP, [Doron Weinberg](#), [Nina Wilder](#), Weinberg & Wilder, [Michael Lee](#), Law Offices of Michael G.W. Lee, [Garrick S. Lew](#), Esquire, Law Office of Garrick S. Lew, [Zuzana S. Ikels](#), Coblenz, Patch, Duffy & Bass, LLP, San Francisco, CA, [Daniel Horowitz](#), Esquire, Law Office of [Daniel Horowitz](#), Lafayette, CA, [Peter J. Drobac](#), Esquire, Mcdermott Will & Emery LLP, Menlo Park, CA, [Gordon Alan Greenberg](#), Esquire, Mcdermott Will & Emery, Los Angeles, CA, for Defendants–Appellees.

Appeal from the United States District Court for the Northern District of California, [Maxine M. Chesney](#), Senior District Judge, Presiding. D.C. No. 3:99–cv–03073–MMC.

Before: [FARRIS](#), [FERNANDEZ](#), and [BYBEE](#), Circuit Judges.

MEMORANDUM **

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

**1 Universal Trading & Investment Company (“UTICo”) appeals the district court's denial of its motion for relief from judgment¹ and the district court's

order that certain parties² could recover on UTICO's attachment bonds.³ We affirm.⁴

1 See Fed.R.Civ.P. 60(b).

2 Petro Kiritchenko, Ludmila Kiritchenko, Bancross U.S. Holdings, Inc., BRC Property Holdings, LLC, and Xanadu Property Holdings, LLC.

3 See Cal.Civ.Proc.Code § 490.020.

4 As shown in the caption, Petro Kiritchenko and a number of other persons and entities were named as Appellees in this matter. For convenience, we will refer to “Kiritchenko” in our decisions of the issues when what we say regarding the issues as to him applies to the other Appellees as well.

Initially, we note that the district court's previous decision (*Kiritchenko I*) on summary judgment was affirmed by us in *Universal Trading & Investment Co., Inc. v. Kiritchenko (Kiritchenko II)*, 346 Fed.Appx. 232 (9th Cir.2009). Our decision in *657 that case had two bases. As we stated: “The purported assignment of claims by Ukraine was a sham.... Even were it not, [UTICO] failed to prove the assignment was valid under Ukrainian law.” *Kiritchenko II*, 346 Fed.Appx. at 232.

UTICo fails to present an argument regarding the first ground in *Kiritchenko II*, even though Kiritchenko did raise the issue in the answering brief. Our decision in *Kiritchenko II* is the law of the case. See *Disimone v. Browner*, 121 F.3d 1262, 1266 (9th Cir.1997); see also *Gonzalez v. Arizona*, 677 F.3d 383, 389 n. 4 (9th Cir.2012) (en banc).

UTICo fares no better on the alternative ground. It sought relief from the judgment in *Kiritchenko I* on the basis that one of the decisions⁵ by the courts in the Ukraine, which the district court had previously referred to as offering further support for its decision in *Kiritchenko I*, had been set aside and the case was terminated upon a request by Lazarenko. We disagree. Neither the district court's decision in *Kiritchenko I*, nor ours in *Kiritchenko II*, depended upon the prior Ukrainian judgments,⁶ nor, under federal res judicata law,⁷ can it be said that the later Ukrainian decision was a consent decree,⁸ or a judgment on the merits.⁹

5 There were two decisions: one in favor of Petro Kiritchenko and one in favor of Lazarenko.

6 See Rule 60(b)(5); *Tomlin v. McDaniel*, 865 F.2d 209, 210–11 (9th Cir.1989), declared overruled on other grounds, *Phelps v. Alameida*, 569 F.3d 1120, 1132 (9th Cir.2009). The mere fact that a “prior case provides a precedent for the later one is not sufficient.” *Id.* at 211.

7 The parties rely on federal law; so shall we. On this record, foreign law is presumed to be the same as the law of the United States. See *MCA Inc. v. United States*, 685 F.2d 1099, 1103 n. 12 (9th Cir.1982); *United States v. Westinghouse Elec. Corp.*, 648 F.2d 642, 647 n. 1 (9th Cir.1981).

8 See *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 378, 112 S.Ct. 748, 757, 116 L.Ed.2d 867 (1992); *Gates v. Shinn*, 98 F.3d 463, 468 (9th Cir.1996).

9 See Fed.R.Civ.P. 41(a) (voluntary dismissal is without prejudice); *Cadkin v. Loose*, 569 F.3d 1142, 1150 (9th Cir.2009) (same); *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 501–06, 121 S.Ct. 1021, 1025–27, 149 L.Ed.2d 32 (2001) (claim preclusion); *Gospel Missions of Am. v. City of L.A.*, 328 F.3d 548, 555 (9th Cir.2003) (same); *Segal v. Am. Tel. & Tel. Co., Inc.*, 606 F.2d 842, 845 n. 2 (9th Cir.1979) (per curiam) (issue preclusion).

Furthermore, UTICo has not shown that some extraordinary circumstance¹⁰ requires relief here because it has neither demonstrated that it will suffer a manifest injustice¹¹ if relief is not granted, nor demonstrated that Kiritchenko somehow perpetrated a fraud on the court.¹² Nor has UTICo demonstrated that the judgment in *Kiritchenko I* (affirmed in *Kiritchenko II*), is void. See Rule 60(b)(4); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S.Ct. 1367, 1377, 176 L.Ed.2d 158 (2010); *Thomas, Head & Greisen Emps. Trust v. Buster*, 95 F.3d 1449, 1460 n. 17 (9th Cir.1996).

10 See Rule 60(b)(6).

11 See *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1103 (9th Cir.2006).

12 See *United States v. Estate of Stonehill*, 660 F.3d 415, 445 (9th Cir.2011); *Levander v. Prober (In re Levander)*, 180 F.3d 1114, 1119 (9th Cir.1999).

Thus, the district court did not err when it denied Rule 60(b) relief.¹³

13 We have not overlooked UTICo's assertion that the district court erred in not granting it discovery. However, because its briefs do not provide reasoned argument with citations to authorities, we deem the issue waived. *See* Fed. R.App. P. 28(a)(9); *United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir.2010); *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir.1994). In any event, UTICo has failed to show how that discovery would affect the salient issues in this case—the effect of the Ukraine court decision regarding Lazarenko.

*658 UTICo also asserts that the district court erred when it allowed recovery on the bonds that UTICo posted in order to attach assets of its opponents. We disagree. Under the law of California,¹⁴ the attachments were wrongful,¹⁵ and recovery on the bonds was proper.¹⁶

UTICo's assertion that a separate bond trial was required is otiose.¹⁷

14 *See* Fed.R.Civ.P. 64.

15 *See* Cal.Civ.Proc.Code § 490.010(b).

16 *See id.* § 490.020; *Mart, Inc. v. Nat'l Auto. & Cas. Co.*, 250 Cal.App.2d 772, 775–76, 58 Cal.Rptr. 877, 880 (1967).

17 *See* Cal.Civ.Proc.Code § 996.440.

AFFIRMED.

All Citations

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