IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LATICIA A. DAVIS PLAINTIFF

vs. Civil Action No. 2:96cv189-D-D

MAGNOLIA LADY, INC., d/b/a Lady
Luck Rhythm and Blues Casino-Hotel, Inc. DEFENDANT

MEMORANDUM OPINION

By memorandum opinion and order dated December 1
motion for summary judgment and closed this case. Davis
D (N.D. Miss. Dec. 16, 1997) (Memorandum Opnion and
this court, however, did not enter this court's order onto th
P. 79(a) until December 16, 1997. Also on December 16,
agreement whereby the plaintiff agreed to move to dismiss
receipt of $10,000.00. This court was not aware at any tin
judgment by the clerk that the parties contemplated or ente
there is no indication that the parties were aware of this co
after they had entered into a settlement agreement.

As a consequence of this court's prior opinion and ord
payment to the plaintiff pursuant to the terms of the settle
this court her motion for relief from judgment and to "appr
The defendant's position is that this court's memorandum
all of the plaintiff's claims. Therefore, the defendant cont
is voidable pursuant to well established contractual princip
parties. See, e.g., Mississippi State Highway Com'n v. Patt
(Miss. 1993); RESTATEMENT (SECOND) OF CONTRACTS, § 152.

> [G]ood faith is not the test. If the representation was f
> justified in relying upon it, then [that party] agreed to t
> therefore is not bound thereby.

Penn Mutual Insurance Co. v. Nunnery, 176 Miss. 197, 21
mistake of fact was that the plaintiff's claims were pending

was entered into by the parties.

This court does not find the argument persuasive, as it assumption – that the effective date of this court's Decemb it was signed. As expressly dictated by the Federal Rules this court are not effective until properly entered upon the P. 58 ("A judgment is effective only when . . . entered as p judgment in this matter dismissing the plaintiff's claims di the same day that the parties consummated the settlement a Plaintiff's Motion, p. 3 (" Sometime after 2:00 p.m. [on De communicated its acceptance of Plaintiff's counter-offer o court required to determine which came first on December Herculean.

Thankfully, this court need not decide that question, fo this court's opinion and order of December 15 and moot th of this court's final judgment of December 16, this court re See, e.g.,Winchester v. U.S. Atty. for Southern Dist. of Te appeal generally divests district court of jurisdiction); Trav 1404, 1407 n.3 (5th Cir.1994) (explaining nature of district court's continuing jurisdiction over its own orders encomp and therefore the undersigned may sever this Gordian knot court notes that the plaintiff is additionally entitled to relief 60(b) regardless of the particular timing of the settlement a

If the parties' settlement agreement preceded the entry then the plaintiff is entitled to relief pursuant to Fed. R. Civ relief from judgment on the grounds of mistake. It would b parties had not settled the claims at bar before entry of jud instance. The undersigned would most certainly prefer to b settlement negotiations in order to avoid situations such as

have reasonably expected the parties to have known about

the time they finalized settlement negotiations. In order to

parties must be able to rely upon the finality of settlement.

that had it been informed of the settlement agreement prior

undersigned would have directed the clerk of this court not

and order.

Should the settlement ultimately prove to have occurre

of this court, however, the undersigned believes that relief

Civ. P. 60(b)(6):

> Rule 60(b)(6) provides that a court may "relieve a part
> other reason justifying relief from the operation of the
> specific bases for granting relief from a final judgment
> that this clause's " 'any other reason' language refers to
> the five enumerated grounds on which a court may gra
> Servs. One Ltd. Partnership v. Peyton Place, Inc., 62 F.
> Although we frequently have recognized that "'Rule 60
> power to do justice in a particular case when relief is n
> e.g., id. (quoting Harrell v. DCS Equip. Leasing Corp.
> also narrowly circumscribed its availability, holding th
> only if extraordinary circumstances are present." Baile
> 160 (5th Cir.) (affirming order denying Rule 60(b)(6) r
> (citing Ackermann v. United States, 340 U.S. 193, 71 S
> *denied*, 498 U.S. 829, 111 S.Ct. 89, 112 L.Ed.2d 61 (1990
> 774; American Totalisator Co. v. Fair Grounds Corp.,

Batts v. Tow Motor Forklift Co., 66 F.3d 743, 746 (5th Cir.

Services One Ltd. Partnership v. Peyton Place, Inc., 62 F.3

Totalisator Co. v. Fair Grounds Corp., 3 F.3d 810, 815-16

By all accounts, the settlement agreement reached in th

entered into in good faith by both parties. The policy of th

See, e.g., Carson v. American Brands, Inc., 450 U.S. 79, 88

(1981) (noting Title VII incorporates strong preference for

discrimination claims); Bertram v. Freeport McMoran, Inc.

(acknowledging public policy in favor of encouraging settl

31 F.3d 224, 228 (5th Cir. 1994) ("[F]ederal labor policy has

between an employer and an employee."). Settlements are

and effort inherent in the progression of litigation, either be
correlation of the amount of a settlement offer to the cost c
consideration in settlement discussions. That this court mi
defendant is no indication that the settlement entered into v
involved not only before the undersigned, but in considerat
light of the unique character of the situation at bar, and in c
settlement of claims, the undersigned feels that relief from
justice and equity in this matter. This court is fully cogniza
60(b)(6), but this court believes that the situation at bar is n

As this court currently possesses jurisdiction over its ov
its prior order and opinion. Additionally, however, the unc
relief from judgment pursuant to the application of Federal
plaintiff's motion for relief from judgment shall be granted
entered opinion and order rendering final judgment in this c

A separate order in accordance with this opinion shall

This the _____ day of April 2001.

_____
United States District Judge

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MAGNOLIA LADY, INC., d/b/a Lady
Luck Rhythm and Blues Casino-Hotel, Inc. DEFENDANT

ORDER GRANTING MOTION FOR RELIEF FROM JUDGMENT,
VACATING PRIOR ORDER AND OPINION,
AND DISMISSING CAUSE BY REASON OF SETTLEMENT

Pursuant to a memorandum opinion issued this day, it i

) the motion of the plaintiff for relief from judgment

) this court's memorandum opinion and order dated
entered onto the official court docket by the clerk c
are hereby WITHDRAWN; the clerk of the court i
docket of this court that opinion and order;

) in light of the settlement agreement entered into by
this matter is hereby DISMISSED WITHOUT PRI
thirty-five (35) days from the date of this order to
settlement agreement previously entered into by th
defendant fail to do so, the plaintiff may return to t
appropriate; and

) as to the remainder of the relief requested by the p

SO ORDERED, this the _____ day of April 2001.

_____
United States District Judge