

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

August Term, 2019

(Argued: December 18, 2019 Decided: August 12, 2020)

Docket No. 18-3807-cv

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METZLER INVESTMENT GMBH, CONSTRUCTION LABORERS PENSION TRUST OF  
GREATER ST. LOUIS,  
*Plaintiffs-Appellants,*

SUSIE ONG, Individually and On Behalf of All Others Similarly Situated,  
*Plaintiff,*

v.

CHIPOTLE MEXICAN GRILL, INC., MONTGOMERY F. MORAN, JOHN R. HARTUNG, M.  
STEVEN ELLS,  
*Defendants-Appellees.*

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Before: POOLER, SACK, AND HALL, *Circuit Judges.*

The United States District Court for the Southern District of New York  
(Katherine Polk Failla, *Judge*) granted the defendants-appellees' motion pursuant  
to Federal Rule of Civil Procedure 12(b)(6) to dismiss with prejudice the  
plaintiffs-appellants' second amended complaint which alleged violations of the  
federal securities laws against the defendants-appellees, and entered judgment

for the defendants-appellees. The plaintiffs-appellants then brought a motion under Federal Rules of Civil Procedure 59(e) and 60(b) for relief from the judgment and for leave to file a third amended complaint. The district court denied the motion on the grounds that the plaintiffs-appellants were not entitled to relief under those rules and, in the alternative, that amendment would be futile. The plaintiffs-appellants appealed. We agree that the plaintiffs-appellants are not entitled to relief under Rules 59(e) and 60(b). The judgment of the district court is therefore

AFFIRMED.

DOUGLAS WILENS, Robbins Geller Rudman & Dowd LLP, Boca Raton, FL, *for Plaintiffs-Appellants.*

Samuel H. Rudman, David A. Rosenfeld, and Michael G. Capeci, *on the brief*, Robbins Geller Rudman & Dowd LLP, Melville, NY, *for Plaintiffs-Appellants.*

James M. Hughes, and Christopher F. Moriarty, *on the brief*, Motley Rice LLC, Mount Pleasant, SC, *for Plaintiffs-Appellants.*

William H. Narwold, and Mathew P. Jasinski, *on the brief*, Motley Rice LLC, Hartford, CT, *for Plaintiffs-Appellants.*

Louis M. Bogard, *on the brief*, Motley Rice LLC, Washington, DC, *for Plaintiffs-Appellants.*

ANDREW B. CLUBOK (Susan E. Engel, Matthew J. Peters, and Jessica L. Saba, *on the brief*), Latham & Watkins LLP, Washington, DC, *for Defendants-Appellees.*

Kendra N. Beckwith, *on the brief*, Messner Reeves LLP, Denver, CO, *for Defendants-Appellees.*

SACK, *Circuit Judge:*

This appeal concerns an amended class-action complaint filed by the plaintiffs-appellants, Metzler Asset Management GmbH and Construction Laborers Pension Trust of Greater St. Louis, in the United States District Court for the Southern District of New York alleging violations of the federal securities laws by the defendants-appellees, Chipotle Mexican Grill, Inc., M. Steven Ells, John R. Hartung, and Montgomery F. Moran. On the defendants-appellees' motion, the district court (Katherine Polk Failla, *Judge*) dismissed the amended complaint without prejudice for failure to state a claim.

The plaintiffs-appellants filed a second amended complaint and the defendants-appellees again moved to dismiss. In their opposition papers, the plaintiffs-appellants requested leave to file a third amended complaint if the court were to grant the defendants-appellees' motion. After the close of briefing, the court granted the defendants-appellees' motion to dismiss and denied the

plaintiffs-appellants' request for permission to file a third amended complaint on the grounds that they had failed to cure deficiencies by amendments previously allowed, amendment would prejudice the defendants, and amendment would be futile. Accordingly, the district court dismissed the second amended complaint with prejudice and entered judgment for the defendants-appellees.

The plaintiffs-appellants then moved under Federal Rules of Civil Procedure 59(e) and 60(b) for relief from the judgment and for leave to file a third amended complaint. The court denied the motion on the grounds that the plaintiffs-appellants were not entitled to relief under Rules 59(e) and 60(b) and, in the alternative, that amendment would be futile. The plaintiffs-appellants challenge this ruling on appeal. They argue that the district court analyzed their motion incorrectly under Rules 59(e) and 60(b) and erred in concluding that amendment would be futile. For the reasons set forth below, we conclude that the district court correctly analyzed the plaintiffs-appellants' motion under Rules 59(e) and 60(b) and acted well within its discretion in denying that motion. As a result, we do not reach the district court's alternative holding or the plaintiffs-appellants' challenges to it. We therefore affirm the judgment of the district court.

## BACKGROUND

### I. Factual Background

The following statement of facts is drawn from the allegations in the plaintiffs-appellants' proposed third amended complaint.

#### 1. *The Parties*

The plaintiffs-appellants in this class action are Metzler Asset Management GmbH and Construction Laborers Pension Trust of Greater St. Louis ("Metzler" and the "Trust" respectively; together the "plaintiffs" or the "plaintiffs-appellants"). They purchased shares of Chipotle Mexican Grill, Inc. ("Chipotle") common stock between February 5, 2015 and February 2, 2016 (the "class period").

The defendants-appellees are Chipotle, M. Steven Eells ("Eells"), Montgomery F. Moran ("Moran"), and John R. Hartung ("Hartung"). Chipotle is a fast-food restaurant chain. It was founded by defendant Eells in 1993 and by December 31, 2015 had grown to operate over 1,900 restaurants.

During the class period, which originally ran from February 5, 2015, through February 2, 2016, before it was shortened to October 21, 2015, through February 2, 2016, defendants Eells and Moran served as co-chief executive officers

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