IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

BENJAMIN FISH

Plaintiff,

v. No. 2:17-cv-02093-SHM-tmp

STONE, HIGGS & DREXLER, P.C.

Defendant.

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT

COMES NOW Defendant Stone, Higgs & Drexler GP, incorrectly identified as Stone, Higgs & Drexler, P.C. ("Defendant"), by and though counsel of record, GLASSMAN, WYATT, TUTTLE & COX, P.C., and files this Response in Opposition to Plaintiff's Motion to Alter or Amend Judgment (ECF No. 29.) as follows:

INTRODUCTION

On December 29, 2017 this Court entered an Order granting Defendant's Motion for Summary Judgment, denying Plaintiff's Motion for Partial Summary Judgment, and denying Defendant's Rule 11 Motion ("Court's Order"). (ECF No. 27.) This Court entered Judgment on the Court's Order. (ECF No. 28.) On January 25, 2018, Plaintiff filed a Motion to Alter or Amend Judgment ("Plaintiff's Motion"). (ECF No. 29.) To the extent necessary for resolution of Plaintiff's Motion, Defendant rests on the arguments set forth in its Motion for Summary Judgment and accompanying Memorandum of Law

and Exhibits thereto, which are incorporated herein by reference. For the following reasons, Plaintiff's Motion must be denied.

LAW AND ARGUMENT

I. Fed. R. Civ. P. 59(e).

"In practice, because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied." Day v. The Krystal Co., No. 1:05-CV-300, 2007 U.S. Dist. LEXIS 24265, *5 (E.D. Tenn. Mar. 15, 2007) (citing 11 Charles Alan Wright, et al., Federal Practice and Procedure Civil 2d § 2810.1); e.g., Capital Confirmation, Inc. v. Auditconfirmations, LLC, No. 3:09-0412, 2009 U.S. Dist. LEXIS 101850, at *7 (M.D. Tenn. Nov. 2, 2009) ("In light of the 'narrow purposes' of the motion and judicial system's interests in the finality of judgments and in the conservation of judicial resources, Rule 59(e) motions 'typically are denied.'"); Ruscavage v. Zuratt, 831 F. Supp. 417, 418 (E.D. Pa. 1993) (noting Rule 59(e) motions "should be granted sparingly because of the interests in finality and conservation of judicial resources.").

"The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment. A motion under Rule 59(e) is not an opportunity to re-argue a case." Goodbar v. Technicolor Videocassette of Mich., No. 09-2553, 2011 U.S. Dist. LEXIS 46929, at *3 (W.D. Tenn. Apr. 29, 2011). "The Rule 59(e) vehicle does not exist to provide the movant with a second opportunity to make its previous argument, that is, a Rule 59(e) motion is not an opportunity to re-argue a case. Moreover, the movant should not use a Rule 59(e) motion to raise or make arguments which could, and should, have been made before judgment issued." Capital Confirmation, Inc. v. Auditconfirmations, LLC, No.

3:09-0412, 2009 U.S. Dist. LEXIS 101850, at *7 (M.D. Tenn. Nov. 2, 2009) (internal citations and quotations omitted).

Under these guidelines, "[a] court may grant a Rule 59(e) motion if there is '(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.'" Adkins v. Regions Morgan Keegan Select High Income Fund, Inc., No. 13-2843, 2016 U.S. Dist. LEXIS 92556, at *9 (W.D. Tenn. Mar. 9, 2016) (citing Intera Corp. v. Henderson, 428 F.3d 605, 620 (6th Cir. 2005)).

II. Plaintiff has failed to demonstrate "manifest injustice."

Plaintiff's motion does not assert that reasons (1), (2), or (3), set forth above, for granting a Rule 59(e) motion apply. Plaintiff asserts this Court's Order is "manifestly unjust" because, according to Plaintiff's analysis of the Order, it is "internally inconsistent." (ECF No. 29, at 2, 5.) In arriving at this conclusion, Plaintiff relies on the same arguments this Court rejected during the briefing of the Parties' respective motions for summary judgment. As demonstrated above, a Rule 59(e) motion "is not an opportunity to re-argue a case." Goodbar, 2011 U.S. Dist. LEXIS 46929, at *3. On this basis alone, Plaintiff's Motion should be denied.

Nonetheless, Plaintiff has failed to demonstrate manifest injustice such that this Court should grant Plaintiff's Motion. This Court recently stated, "[a]lthough the 'manifest injustice' ground for a Rule 59(e) motion appears to be a catch-all provision, it is not meant to allow a disappointed litigant to attempt to persuade the Court to change its mind. Instead, whether manifest injustice would result from denying a Rule 59(e) motion is, by definition, a fact-specific analysis that falls squarely within the discretionary

authority of the Court. In exercising this discretion, the Court should weigh the importance of bringing litigation to a firm conclusion and the need to render fair and just rulings." Harris v. Perry, No. 2:12-cv-02668-STA-dkv, 2016 U.S. Dist. LEXIS 131942, at *8 (W.D. Tenn. Sep. 27, 2016).

This Court has further stated:

> "As applied to Rule 59(e), no general definition of manifest injustice has ever been developed; courts instead look at the matter on a case-by-case basis. Torre v. Federated Mutual Ins. Co., 906 F. Supp. 616, 619 (D. Kan. 1995) (unsubstantiated assertion could not lead to a finding of manifest injustice); Attorney Registration & Disciplinary Com. of Supreme Court v. Betts, 157 B.R. 631 (Bankr. N.D. Ill. 1993) (mere disagreement with court's findings does not rise to level of manifest injustice). What is clear from case law, and from a natural reading of the term itself, is that a showing of manifest injustice requires that there exist a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy." In re Bunting Bearings Corp., 321 B.R. 420, 423 (Bankr. N.D. Ohio 2004). As found in *Black's Law Dictionary*, a manifest injustice is defined as "'[a]n error in the trial court that is direct, obvious and observable such as a defendant's guilty plea that is involuntary . . . .'" In re Looper, 2007 Bankr. LEXIS 2071, 2007 WL 1725251, at *2 (Bankr. E.D. Tenn., June 12, 2007) (quoting *Black's Law Dictionary* 974 (7th ed. 1999)).

McDaniel v. Am. Gen. Fin. Servs., No. 04-2667, 2007 U.S. Dist. LEXIS 52217, at *6-7 (W.D. Tenn. July 17, 2007); Adkins v. Regions Morgan Keegan Select High Income Fund, Inc., No. 13-2843, 2016 U.S. Dist. LEXIS 92556, *10-11 (W.D. Tenn. Mar. 9, 2016) ("Courts in this circuit have interpreted manifest injustice as a showing that there exists a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy.").

Plaintiff's Motion fails to articulate "a fundamental flaw" in this Court's Order that would lead to an "inequitable" result and a result "not in line with applicable policy." Instead, Plaintiff attempts to use this Court's reasoning against itself in a thin attempt at

having this Court reverse its Order, which reads as nothing more than "a disappointed litigant to attempt to persuade the Court to change its mind." Harris, 2016 U.S. Dist. LEXIS 131942, at *8. Because Plaintiff does not rely on reasons (1), (2), or (3) for a court to grant a Rule 59(e) motion, Plaintiff is forced "to make its previous argument" that this Court already rejected. See Capital Confirmation, Inc., 2009 U.S. Dist. LEXIS 101850, at *7. Finally, this Court's Order spends pages discussing the applicable policy of the FDCPA, and in fact, uses the policy to reject Plaintiff's arguments. (ECF No. 27, at 23-25.) In short, Plaintiff's motion fails to demonstrate a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy. For these reasons, Plaintiff's Motion must be denied.

III. CONCLUSION

For the above reasons, this Court must deny Plaintiff's Motion to Alter or Amend Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2018, a copy of the foregoing was sent via the Court's ECF system, U.S. Mail, Facsimile and/or electronic mail to the following:

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