

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

BETTY COLAR

VERSUS

WINN-DIXIE MONTGOMERY, INC.

CIVIL ACTION

NO. 09-755-JJB

RULING

This matter is before the court on plaintiff Betty Colar's motion (doc. 18) for new trial. Plaintiff subsequently filed a memorandum (doc. 20) in support of the motion, following a request from the court to address the issue of timeliness. Defendant has filed an opposition (doc. 21).

Defendant correctly asserts in its opposition that plaintiff's motion for new trial was untimely under Rule 59 of the Federal Rules of Civil Procedure. In plaintiff's supporting memorandum, she asserts that her motion for new trial should be considered as a Rule 60(b) Motion for Relief from a Judgment or Order.

Rule 60(b) allows a court to relieve a party from a final judgment or order for certain enumerated reasons, "or any other reason that justifies relief." Plaintiff contends that she is basing her motion on Rule 60(b)(3) for fraud, misrepresentation or misconduct by the opposing party. However, plaintiff has not shown fraud, misrepresentation or misconduct by the defendant. "A rule 60(b)(3) assertion must be proven by clear and convincing evidence and the conduct complained of must be such as to prevent the losing party from fully and

fairly presenting its case or defense. *Diaz v. Methodist Hosp.*, 46 F.3d 492, 495 (5th Cir. 1995). Plaintiff's conclusory allegations in her memorandum are insufficient. Plaintiff has not met her burden of proving that defendant engaged in fraud, misrepresentation, or misconduct. Plaintiff has also not established any other basis for the court to grant a Rule 60 motion.

Accordingly, plaintiff's motion for new trial (doc. 18) is HEREBY DENIED. Plaintiff's request for relief from judgment or order under Rule 60(b) is likewise DENIED.

Signed in Baton Rouge, Louisiana, on March 30, 2011.



**JUDGE JAMES J. BRADY
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**