

United States District Court
Southern District of Texas

ENTERED

June 09, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JOE SHIELDS,

Plaintiff,

VS.

ULTIMATE VACATION GROUP LLC
D/B/A ROYAL BAHAMAS CRUISE
LINE, *et al*,

Defendants.

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CIVIL ACTION NO. 3:14-CV-285

ORDER

On November 11, 2015, Plaintiff Joe Shields, represented by counsel, filed a “Stipulation of Dismissal with Prejudice. Dkt. 114. The next day, he filed an “Agreed Proposed Order Granting Dismissal with Prejudice.” Dkt. 115. This Court entered an order dismissing the case with prejudice on November 23, 2015. Dkt. 116.

On May 5, 2017, Shields, this time appearing *pro se*, filed a letter that this Court construes as a motion to reopen the case and reconsider the dismissal. Dkt. 117. Defendants have duly responded to that motion. Dkt. 117.

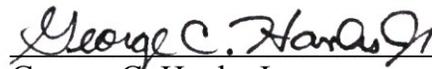
Shield’s request to vacate the dismissal and reopen his case may be liberally construed as seeking relief under Federal Rule of Civil Procedure 60(b). *See Smith v. Texas Dep't of Criminal Justice, Institutional Div.*, 79 Fed. App’x. 61, 62 (5th Cir. 2003). Rule 60(b) provides that upon such a motion, a court may relieve a party from a final judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could

not have been discovered earlier; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or it is based on an earlier judgment that has been reversed or vacated, or that applying the judgment prospectively is no longer equitable; or (6) any other reason that justifies relief. FED. R. CIV. PROC. 60(b)(1)-(6).

Here, Shields alleges fraud by Defendants and their counsel, and newly discovered evidence. However, his motion is untimely. Rule 60(c)(1) requires such motions to be brought within one year after the entry of the judgment or order or the date of the proceeding. FED. R. CIV. PROC. 60(c)(1); *Smith v. Kukua*, 487 Fed. App'x. 145, 146 (5th Cir. 2012).

After due consideration, the Court finds that Shield's motion, Dkt. 117, should be DENIED.

SIGNED at Galveston, Texas, this 9th day of June, 2017.



George C. Hanks Jr.
United States District Judge