

United States District Court
for the
Southern District of Florida

Joseph Celestine, Plaintiff,)
)
v.) Civil Action No. 17-20237-Civ-Scola
)
Capital One, and others,)
Defendants.)

Order Denying Motion To Amend Judgment

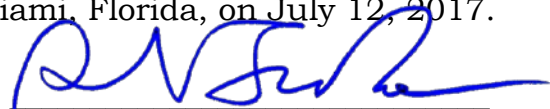
This cause is before the Court on the Plaintiff Joseph Celestine's motion to amend judgment pursuant to Rules 52(b) and 59(e) of the Federal Rules of Civil Procedure. (Mot. at 1, ECF No. 75.) Celestine appears to seek relief from the Court's order granting the Defendants' motion to dismiss (Order, ECF No. 69). The order provided Celestine an opportunity to amend Counts 1, 2, and 4, and dismissed with prejudice Count 3. (*Id.* at 6.)

First and foremost, the Court notes that its order on the motion to dismiss is not a final appealable order. *Bell v. Florida Highway Patrol*, 589 F. App'x 473, 474 (11th Cir. 2014) ("[A]n order dismissing a complaint is not final and appealable unless the order dismisses the entire action or holds that the complaint could not be saved by amendment." (quoting *Briehler v. City of Miami*, 926 F.2d 1001, 1002 (11th Cir. 1991))). Thus, the order does not constitute a judgment under the Rules. Fed. R. Civ. P. 54(a) ("Judgment' as used in these rules includes a decree and any order from which an appeal lies."). As such, Celestine cannot at this time seek relief under Rule 59(e), which expressly pertains to altering a judgment.

Next, the Court notes that Rule 52(b) simply does not apply to its order on the motion to dismiss. That Rule allows a party to move the court to amend any findings of fact within twenty-eight days after entry of judgment. However, Rule 52(a)(3) notes that the "court is not required to state findings or conclusions when ruling on a motion under Rule 12" Here, the Court ruled on a motion to dismiss filed under Rule 12(b)(6) and made no findings of fact pursuant to Rule 52(a).

Accordingly, the Court **denies** Celestine's motion to amend judgment (**ECF No. 85**).

Done and Ordered in chambers, at Miami, Florida, on July 12, 2017.



Robert N. Scola, Jr.
United States District Judge