



on the ground, inter alia, that it failed to state a claim upon which relief may be granted. At oral argument on the motion on October 23, 2002, the plaintiffs did not contest the defendant's arguments and in fact requested that the case be dismissed on the merits. A judgment granting the Motion to Dismiss Amended Complaint was entered that day.

In the present motion, filed exactly one year later on October 23, 2003, the plaintiffs allege that at some unspecified date following the judgment, they found a letter from Equifax dated May 9, 2000, suggesting that AmSouth had been contacted concerning the erroneous credit report. They agree that they received the letter before the judgment, but had no recollection of it and had not supplied it to their counsel. They claim that the letter was found "amongst federal black lung papers in their possession." (Suppl. to Mot. for Relief from Order ¶ 2.) The plaintiffs assert that when they filed their Amended Complaint, they were unaware that AmSouth had been contacted by Equifax and had been advised by AmSouth ("although not in a pleading") that it had not been so contacted. (Mot. for Relief from Order ¶ 4.)<sup>1</sup>

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<sup>1</sup> In its Motion to Dismiss the Amended Complaint, the defendant argued that the plaintiffs had stated no claim under the Fair Credit Reporting Act because they did not allege that AmSouth had received notice from the consumer reporting agency (Equifax) of a dispute over the accuracy of information AmSouth had furnished. (Mem. Supp. of Mot. to Dismiss Am. Compl. 7-8.) While the plaintiffs do not explain the significance of the letter in question in their present motion, presumably they contend that it factually supports a claim that AmSouth did receive such notice, although the letter in question does not expressly so state.

Because of the strong policy reasons in favor of finality in litigation, Rule 60(b) relief is only available in extraordinary circumstances. *See Schwieger v. Farm Bureau Ins. Co. of Neb.*, 207 F.3d 480, 487 (8th Cir.). It is not a matter of right, but in the court's discretion. *See Robb v. Norfolk & W. Ry. Co.*, 122 F.3d 354, 359 (7th Cir. 1997).

Under Rule 60(b), the court is empowered to set aside a judgment for certain specified reasons, including “mistake, inadvertence, surprise, or excusable neglect,” Fed. R. Civ. P. 60(b)(1), “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b),” *id.* 60(b)(2), or “fraud, misrepresentation or other misconduct by the adverse party,” *id.* 60(b)(3). The plaintiffs do not specify which ground of Rule 60(b) they rely upon. In any event, before showing a ground for relief under a particular subsection of Rule 60(b), the plaintiffs must first satisfy certain threshold conditions as follows: (1) that their motion is timely; (2) that they have a meritorious claim; and (3) that the defendant would not be unfairly prejudiced by having the judgment set aside. *See Park Corp. v. Lexington Ins. Co.*, 812 F.2d 894, 896 (4th Cir. 1987).

While the plaintiffs here have met the absolute, one-year time limit imposed for the grounds specified in subsections one through three of Rule 60(b), they must also show that their motion was made within a reasonable time. *See Fed. R. Civ. P.*

60(b). In part, reasonableness depends on the explanation for the delay. *See McLawhorn v. John W. Daniel & Co.*, 924 F.2d 535, 538 (4th Cir. 1991) (holding a plaintiff's Rule 60(b)(3) motion untimely where a three and one-half month delay had occurred with no explanation as to the reasons for the delay).

The plaintiffs here do not disclose when they discovered the letter from Equifax. In any event, they admit that the letter was always in their possession but they simply overlooked it. They do not explain why they could not have earlier engaged in third-party discovery with Equifax in order to have determined whether any such communications existed. The plaintiffs clearly have not shown that they acted with diligence and accordingly, I cannot find that the plaintiffs filed their motion for relief within a reasonable time.<sup>2</sup>

For the foregoing reasons, it is **ORDERED** that the Motion for Relief from Order [Doc. No. 20] and the Supplement to Motion for Relief from Order [Doc. No. 25] are DENIED.

ENTER: January 12, 2004

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United States District Judge

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<sup>2</sup> Moreover, the plaintiffs have not met their burden to show that they fall within any of the subsections of Rule 60(b), even had the motion been filed within a reasonable time.