IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DANELLE DUNCAN,

Plaintiff,

v.

ASSET RECOVERY SPECIALISTS, INC., GREG STRANDLIE, and WELLS FARGO BANK NA d/b/a WELLS FARGO DEALER SERVICES,

Defendants.

OPINION AND ORDER

16-cv-530-wmc

The court previously granted defendants' motion for summary judgment on plaintiff's only federal claim under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(6), based on defendants' alleged attempt to collect $100 from plaintiff to retrieve her personal belongings from her repossessed vehicle. As a result, the court further declined to exercise its supplemental jurisdiction over the remaining state law claims, dismissing those claims without prejudice. (7/5/17 Op. & Order (dkt. #53).) Consistent with that opinion, the clerk of court entered judgment in defendants' favor and dismissed this case. (7/12/17 Judgment (dkt. #54).) Before the court is plaintiff's motion to alter or amend that judgment. (Dkt. #60.)

To prevail on a Rule 59(e) motion, Duncan must "clearly establish": (1) that the court committed a manifest error of law or fact, or (2) that newly discovered evidence precluded entry of judgment. *Blue v. Hartford Life & Acc. Ins. Co.*, 698 F.3d 587, 598 (7th Cir. 2012) (quoting *Harrington v. City of Chi.*, 433 F.3d 542, 546 (7th Cir. 2006)). "A 'manifest error' is not demonstrated by the disappointment of the losing party. It is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" *Oto v.*

Metro. Life Ins. Co., 224 F.3d 601, 606 (7th Cir. 2000). Consistent with this standard, Rule 59(e) may be used neither to raise novel legal theories that should have been presented earlier, *Uphoff v. Elegant Bath, Ltd.*, 176 F.3d 399, 410 (7th Cir. 1999), nor to "provide a vehicle for a party to undo its own procedural failures," *Bordelon v. Chi. Sch. Reform Bd. of Trustees*, 233 F.3d 524, 529 (7th Cir. 2000) (citation omitted).

In its brief in support of the motion, plaintiff contends that she pleaded another FDCPA claim, and the court should "retain[] jurisdiction over that claim and the remaining state law claims," and "set this matter for further proceedings." (Pl.'s Br. (dkt. #61) 4.) This argument, however, fails to get off the ground because plaintiff did *not* plead another FDCPA claim. The *only* FDCPA claim alleged was premised on defendants Strandlie and Asset Recovery Specialists, Inc.'s alleged demand of $100 for return of the personal property in her car. (*See* Compl. (dkt. #1) pp.8-9.) The other causes of action -- all involving the repossession of her vehicle itself -- concern only violations of state law. (*See id.* at pp.10-15 (listing claims for conversion, violation of Wis. Stat. § 895.446, violation of Wis. Stat. § 417.104, unconscionable behavior and unreasonable sale).)

The court is mindful that plaintiffs need not plead legal theories, *see Reeves ex rel. Reeves v. Jewel Food Stores, Inc.*, 759 F.3d 698, 701 (7th Cir. 2014), but, here, plaintiff *did* plead specific causes of action and defendants relied on that pleading in moving for summary judgment as to all claims. Plaintiff attempts to skirt around this issue by simply stating that the parties' "focus" in their summary judgment briefing was on the FDCPA personal property claim, and purports to cite to an argument in her opposition brief that the repossession itself violated the FDCPA. (Pl.'s Br. (dkt. #61) 2.) While the heading of

the referenced portion of the brief states "undisputed facts demonstrate that the repossession of Ms. Duncan's vehicle, and demanding money for the return of her personal property were illegal," the subsequent argument as to the FDCPA claim *only* concerns the personal property allegation. Plaintiff presented *no* argument that the repossession itself violated the FDCPA, and the reason why is obvious: plaintiff did not allege such a claim. Plaintiff points to nothing in the record that would demonstrate that defendants (or for that matter the court) were given notice of another, possible FDCPA claim.

Furthermore, while the FDCPA recognizes a claim based on whether a debt collector has the right to repossess a vehicle, it is less clear whether such a claim exists based on *how* a vehicle was repossessed. Instead, those claims more commonly are pursued under state law claims, consistent with plaintiff's causes of action here. Regardless, at the very least, the court's supposed failure to recognize such a claim does not constitute a manifest error of law or fact. Finally, while the Federal Rules of Civil Procedure contemplate amendment of pleadings post judgment, *see* Fed. R. Civ. P. 15(b)(2), neither the parties' express or implied consent, nor the record evidence, supports an amendment here.

ORDER

IT IS ORDERED that plaintiff Danelle Duncan's motion to alter or amend the judgment (dkt. #60) is DENIED.

Entered this 9th day of November, 2017.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge