

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-231

NOVEMBER TERM, 2005

James Bull	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Superior Court
	}	
Heidemarie Schneider	}	DOCKET NO. 199-4-03 Wrcv
	}	

Trial Judge: Theresa S. DiMauro

In the above-entitled cause, the Clerk will enter:

Defendant Heidemarie Schneider appeals pro se from the trial court=s denial of two post-judgment motions. She contends the court erred in concluding: (1) the motion for new trial was untimely; and (2) the motion for relief from judgment failed to adduce newly-discovered evidence that could not have been discovered earlier with due diligence. We affirm.

The underlying dispute involved a claim by plaintiff James Bull, a licensed real estate agent, against defendant for breach of a listing agreement. In April 2004, following a bench trial, the court issued a written decision in favor of plaintiff, concluding that he was entitled to a real estate commission totaling \$29,940 from the sale of the property in question. Defendant appealed, raising multiple issues relating to the existence and validity of the agreement. This Court rejected the claims and affirmed the judgment in a decision issued in April 2005. Bull v. Schneider, No. 2004-243 (Vt. Apr. 8, 2005) (unreported mem.). Shortly thereafter, defendant moved for a new trial and for relief from judgment on the ground of newly discovered evidence. Defendant claimed she had recently discovered that plaintiff had failed to provide an Agency Disclosure Notice, had failed to register his business with the State of New Hampshire, and had provided an incorrect address on the marketing contract, rendering the agreement invalid. She also asserted that plaintiff=s firm did not exist. The court denied the motion, ruling that the motion for new trial was untimely, and that plaintiff had not shown that the new evidence could not have been discovered earlier with due diligence. This pro se appeal followed.

Defendant contends the court erred in denying the motion for new trial as untimely, noting that it was filed within ten days of this Court=s decision affirming the judgment on appeal. A motion for new trial must be served Anot later than 10 days after the entry of the judgment.@ V.R.C.P. 59(b). The rule makes clear that the motion is to be filed within ten days of the entry of judgment by the court Abefore which an action has been tried,@ V.R.C.P. 59(a), in this case the superior court, which issued its judgment in April 2004. Thus, the trial court correctly determined that defendant=s motion for new trial, filed in April 2005, was untimely.

Defendant also contends the court erred in denying her motion for relief from judgment based on the allegedly newly-discovered evidence concerning the absence of an agency disclosure notice, inaccurate address on the marketing contract, and lack of registration in New Hampshire. Defendant litigated multiple claims at trial concerning the existence and validity of the listing agreement. The court held she did not show why this additional evidence could not have been offered at trial, as well. See V.R.C.P. 60(b)(2) (relief from judgment for newly discovered evidence may be

granted if movant shows the evidence could not have been discovered prior to trial through the exercise of due diligence). We discern no abuse of discretion, and no basis to disturb the trial court=s ruling. See Stalb v. Stalb, 168 Vt. 235, 248 (1998) (court has wide discretion in acting on a Rule 60(b) motion).

Plaintiff=s request for sanctions against defendant under V.R.C.P. 11 for filing an allegedly frivolous motion for new trial and relief from judgment is more properly addressed to the trial court.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice