

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

JOHN W. GILLESPIE,	)	
	)	
Plaintiff/Appellant,	)	
	)	
v.	)	C.A. No. 2007-10-164
	)	(JP12-07-004225)
CHELSEA ON THE SQUARE	)	
APARTMENTS,	)	
	)	
Defendant/Appellee.	)	

Submitted: January 22, 2008  
Decided: February 4, 2008

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**ORDER**  
**ON PLAINTIFF/APPELLANT'S APPEAL FROM**  
**JUSTICE OF THE PEACE COURT**  
**ON DEFENDANT/APPELLEE'S MOTION TO QUASH THE APPEAL**

This matter is here on appeal from a Justice of the Peace Court denial of Plaintiff, John W. Gillespie's (hereinafter "Gillespie") motion to vacate a default judgment. The Justice of the Peace Court entered a non-suit on Gillespie's claim for his failure to appear and granted a default for defendant Chelsea on the Square Apartments (hereinafter "Chelsea") on its counterclaim against Gillespie on August 7,

2007. Gillespie filed a motion to vacate the default on August 13, 2007. The Justice of the Peace Court denied the motion to vacate on September 24, 2007.

Gillespie docketed this appeal on October 18, 2007 from a Justice of the Peace Court's decision denying his motion to vacate and dismiss the default judgment entered for defendant Chelsea.

### **FACTS**

The facts in this matter are rather straight forward. Gillespie filed an action in the Justice of the Peace Court on March 4, 2007 alleging Chelsea engaged in prohibitory retaliatory acts under the Landlord-Tenant Code, *25 Del. C. § 5516(b)*. On April 11, 2007, Counsel for Chelsea entered his appearance and filed an Answer on May 14, 2007. Chelsea filed a counterclaim on May 14, 2007 alleging abuse of process in that Gillespie had engaged in a process of initiating repetitive civil proceedings for the same cause of action without a legal basis.

On June 4, 2007, Chelsea filed a motion to dismiss Gillespie's claim in this case citing a decision of Justice of the Peace Court No. 12, dated April 20, 2007, which dismissed seven (7) other cases of Gillespie. In the April 20, 2007 decision, Justice of the Peace Court No. 12 dismissed the seven (7) cases and held as a matter of law Chelsea did not engage in acts of retaliation, in cases it dismissed. However, this case was not dismissed.

The Justice of the Peace Court on June 15, 2007 ordered Gillespie to respond to Chelsea's motion to dismiss within ten (10) days of its order. On July 6, 2007,

Chelsea wrote to the Justice of the Peace Court requesting that the Court grant its motion to dismiss for failure of Gillespie to file a response as ordered by the Court. Chelsea's July 6, 2007 motion also indicated that if granted, Chelsea's counterclaim would be heard on the date scheduled for trial of August 7, 2007. A copy was noted as sent to Gillespie.

The Justice of the Peace Court No. 12 docket indicates that the case was scheduled for trial on August 7, 2007. In an Order dated August 7, 2007, the Justice of the Peace Court dismissed Gillespie's claim as a non-suit for failure to appear. The Court further held a hearing on Chelsea's counterclaim. Following the hearing, the Court entered judgment for Chelsea in the amount of \$15,000.00, with post-judgment interest of 11.25%.

On August 13, 2007, Gillespie filed a motion to vacate the default judgment. In the motion, Gillespie alleged that notice was sent to him on May 25, 2007 indicating the trial date of August 7, 2007, and he inadvertently and mistakenly marked the date as August 16, 2007. In support thereof, Gillespie argued that he requested a temporary scheduling change at his place of employment for August 16, 2007, in mistaken belief that the trial was to be held on that date. Gillespie also argued that the counterclaim for which judgment was entered in this case was dismissed by the Court in the April 20, 2007 opinion dismissing seven (7) other cases he had filed against Chelsea. Moreover, Gillespie argued this counterclaim is identical to those dismissed by the Court in its April 20, 2007 opinion, for which no timely

appeal was taken to the Court of Common Pleas. As a consequence, he argues the counterclaim was no longer pending as an action against him.

The Justice of the Peace Court No. 12 on August 29, 2007 issued a decision denying Gillespie's motion to vacate the default. That decision listed the basis which Gillespie set forth for relief, i.e., (1) he inadvertently recorded the date wrong and, (2) the default is void because of a previous decision of the Court.

### **DISCUSSION**

An appeal from denial of a motion to vacate a default judgment does not bring the matter to this court for a trial *de novo* but only brings for review the Justice of the Peace Court's Order denying the motion to vacate. *Ney v. Polite*, Del. Supr., 399 A.2d, 527, 529 (1979). Therefore, this Court's review is limited to whether a Court has abused its discretion, the standard which was set forth in *Pitts v. White*, 109 A.2d 786 (Del. Super. 1954) and provides as follows:

“The essence of judicial discretion is the existence of judgment by conscience and reason, as opposed to capricious arbitrary action and where a Court has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law of practice, so as to produce injustice, its legal discretion has not been abused; for the question is not whether the reviewing Court agrees with the Court below, but rather whether it believes that the judicial mind in view of the relevant rules of law and upon due consideration of the facts of the case could have reasonably reached the conclusion of which complaint is made.”

The Justice of the Peace Court concluded in its Order of August 29, 2007 that Gillespie's motion did not move to vacate the non-suit, but only sought relief from the default judgment entered for Chelsea. The Court then analyzed the motion under Justice of the Peace Court *Civil Rule 60(b)(1)* "excusable neglect." When considering a motion on the basis of excusable neglect, the Court must analyze the facts of the proceeding and the merits of the argument. In *Saunders v. CC&H, et al.*, 2006 WL 274337 (Del. Super.), Jurden, J. held:

"Excusable neglect is neglect which might have been the act of a reasonably prudent person under the circumstances. Carelessness and negligence are not necessarily excusable neglect . . . mere showing of negligence or carelessness without a valid reason may be deemed insufficient. Moreover, 'negligence' may be so gross as to amount to sheer indifference; to open and vacate judgment upon such excuse would cease to give meaning to the words excusable neglect."

In these proceedings, Gillespie argued that his failure to appear was the result of an inadvertent mistake regarding the scheduled date. The Court after applying the standards, concluded as follows:

". . . As to the request for relief from the default judgment of the defendant's counterclaim, the defendant has failed to convince this Court that his actions were those of a reasonable man; has failed to support excusable neglect; has not presented a meritorious defense, nor has he demonstrated a lack of substantial prejudice to the moving party."

The Justice of the Peace Court's opinion clearly indicates that Gillespie's motion was properly considered and analyzed under the Court's rule. The question here is not whether I would have acted similar, but rather whether the Court has

abused its discretion. This Court may not substitute its discretion for that of the Justice of the Peace Court. Discretion is abused where the Court has exceeded the bounds of reason in view of the circumstances, where the decision lacks a reasonable basis or where the decision is against logic and facts and reasonable deductions drawn therefrom.

The record indicates the Court considered Gillespie's argument that he inadvertently placed the wrong date on his calendar. However, the Court did not find this argument sufficient to merit vacating the default under the Rule. The Court went on to state Gillespie failed to set forth a meritorious defense or lack of prejudice to opposing party. Therefore, I conclude that the decision was a product of a logical and analytical analysis of Gillespie's arguments and the facts of the case.

ACCORDINGLY, the judgment of the Justice of the Peace Court is hereby Affirmed; the Appeal is Dismissed. The record is remanded for proceeding consistent with this opinion.

SO ORDERED,

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Alex J. Smalls  
Chief Judge

cc: Judge Brown  
Justice of the Peace Court No. 12

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