

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Palisades Collection, LLC.,	:	
	:	C.A. No. 08-06-0072
Plaintiff,	:	
	:	
v.	:	
	:	
Tracy Santos,	:	
	:	
Defendant.	:	

Submitted: October 2, 2008

Decided: October 2, 2008

**Decision on Defendant's Motion for Reargument.**

**Defendant's Motion is denied.**

**Stephen P. Doughty, Esquire 15 Ashley Place, Suite 2B, Wilmington, Delaware  
19804, attorney for plaintiff.**

**Maggie R. Clausell, Esquire 9 East Loockerman Street, Suite 205, Dover, Delaware  
19901, attorney for defendant.**

**Trader, J.**

In this civil action, the defendant has filed a Motion for Relief from Judgment or Order pursuant to Court of Common Pleas Civil Rule 60(a). I construe the defendant's motion for reargument under Civil Rule 59(e).

The relevant facts are as follows: The defendant, entered a credit card agreement (hereinafter "the Agreement") with Fingerhut. The defendant's payment was based on the monthly balance due. Subsequently, the defendant defaulted under the Agreement, having failed to make payments when due. The plaintiff accelerated the account. The gross unpaid balance was \$4,684.93. Per the Agreement, reasonable attorney's fees are also due if the account is turned to counsel for collection. Reasonable attorney's fees under 10 *Del. C.* § 3912 amount to \$936.98.

On or about June 12, 2008, the plaintiff, Palisades Collection, LLC, filed in the Court of Common Pleas, a Complaint against the Defendant, Tracy Santos, for the total amount of \$5,621.91, plus post judgment interest, and costs of suit . The service of process was on June 22, 2008. On June 25, 2008, the *pro se* defendant, Tracy Santos, filed a verified Answer denying the allegations in the Complaint.

The plaintiff served the defendant with Plaintiff's Request for Admissions and Plaintiff's Request for Interrogatories on July 16, 2008. On August 18, 2008, the Plaintiff filed a Motion for Summary Judgment with notice of the motion hearing scheduled for August 27, 2008, on the basis that the only issues in dispute were payment and amount due under the Agreement. The plaintiff's motion was accompanied by an affidavit stating that the defendant had entered into a credit card agreement and subsequently defaulted under the Agreement by failing to make payments when due. The amount due is now \$5,621.91 which includes the attorney's fees resulting from the

account being turned over to collections. The Motion for Summary Judgment was granted on August 27, 2008 because the defendant failed to file a counter- affidavit. The defendant filed a Motion for Relief from Judgment or Order Pursuant to Rule 60(a) on September 2, 2008.

Under Court of Common Pleas Civil Rule 56, a motion for summary judgment should be granted as a matter of law where there is no genuine issue of material fact. The plaintiff bears the burden of demonstrating that there is no genuine issue as to any material fact. *Matas v. Green*, 171 A.2d 916, 918 (Del. Super. Ct. 1961). When the plaintiff is the moving party the facts are taken in the light most favorable to the defendant. *Id.* The burden, however, shifts to the defendant when the motion for summary judgment is supported by such a showing. *Moore v. Sizemore*, 405 A.2d 679, 680-81(Del. 1979). If the non-moving party fails to meet this burden, judgment shall be entered against the non-moving party. CCP Civ. R. 56(e).

Rule 56(c) states that, “the adverse party *prior to the day of [the motion for summary judgment] hearing* may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Discover Bank v. Turner*, 2007 WL 3231607, at \*2 (Del. Com. Pl.) (citing CCP Civ. R. 56(c)) .

The defendant’s Motion for Relief from Judgment is in actuality a Motion for Reargument under Court of Common Pleas Civil Rule 59(e) based on the fact that the notice for the hearing was insufficient and that the Court did not take notice of the

defendant's notarized Answer as her response to the motion for summary judgment.

"The applicable standard on a motion for reargument is well settled. A party seeking reargument must show the court misapprehended the law or the facts in a manner that would change the outcome of its decision if it were correctly and/or fully informed." *The News Journal Co., Inc. v. Little Caesars of Delaware*, 2000 WL 33653459, at \*1 (Del. Com. Pl.)(citations omitted). "A motion for reargument will be denied where it relies on grounds not raised in the original proceeding or where it merely advances the same matters that were already considered in the original proceeding." *Id.* In this case, there are no new grounds for reargument presented. In fact, in her motion, the defendant maintains that her original Answer should serve both as her pleading and her response to the motion for summary judgment. Thus, the defendant merely advances the same matters already considered by this Court in the original proceeding. The Court, therefore, has not overlooked any controlling legal principle and there is no basis for reargument.

The defendant essentially sets forth two contentions in her motion for reargument. First, she contends that she failed to receive adequate notice of the hearing under the Rules of Court. Secondly, she contends that her verified answer served as a counter affidavit to her response to the motion for summary judgment. I reject both contentions for the reasons that follow.

Even if the defendant's contentions were considered on the merits, she cannot prevail. The defendant contends that she was given insufficient notice regarding the hearing for the motion on summary judgment. Court of Common Pleas Civil Rule 56(c) requires ten (10) days notice before the time fixed for the hearing. The defendant was properly served with the plaintiff's motion for summary judgment, and the affidavit by

the plaintiff's record keeper verifying the authenticity of the statements. Notice of the hearing was given only nine days prior to the hearing; however, the defendant, Tracy Santos, showed up for the motion for summary judgment, and did not raise this issue at that hearing, so the defense of insufficient notice is deemed waived.

The defendant did not file any response or counter-affidavits prior to the August 27 hearing. "As a *pro se* litigant during the period prior to the date of hearing, it was her obligation to respond to the motion as required under the Court of Common Pleas Civil Rules." *Id. See* CCP Civ. R. 56. If the defendant wished to submit a counter-affidavit in response to the affidavit submitted by the plaintiff, she was required to do so at the time she filed her response to the motion. *See Id.* "The *pro se* status of a litigant does not excuse and justify the defendant's failure to meet the procedural requirements." *Id.* (citing *Arots v. Salesianum School*, 2003 WL 21398017, at \*4 (D. Del.).

The defendant, who is now represented by counsel, contends that her Answer of June 23, 2008 is the required counter-affidavit because it was notarized. An affidavit is "[a] voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." BLACKS LAW DICTIONARY 58 (7th ed. 1999). The point of the affidavit is that the statements are sworn statements under oath. A notarized signature on an answer, merely means that the notary has seen proof that the person signing the answer is who they say they are. 29 *Del. C.* § 4309. There is no oath taken regarding the truth of the matter within the document.

Under Court of Common Pleas Civil Rule 56(e):

"When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is

a genuine issue for trial. If the adverse party does not so respond, summary judgment if appropriate, shall be entered against the adverse party.”

In this case, the defendant did not file any response to the motion for summary judgment under CCP Civ. R. 56(e). The defendant’s answer cannot be the counter-affidavit because the Court rule states that the adverse party in a motion for summary judgment may not rely on their pleadings. CCP Civ. R. 56(e). The unauthenticated and undocumented statements of the Answer submitted by the defendant are mere allegations that provide no specific facts required to overcome a motion for summary judgment. Therefore there is no basis for either relief from judgment or reargument based on the merits of the case.

Based on the above conclusions of law, the motion for reargument is denied.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**