

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

Palisades Collection, LLC)	
Assignee of Verizon Wireless)	
Assignee of Verizon Pennsylvania, Inc.,)	
)	C.A. No. 07-08-0133
Plaintiff,)	
)	
v.)	
)	
Charles Yu,)	
)	
Defendant.)	

Submitted: September 24, 2008
Decided: October 9, 2008

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DECISION ON MOTION TO VACATE DEFAULT JUDGMENT

In this civil action, the defendant, Charles Yu, has filed a motion to vacate default judgment against him pursuant to Court of Common Pleas Civil Rule 55(c).¹ The defendant's motion is denied because the defendant has failed to demonstrate excusable neglect as a basis for relief.

¹ The defendant filed his motion as a Motion for Relief from Judgment pursuant to Court of Common Pleas Civil Rule 60(b). However, the Court considers it a Civil Rule 55(c) Motion to Vacate Default Judgment.

FACTS

On or about July 8, 2007, the plaintiff, Palisades Collection, LLC, filed a complaint for a debt action demanding a judgment against the defendant, Charles Yu. The complaint was served on the defendant on January 27, 2008, by private process server. When the defendant failed to file an answer to the complaint, default judgment was entered against him by this Court on February 29, 2008. Over six months later, on September 3, 2008, the defendant filed this motion to vacate the default judgment against him pursuant to Court of Common Pleas Civil Rule 55(c). The Court held a hearing on the motion on September 24, 2008. Both parties were represented by attorneys, although the defendant was not present and was reported by his attorney to be out of state on business.

The defendant contends that there was excusable neglect for his failure to file an answer to the complaint. The basis for the excusable neglect is that he is Korean and English is not his first language. Therefore, he did not know that he had to respond to the complaint. Further, the defendant maintains that he satisfied his obligation to the original creditor and does not owe the money. At the hearing, the defendant's attorney represented that the defendant understands English and does not need a translator, although he is difficult to understand. The Court was unable to assess the defendant's understanding of the English language because he was not present at the motion. The defendant's attorney did not present any additional evidence to the Court. His attorney argued that the default judgment was filed only 11 days after the answer was due and that the defendant was not aware of the default judgment until months later when he received notice of the judgment.

It is the plaintiff's position that the defendant has not established a basis for excusable neglect in his conduct when he failed to answer the complaint. Further, the plaintiff contends that the judgment was transferred to the Superior Court on June 2, 2008, and this Court no longer has jurisdiction over the matter.

DISCUSSION

Jurisdiction for Motion.

On June 2, 2008, the default judgment entered against the defendant was transferred to the Superior Court. Under Court of Common Pleas Rule 58A(c): "The Court of Common Pleas shall retain jurisdiction for purposes of all post-judgment proceedings with the exception of execution upon the judgment and/or sale of real property." Therefore, although the judgment was transferred, the underlying issue of whether there exists excusable neglect to prevent the judgment from being entered in the first place, remains in the jurisdiction of this Court.

Motion to Vacate Default Judgment and Excusable Neglect.

Court of Common Pleas Civil Rule 55(c) provides that the Court may vacate a default judgment in accordance with Civil Rule 60(b). Under Court of Common Pleas Civil Rule 60(b), relief from judgment can be granted for mistake, inadvertence, excusable neglect, newly discovered evidence, fraud or the judgment is void. CCP Civ. R. 60(b)(1), (2), (3), (4). Additionally, the Court may provide relief from judgment under Civil Rule 60(b)(5) if the judgment has been satisfied, released or discharged or under

Civil Rule 60(b)(6) for any other reason justifying relief from the operation of the judgment. CCP Civ. R. 60(b)(5),(6).

In this case, the defendant claims he did not respond to the complaint because he did not understand English well enough to know to respond to it. This argument falls under Court of Common Pleas Civil Rule 60(b)(1), excusable neglect. In *Lee v. Charter Communications, VI, LLC*, 2008 WL 73720, at *1 (Del. Super. Ct.), the Superior Court in addressing the excusable neglect standard under Superior Court Rule 60(b)(1), which mirrors the Court of Common Pleas rule, stated that although the rule should be construed liberally, a party moving to vacate a default judgment must satisfy three conditions: 1) excusable neglect in the conduct that allowed the default judgment to be taken; 2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on its merits; and 3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted. A judgment cannot be vacated where the defendant has simply ignored the process. *Id.*

In the present matter, the defendant has not demonstrated that excusable neglect in his conduct resulted in the default judgment against him. He maintains that he did not understand English well enough to know to respond to the complaint. However, no evidence was presented by the defendant to support this allegation except for the fact that English is his second language. As explained in the Delaware Superior Court case of *Canton Inn v. Security Ins. Co.*, 1986 WL 2258 at *1 (Del. Super. Ct.), a court must determine how well a defendant understands English in order to determine whether he or she has demonstrated excusable neglect when a default judgment has been entered against them. In that case, the defendant was Chinese and failed to answer the complaint

against him. The Justice of the Peace Court had held that because the defendant received proper notice, had a minimum knowledge of the English language and had run a successful business, he had the capability to understand that he had to appear in court. However, the Superior Court on appeal found that the defendant could not speak or write the English language, depended on friends to read for him, and that there was a basis for a misunderstanding that the dispute would be settled by non-judicial means. *Id.* at *2. Given this fact pattern, the Superior Court found that the defendant demonstrated excusable neglect in his conduct.

The fact pattern in the present case is distinguishable from the fact pattern considered by the Superior Court in the *Canton Inn* matter. The defendant's attorney represented that while the defendant is somewhat difficult to understand, he speaks and understands English and does not need a translator. English is simply his second language. Additionally, the defendant, Mr. Yu, was not present at the hearing for his motion. Therefore, no additional evidence was presented to the Court so that it could determine how well he speaks, reads and understands English. Given these factors, the defendant has not demonstrated that the default judgment against him was entered as a result of excusable neglect in his conduct.

CONCLUSION

In conclusion, while the judgment against the defendant, Mr. Yu, has been transferred to the Superior Court, the Court of Common Pleas retains jurisdiction as to whether the default judgment entered against him should be vacated under Court of Common Pleas Civil Rules 55(c) and 60(b) on the basis of excusable neglect. As

insufficient evidence was presented to this Court to show that there was excusable neglect by the defendant in his failure to answer or otherwise respond to the complaint filed against him, his motion to vacate the default judgment against him is denied.

IT IS SO ORDERED THIS 9th DAY OF OCTOBER, 2008.

CHARLES W. WELCH
JUDGE