

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

CHARLES W. WELCH, III
JUDGE

March 16, 2017

Ms. Chavon N Reeves
8485 Westville Rd.
Camden-Wyoming, DE 19934

Gregory J. Babcock, Esq.
Portfolio Recovery Associates, LLC
1000 N. West St., Suite 1200-1253
Wilmington, DE 19801

RE: Portfolio Recovery Associates, LLC v. Reeves
C.A. No.: CPU5-15-000352

Decision on Defendant's Motion to Vacate Default Judgment

Dear Ms. Reeves and Mr. Babcock,

The Court is in receipt of the Motion to Vacate Default Judgment that has been filed by the defendant, Chavon Reeves, for the above-referenced matter. The motion was filed pursuant to Court of Common Pleas Civil Rule 55(c). After careful consideration by the Court, Ms. Reeves' motion is denied because she has failed to demonstrate excusable neglect as a basis for relief.

On March 25, 2015, the plaintiff filed a consumer debt action against the defendant. In its Complaint, the plaintiff alleged that the defendant defaulted on a credit account for failure to make monthly payments as they became due and owing. The plaintiff is the assignee and current owner of the credit account originally entered into by the defendant with Wells Fargo Bank.

On April 23, 2015, the defendant was personally served with a copy of the Summons and Complaint at 8485 Westville Road, Camden-Wyoming, DE 19934. On May 12, 2015, the defendant filed her Answer denying the allegations against her. On July 7, 2015, the plaintiff filed its Notice of Discovery on the defendant. The defendant did not respond. On October 6, 2015, the Court scheduled a Pre-Trial Conference to take place on December 11, 2015, and notice of the scheduled conference was mailed to the parties' last known addresses. The plaintiff filed its Pre-Trial Worksheet, on October 16, 2015, along with a Certificate of Service, certifying that a copy of the Pre-Trial Worksheet was served upon the defendant via first class mail to her residence. The Court's notice to the defendant regarding the Pre-Trial Conference was not returned

undeliverable. The defendant failed to appear for the scheduled Pre-Trial Conference. Upon request by the plaintiff after the defendant's non-appearance at the Pre-Trial Conference, the Court rescheduled the Pre-Trial Conference to provide the defendant another opportunity to appear at it.

On September 30, 2016, the Court scheduled another Pre-Trial Conference to take place on December 19, 2016, and notice of the scheduled conference was mailed to the parties' last known addresses. The Court's notice to the defendant regarding the Pre-Trial Conference was not returned as undeliverable. On December 19, 2016, the Court entered a default judgment against the defendant when the defendant failed to appear at the second scheduled Pre-Trial Conference. The Court mailed a copy of the signed Order of Default Judgment to the defendant at the same address and in the same manner as the notices regarding the Pre-Trial Conference. The defendant received the signed Order of Default Judgment. She then filed the current Motion to Vacate Default Judgment on the grounds that she never received a copy of the Court's notices informing her of the scheduled Pre-Trial Conferences.

DISCUSSION

I. Service and Receipt of Documents via Mail

The law requires that notice must be received in order to be effective.¹ "If the mailed notice is in fact not received, then the notification is without any legal effect."² "However, there is a presumption that mailed matter, correctly addressed, stamped and mailed, was received by the party to whom it was addressed."³ "This presumption may be strengthened, weakened or overcome by proof of attendant pertinent circumstances."⁴ "Merely denying receipt does not rebut the presumption."⁵ "Delaware courts have found this presumption to qualify as satisfactory evidence [of] delivery."⁶

In the instant matter, the defendant has failed to rebut the presumption that she received the Court's notices informing her of the two scheduled Pre-Trial Conferences. Both notices were properly addressed, to the defendant's last known address, stamped and mailed. The Court's notices were not returned as undeliverable. Furthermore, the presumption is strengthened by the fact that the defendant filed an Answer in the matter and acknowledged receipt of the Court's signed Order of Default Judgment that was mailed in the same manner and to the same address as the Court's Pre-Trial Conference notices. In her motion, the defendant contends that she never received notice, possibly as a result of the holiday influx of mail. However, denying receipt of the notices does not rebut the presumption. Additionally, defendant's excuse is clearly misplaced, as notice

¹ *Windom v. Ungerer*, 903 A.2d 276, 282 (Del. 2006) (quoting *State ex rel. Hall v. Camper*, 347 A.2d 137, 138-39 (Del. Super. 1975)).

² *Id.*

³ *Id.*

⁴ *Windom*, 903 A.2d at 282 (quoting *Graham v. Commercial Credit Co.*, 194 A.2d 863, 856-66 (Del. Ch. 1963)).

⁵ *Windom*, 903 A.2d at 282.

⁶ *Rehoboth-By-The-Sea v. Baris*, 2015 WL 3643496, at *4 (Del. Com. Pl. Jun. 10, 2015).

was sent in October of 2015 and then again in September of 2016. Therefore, the Court finds that the defendant was in receipt of the Court's notices regarding the scheduled Pre-Trial Conferences.

II. Excusable Neglect

Court of Common Pleas Civil Rule 55(c) provides that the Court may vacate a judgment in accordance with Civil Rule 60(b). A party moving to vacate a judgment under Civil Rule 60(b) has the burden of proving three elements before the motion will be granted: "(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 the merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted."⁷

The Court will only consider the second two elements of the analysis if the defendant has provided a satisfactory explanation that his failure to appear was due to excusable neglect.⁸ "Excusable neglect is defined as 'that neglect which might have been the act of a reasonably prudent person under the circumstances.'"⁹

In this case, the defendant's only contention is that she never received the Court's notices for the scheduled Pre-Trial Conferences. Because the Court has determined that the defendant was in receipt of the Court's notices, the defendant has failed to show that her failure to appear for two scheduled Pre-Trial Conferences was due to excusable neglect. Therefore, the judgment was properly entered.

CONCLUSION

In conclusion, the defendant did not present sufficient evidence to the Court to prove that her conduct constituted excusable neglect when she failed to appear for two scheduled Pre-Trial Conferences. Therefore, the defendant's Motion to Vacate Default Judgment is denied.

IT IS SO ORDERED

Sincerely,



Charles W. Welch, III

CWW:mek

⁷ *Perry v. Wilson*, 2009 WL 1964787, at *1 (Del. Super. Jul. 8, 2009) (quoting *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at *1 (Del. Super. Apr. 13, 2014)).

⁸ *Id.*

⁹ *Id.*