

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

METROPOLITAN PROPERTY &)
CASUALTY INSURANCE COMPANY)
and CYNTHIA BULLOCK,)
)
Plaintiffs,)
)
v.)
)
PAULINE HAFELE,)
)
Defendant.)

C.A. No.: 2004-09-450

Date Submitted: April 2, 2007
Date Decided: May 4, 2007

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ORDER ON JUDGMENT DEBTOR’S MOTION TO COMPEL DISCOVERY

On November 5, 2004 this Court entered a default judgment for Judgment Creditors Metropolitan Property & Casualty Insurance Company and Cynthia Bullock (“Judgment Creditors”) and against Judgment Debtor Pauline Hafele (“Judgment Debtor”). On November 3, 2006 the Court denied a motion to vacate the judgment as to liability but granted a motion to vacate the amount, ordering an inquisition hearing on damages. On March 16, 2007 this Court denied Judgment Debtor’s Motion to Compel Discovery in preparation for the as-yet unscheduled inquisition hearing on damages. On March 23, 2007 the Judgment Debtor filed what purports to be a Motion for Reargument,

contending that to deny her motion to compel discovery would violate her procedural due process rights under the Fourteenth Amendment. On April 2, 2007, the Judgment Creditors filed a response in opposition to Judgment Debtor's filing, arguing that the March 23, 2007 filing was not a proper Motion for Reargument and that Judgment Debtor's due process rights are not violated by a denial of discovery. This is the Court's decision and order.

Judgment Creditors are correct in noting that Judgment Debtor's March 23, 2007 filing does not perfectly conform to the proper format for a Motion for Reargument. Rule 7 states that "[t]he rules applicable to captions and other matters of form of pleadings apply to all motions, and other papers provided for by these Rules." CCP Civ. R. 7(b)(2). In particular, every motion must make all averments in numbered paragraphs, and must contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation. CCP Civ. R. 10. Although Judgment Debtor's March 23, 2007 correspondence contains a caption setting forth the title of the action and the file number, it neglected to include a designation in the caption or numbered paragraphs in the body. The correspondence did include the name of the Court, although not in the caption.

More substantively, however, Rule 7 requires that "[a]n application to the Court for an order shall be by motion which, unless made during a hearing or trial shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought." CCP Civ. R. 7(b)(1). Judgment Debtor's March 23, 2007 correspondence substantially complies with this requirement, stating its grounds in several paragraphs and making clear in its conclusion that Judgment Debtor "moves for

reargument.” Moreover, the March 23, 2007 correspondence has been signed by the attorney of record and states the signer’s address and telephone number in accordance with Civil Rule 11. The Court therefore finds that Judgment Debtor has successfully filed a motion for reargument in spite of that motion’s formalistic deficiencies.

In support of her Motion for Reargument, Judgment Debtor Hafele cites *Michael v. St. Francis Hospital, Inc.* for the proposition that due process requires discovery for an inquisition hearing. 1981 Del. Super. LEXIS 678. A quick consultation of that case, however, shows that the only reference to “pre-inquisition discovery” occurs in preliminary dicta, as the opinion recounts the procedural history of the case. *Id.* at *1-2. Judgment Debtor has not presented the Court with any authority compelling discovery for an inquisition hearing, nor has the Court been able to find any such authority.

As part of her due process argument, Judgment Debtor argues that an inquisition hearing is “mandated” by Civil Rule 55(b)(2) when the plaintiff seeks a default judgment and its claim is not a “sum certain” within the meaning of Rule 55(b)(1). Judgment Debtor seems to base her argument on the proposition that such a hearing is analogous to a trial, entitled to some if not all of the procedural safeguards associated with a trial. The Court must disagree.

Rule 55 states that “[i]f, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or, to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court *may* conduct such hearings or order such references *as it deems necessary and proper.*” CCP Civ. R. 55(b)(2) (emphasis added). Thus, far from being obligated to hold a mandatory hearing, a Court may *elect* to conduct a post-judgment

inquisition hearing for its own convenience in establishing damages to be awarded on a default judgment such as exists in this case. Although discovery might undoubtedly aid the parties in their preparation for this elective hearing, the Court again notes that all mandatory discovery rules apply to trials rather than hearings.

Regarding Judgment Debtor's appeal to the Fourteenth Amendment, the Court agrees with her general argument that "procedural due process demands that a party whose property or liberty is jeopardized have the right to present reasons why the proposed action should not be taken, the right to present evidence including the right to call witnesses, the right to know opposing evidence and the right to cross-examine adverse witnesses." Unfortunately, Judgment Debtor waived all these rights when she was served with the complaint and then failed to file an answer or otherwise participate in pre-judgment litigation. Delaware Courts hold that notice and opportunity to be heard are required as due process before one can be deprived of property. *PNC Bank v. Sills*, 2006 WL 3587247, at *3 (Del. Super.). In order to satisfy the demands of the Fourteenth Amendment, the notice "must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). However, if these conditions are reasonably met, the constitutional requirements of due process are satisfied. *Id.* at 314-5. There is no dispute that Judgment Debtor was given reasonable notice of the action pending against her, nor that she failed to file an answer. As such, this Court finds that she has waived the procedural rights to discovery that she would have had in an actual trial.

ORDER

For the aforementioned reasons, Judgment Debtor's Motion for Reargument is hereby DENIED.

IT IS SO ORDERED this 4th day of May, 2007.

Joseph F. Flickinger III
Judge