

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

WILMINGTON POLICE AND FIRE FCU)	
A DELAWARE CORPORATION,)	
Plaintiff,)	
vs.)	
)	C.A. No. CPU4-12-000064
LONNIKA HAILE and JULIE ANN)	
HAILE,)	
Defendants,)	
)	

Submitted November 26, 2012
Decided November 26, 2012

Xiaojuan Huang, Esquire, Attorney for Plaintiff
Lonnika Haile, *pro se*
Julie Ann Haile, *pro se*

DECISION ON MOTION FOR RECONSIDERATION

On November 5, 2012, Plaintiff submitted its Motion for Reconsideration and/or Motion to Renew the Motion to Sever and Motion for Default Judgment. No response to the Motion has been filed. For the following reasons, the Motion is denied, in part, and granted, in part.

FACTS

On January 3, 2010, Wilmington Police and Fire FCU (“Plaintiff”) filed its Complaint in this action seeking an auto loan deficiency judgment against Defendants of \$23,933.33, plus interest, costs and attorneys fees, after repossession and sale of the secured vehicle. On February 1, 2012, Defendants filed their respective Answers alleging that the sale of the 2005 Dodge Durango was not commercially reasonable. On August 23, 2012, a Suggestion of Bankruptcy was filed on behalf of Defendant Lonnika Haile, noting the Bankruptcy Court’s July 26, 2012 Order of Relief. Notwithstanding the

Suggestion of Bankruptcy, the Clerk of the Court scheduled the **entire** matter for trial on September 26, 2012. Neither Defendant appeared on the day of trial. Plaintiff appeared through counsel. The Court noted on the record the prior docketing of the Suggestion of Bankruptcy. Plaintiff made an oral motion for default judgment against the non-bankrupt co-debtor, Defendant Julie Ann Haile. On November 1, 2012, the Court denied Plaintiff's motion for default judgment. On November 5, 2012, Plaintiff filed its Motion for Reconsideration attaching the Notice of Chapter 7 Bankruptcy Case and the Discharge of Debtor wherein Defendant Lonnika Haile was discharged of her debts pursuant to 11 U.S.C. §727.

DISCUSSION

Under a Chapter 7 liquidation action, non-filing co-debtors are not entitled to the automatic stay protection afforded under Chapter 13 actions. Therefore, the action against a non-filing co-debtor of a Chapter 7 debtor may be severed and separately pursued by a Plaintiff. In denying Plaintiff's trial day oral motion for default judgment against Defendant Julie Ann Haile, the Court noted that it had not been informed under which Chapter of the Bankruptcy Code the filing debtor had been granted protection. Plaintiff has now provided proof that Defendant Lonnika Haile filed under Chapter 7 of the Bankruptcy Code.

In its Motion for Reconsideration, Plaintiff again seeks a default judgment. Under this Court's Civil Rule 55, "when a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by these Rules, and that fact is made to appear, judgment by default **may** be entered ..."¹

¹ Id. (Emphasis added.)

However, both public policy and this Court's rules favor disposition of suits upon their merits, rather than through procedural defaults.² The September 26, 2012 trial should have been stayed upon the filing of the Suggestion of Bankruptcy until the matter was severed. The Court cannot ignore this circumstance in evaluating Defendant Julie Ann Haile's non-appearance at the scheduled trial date. In addition, the record demonstrates a good-faith attempt by Defendant Julie Ann Haile to participate in the litigation process prior to the bankruptcy filing of her co-defendant. Under these circumstances the Court holds that entry of default judgment for her failure to appear at trial would be inappropriate and not in the interests of justice.

CONCLUSION

Plaintiff's Motion for Reconsideration as to the Court's denial of default judgment is **DENIED**. Plaintiff's alternative Motion to Sever is **GRANTED**. The matter against Defendant Julie Ann Haile shall be separately scheduled for trial.

IT IS SO ORDERED this _____ day of November, A.D. 2012.

Kenneth S. Clark, Jr.

² Beckett v. Beebe Med. Ctr., Inc., 897 A.2d 753, 758 (Del. 2006).