

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

CREDIT ACCEPTANCE CORP.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2008-05-097
)	
NANCY WILSON BURTON,)	
)	
Defendant.)	

**ORDER DENYING DEFENDANT’S MOTION
TO VACATE DEFAULT JUDGMENT**

Submitted: November 16, 2012
Decided: November 20, 2012

Charles S. Knothe, Esquire, Wilmington, Delaware, for Plaintiff

Nancy Wilson Burton, Newark, Delaware, self-represented Defendant

ROCANELLI, J.

This is a consumer debt collection action. On May 8, 2008, Credit Acceptance Corporation filed a Complaint against Defendant Nancy Wilson Burton alleging that Ms. Burton signed a loan agreement to finance a vehicle, and had defaulted on those payments.

The Court’s record reflects that Ms. Burton was served when a summons was left by a special process server with an individual named Kevin at 126 Madison Dr., Newark, DE on June 4, 2008. Ms. Burton listed 126 Madison Dr., Newark, DE as her address with the Court when she filed this Motion to Vacate Default Judgment before the Court. Service. The service of process therefore complied with Court of Common Pleas Rule of

Civil Procedure 4(f) that allows for service to be made by leaving copies of the summons and complaint at an “individual’s dwelling house or usual place of abode with some person of suitable age and discretion therein.”¹ Ms. Burton’s “dwelling” was 126 Madison Dr., Newark, DE in 2008, as it is now in 2012.

Ms Burton failed to file a responsive pleading, and Plaintiff secured a default judgment against Ms. Burton on July 7, 2008. The default judgment was entered by the Clerk of the Court pursuant to CCP Civ. R. 55(b)(1). A default judgment was entered for the \$10,255.63 principal amount, plus \$3,521.10 interest, \$2,066.51 attorney fees, and \$130.50 in court costs. The total amount of the judgment was \$15,973.74, plus interest at the rate of 10% on the balance from the date of the judgment.

On August 7, 2012, Plaintiff filed an attachment FIFA for Ms. Burton, and the attachment FIFA was returned by Ms. Burton’s employer in September 2012. Soon after her wages were garnished, Ms. Burton filed a Motion to Vacate the Default Judgment on October 18, 2012, claiming that she did not receive service. On November 25, 2012, Plaintiff filed a response in opposition to Ms. Burton’s Motion. The Court scheduled a hearing for November 16 and gave notice of the hearing to the parties.

On November 16, 2012, the Court held a hearing on the Motion but Ms. Burton failed to appear to present her Motion. Plaintiff, however, did present to the Court that although Ms. Burton alleged in her Motion that she did not receive service, the Affidavit from the Special Process Server demonstrates that service was proper because it was left

¹ Ct. Com. Pl. Civ. R. 4(f). Hereafter, the Court of Common Pleas Rules of Civil Procedure will be referenced as “CCP Civ. R. ____.”

at her residence with “Kevin,” who is believed to be Ms. Burton’s brother-in-law. Also, Plaintiff asserted that Ms. Burton has failed to demonstrate excusable neglect under CCP Civ. R. 60(b). Finally, it was suggested that Ms. Burton did not have a meritorious defense to the action.

“A motion to vacate a default judgment pursuant to . . . Civil Rule 60(b) is addressed to the sound discretion of the Court.”² “Delaware courts receive such motions with favor because they promote Delaware's strong judicial policy of deciding cases on the merits and giving parties to litigation their day in court.”³ As such, all doubts should be resolved in favor of the movant.⁴ Three elements must be proven by the movant before a motion to vacate judgment is 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 its merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.⁵

“Excusable neglect is defined as neglect which might have been the act of a reasonably prudent person under the circumstances.”⁶

While the Court is aware of Delaware’s strong policy to resolve matters on the merits, Ms. Burton failed to appear for the hearing on her motion and did not provide the Court with any credible evidence that she did not receive service. On the contrary,

² *Verizon Delaware, Inc. v. Baldwin Line Const. Co., Inc.*, 2004 WL 838610, at *1 (Del. Super. Apr. 13, 2004).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Lewes Dairy, Inc. v. Walpole*, 1996 WL 111130, at *2 (Del. Super. Jan. 5, 1996).

Plaintiff demonstrated at the hearing that Ms. Burton was properly served with process. The Affidavit of Service of evidences that she was properly served under CCP Civ. Rule 4(f). Therefore, the Court finds that Ms. Burton has failed to establish excusable neglect required under CCP Civ. R. 60(b).

AND NOW, THEREFORE, IN THE INTEREST OF JUSTICE, IT IS HEREBY ORDERED THAT DEFENDANT'S MOTION TO VACATE DEFAULT JUDGMENT IS DENIED.

This 20th day of November 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli