

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DORIS L. JOYNER,	§
	§ No. 206, 2005
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
KMART CORPORATION,	§ C.A. No. 04C-03-140
	§
Defendant Below-	§
Appellee.	§

Submitted: July 15, 2005  
Decided: September 7, 2005

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

**ORDER**

This 7<sup>th</sup> day of September 2005, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, Doris L. Joyner, filed an appeal from two orders of the Superior Court---the first, dated April 13, 2005, dismissed her complaint and the second, dated April 26, 2005, denied her motion for reargument. The defendant-appellee, Kmart Corporation (“Kmart”), has moved to affirm the judgment of the Superior Court on the ground that it is

manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup>

We agree and AFFIRM.

(2) In January 2002, Kmart filed a petition for bankruptcy relief in the United States Bankruptcy Court for the Northern District of Illinois. The record reflects that, on April 23, 2003, the Bankruptcy Court entered an order confirming Kmart's Chapter 11 reorganization plan, which then became effective on May 6, 2003. The record further reflects that, on or before May 19, 2003, the claims agent for Kmart's Chapter 11 bankruptcy sent notification of the confirmation order and the June 20, 2003 deadline for submitting claims, along with a proof of claim form, to Joyner at her last-known address. Joyner never returned the proof of claim form to the agent.

(3) In February 2004, Joyner filed a personal injury lawsuit against Kmart in the Superior Court, claiming that, in February 2002, she was injured by an automatic door while exiting a Kmart store on Centerville Road in Wilmington, Delaware.<sup>2</sup> In its answer to the complaint, Kmart asserted a number of defenses, among them that any claims by Joyner against Kmart had been discharged by the Bankruptcy Court due to her failure to timely submit her proof of claim form.

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> As part of her Answers to Form 30 Interrogatories, Joyner attached a letter dated September 9, 2003 to her from the Kmart Customer Incident Center stating that her claim was time-barred because she did not file her proof of claim form by June 20, 2003.

(4) In this appeal, Joyner claims that: a) she did not receive notice of the bankruptcy proceedings and, therefore, should be permitted to proceed with her claim in the Superior Court to protect her rights; b) Kmart did not file a timely answer to her complaint and, therefore, a default judgment should have been entered; and c) the Superior Court should not have granted Kmart's motion to dismiss because she did not see a copy of it until April 15, 2005, when she appeared for the hearing on the motion.

(5) The record does not support Joyner's claim that she did not receive notice of the bankruptcy proceedings. Even assuming that the Bankruptcy Court should not have discharged Joyner's claim for that, or any other, reason, any remedy Joyner may have lies with the Bankruptcy Court and not with the Superior Court. Joyner is not entitled to proceed with her claim against Kmart in the Superior Court because her claim against Kmart has been discharged in the bankruptcy proceeding. For all of these reasons, we find Joyner's first claim to be without merit.

(6) Joyner's second claim is that Kmart did not timely answer her complaint and, therefore, she is entitled to a default judgment. This claim was not presented to the Superior Court in the first instance and we decline to address it in this appeal.<sup>3</sup>

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<sup>3</sup> Supr. Ct. R. 8.

(7) Joyner's third claim is that her complaint should not have been dismissed because she did not see a copy of Kmart's motion to dismiss prior to April 15, 2005, the hearing date for the motion.<sup>4</sup> Even assuming that Joyner did not actually see the motion prior to appearing for the hearing, she must have at least been aware of its existence prior to that date or she would not have appeared for the hearing. It was Joyner's obligation to respond to the motion in a timely fashion, or request an extension of time in which to respond, as required by the Superior Court Civil Rules.<sup>5</sup> We, therefore, find no abuse of discretion on the part of the Superior Court in granting Kmart's motion to dismiss.<sup>6</sup> Moreover, we find no abuse of discretion on the part of the Superior Court in denying Joyner's motion for reargument, since it contained no reasonable explanation for her failure to respond to Kmart's motion to dismiss.<sup>7</sup>

(8) It is manifest on the face of Joyner's opening brief that this appeal is without merit because the issues presented on appeal are controlled

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<sup>4</sup> The hearing was not held, since the Superior Court already had granted Kmart's motion to dismiss on April 13, 2005, two days after a timely response to the motion was due. On that date, neither a response to the motion nor a request for an extension had been received by the judge. Pursuant to the New Castle County Civil Case Management Plan, § IV, §§A (3) (b), the judge deemed the motion to dismiss to be unopposed and granted it.

<sup>5</sup> Super. Ct. Civ. R. 78(b).

<sup>6</sup> Super. Ct. Civ. R. 41(b).

<sup>7</sup> Super. Ct. Civ. R. 59(e). The Superior Court did not find Joyner's assertion that she had not seen the motion to dismiss prior to the hearing date to be credible, and Joyner provided no other explanation for her failure to respond to it.

by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 25(a), that Kmart's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice