

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

WILMINGTON, DELAWARE 19801

John K. Welch
Judge

May 26, 2010

Ms. Kimberly Holley
1219 W. 7th Street
Wilmington, DE 19805

Re: *Great Seneca Financial Corporation, et al. v. Kimberly Holley*
C.A. No.: 2004-02-251

Dear Ms. Holley:

The Court is in receipt of your Notice of Motion for Reargument (second Motion) filed on May 19, 2010 pursuant to Court of Common Pleas Civil Rule 59(e). It is noticed for June 4, 2010 but the Civil Clerk has correctly advised you it must be heard by this Judge. It is therefore no longer scheduled for June 4, 2010 on the Civil Motion calendar.

You have also now changed the caption of the case in the Second Motion to Great Seneca Financial Corporation, assignee of Palisades, Assignee of Providian Bank, P.O. Box 1651, Rockville, MD 20849 to Kimberly Holley with the same civil action number.¹ In your latest filing, you now request the Court to reconsider its

¹ This was the current caption of the case when the Court entered Mr. Levitsky's Motion for Judgment on the Pleadings and signed by the Court by the Honorable Alex J. Smalls on January 16, 2010.

original Order dated May 20, 2010 denying your Motion to Vacate the Default Judgment.²

Pursuant to Court of Common Pleas Civ. R. 59(e), the following Civil Rule applies:

(e) Rearguments. A motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved. (Emphasis supplied)

As C.C.P. Civ. R. 59(e) provides, after the filing of a Reargument Motion, the Court determines from the Motion and Answer whether argument will be granted. Since you never noticed the correct parties, no answer has been filed. In addition, as case law provides, a Motion for Reargument is the proper device for seeking reconsideration by the Trial Court of its Findings of Fact, Conclusions of Law or judgment, after non-jury trial. *Hessler, Inc. v. Farrell*, 260 A.2d 701 (Del. 1969).

When determining a Motion for Reargument under Civil Rule 59(e), the Court must consider whether it overlooked a precedent or legal principle that would have controlling effect, or that was misapprehended by the law or Courts such as would affect the outcome of this decision. *See, Gass v. Thrax*, --- A.2d --- (Del. Supr. Ct.,

² As noted above, Chief Judge Smalls on July 16, 2004 actually entered an Order for Judgment on the Pleadings, not default judgment under C.C.P. Civ. R. 55 for \$6,033.18.

June 28, 2002). In the instant case, in your Motion to Vacate, you prepared the wrong caption, never formally amended the caption to name the assigned judgment creditor as a defendant; incorrectly characterized the previously orders of the Court as a default judgment, not an order initially granting Judgment on the Pleadings; and now switched in your new caption the parties as plaintiff and defendant.

In your *pro-se* answer filed with the Civil Clerk docketed March 1, 2004, you admitted the underlying debt and “agree[d] to pay the plaintiff the sum of \$6,462.18 representing the balance due and owing for goods sold and delivered and/or services amended and/or a revolving account stated between plaintiff and defendant.” Now, almost seven (7) years later, you seek to reopen the judgment without notice to the assigned creditor of the original plaintiff.

In short, the Court finds that there was no error in denying your Motion to Vacate for the reasons originally entered: Lack of notice to the correct party. The Court did not address the merits of your Motion to Vacate the Default because the judgment creditor was not sent actual notice of your Motion to Vacate.

The Court notes that your separate May 21, 2010 Letter of Appeal filed May 21, 2010 with the Court attaches an April 23, 2010 letter from Palisades Acquisition XVI. That letter instructed you to direct all future correspondence and payments concerning your account to Palisades Acquisitions XVI, P.O. Box 416269, Boston, MA 02241-6269, the new assigned judgment creditor of the plaintiff. (Exhibit “A”). The Court therefore concludes that not only did you list the wrong defendant on your original Motion to Vacate, Palisades Collection Agency, you never notified the

assigned judgment creditor and correct party defendant of your Motion to Vacate Chief Judge Smalls' Order of July 16, 2004.

When you notice the correct judgment creditor, you may refile your Motion to Vacate the Default Judgment or alternately, the order Chief Judge Smalls entered on the Motion for Judgment on the pleadings on July 16, 2004. At that time, the Court will decide the Court on the merits, not on the procedural grounds and decide whether the proper parties are correctly before the Court. You must correct the caption of your case pursuant to C.C.P Civ. R. 15(a) to name the correct parties and reflect the new assigned judgment creditor. The Court shall not accept any future filings until you amend the caption to name the correct parties and provide actual notice to the correct judgment creditor.

If you do so, the Court shall consider, *inter alia*, assuming correct notice, under a discretionary standard, whether there is prejudice to the opposing party; whether the seven (7) year delay in filing your motion is appropriate; whether you acted timely; whether you have actually acknowledged further the debt by making payments and any other relevant factors to be considered in a Motion to Vacate under C.C.P. Civ. R. 55. *See, Dextra Federal Credit Union v. Holley Oak Towing and Service Center*, 2008 WL 867946, Del.Comm.Pl., Welch, J. (March 31, 2008).

Your motion, pursuant to Court of Common Pleas Civ. R. 59(e) for Reargument on the Court's Order denying your Motion to Vacate the Default

Judgment is therefore denied. Your separately filed May 21 2011 appeal letter is also denied.

The Court deems oral argument is not necessary in this matter and decides the matter on the record.

IT IS SO ORDERED this 26th day of May, 2010.

John K. Welch
Judge

Encl: (April 23, 2010 Palisades Acquisition XVI Correspondence)
/jb

cc: Mr. Jose Beltran, Civil Case Manager