

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

| | | |
|-------------------|---|-------------------------|
| RICHARD WILLIAMS, |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 08C-06-222 CLS |
| |) | |
| GERALD BRUNNER, |) | |
| Defendant. |) | |
| |) | |

ORDER

AND NOW, TO WIT, this 9th day of January, 2012, **IT IS HEREBY**

ORDERED as follows:

Introduction

Before the Court is Plaintiff's, Richard Williams ("Williams" or "Plaintiff") Motion to Vacate the Default Judgment entered by this Court on April 14, 2010. Because the default was entered as a result of Plaintiff's inexcusable neglect and Plaintiff has not set forth any other reasons to vacate the judgment, the Motion is **DENIED**.

Background

Plaintiff filed suit against Defendant, Gerald Brunner, ("Defendant" or "Brunner") for Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing. Defendant filed an Answer and Counterclaim to Plaintiff's Complaint. Defendant requested production for the first set of interrogatories and

for production of documents on April 8, 2009. Plaintiff's counsel filed a Motion to Withdraw as counsel, which was granted by this Court on September 15, 2009. On November 24, 2009, Defendant filed a Motion to Impose Sanctions under Super. Ct. Civ. R. 37(d). Defendant requested that this Court enter an order: (1) dismissing the Complaint with prejudice and; (2) entering a default judgment against Plaintiff on Defendant's counterclaim for failure to respond to the April 2009 discovery request. On November 24, 2009, this Court granted Defendant's Motion to Impose Sanctions. Thus, Plaintiff's Complaint was dismissed with prejudice and Default Judgment was entered against Plaintiff on Defendant's counterclaim. On April 14, 2010, this Court entered judgment against Plaintiff for \$9,379.30 on Defendant's Counterclaim.

On July 8, 2011, Plaintiff filed a Motion to Vacate the judgment entered in this Court in the amount of \$9,379.30. This motion has been re noticed several times since its initial notice date of August 2, 2011. The Court will decide this Motion without a hearing.

Parties' Contentions

Plaintiff claims he was not given notice of: (1) the Court's order of September 15, 2009 allowing his counsel to withdraw from the case; (2) Defendant's Motion to Impose Sanctions pursuant to Super. Ct. Civ. R. 37(d); (3)

Defendant's Motion to Determine the Amount of Damages; and (4) a proper accounting of the Counterclaim.

Defendant responded in opposition to Plaintiff's Motion. Defendant submits that Plaintiff did not comply with the rules of this Court and default judgment was properly entered.

Discussion

This Court has the discretion to set aside a default judgment in accordance with Superior Court Civil Rule 60(b).¹ According to Super. Ct. Civ. R. 60(b):

the Court may relieve a party of a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.²

This Court must consider three factors in determining whether a default judgment should be set aside: first, whether Williams' culpable conduct led to the default and, if so, was it excusable; second, whether Williams has a meritorious

¹ Super. Ct. Civ. R. 55(b).

² Super. Ct. Civ. R. 60(b).

defense; and third, whether Bruner will be prejudiced.³ The first requirement must be satisfied for this Court to consider the other two requirements.⁴ If a satisfactory reason has been established for failing to respond to Plaintiff's discovery requests, the second and third factors will be considered.⁵ Satisfactory explanations include excusable neglect or inadvertence. Excusable neglect is defined as "neglect which might have been the act of a reasonably prudent person under the circumstances."⁶ However, the judgment will not be vacated where Plaintiff simply ignored the process.⁷

Plaintiff's Motion merely alleges that he did not receive notice of various documents in this case. Defendant's motions filed with this Court attach a certificate of service. The certificate of service indicates that Plaintiff was served with these documents. The signed order granting Plaintiff's Counsel' Motion to Withdraw was filed and was served on Plaintiff and Defense counsel.

Assuming Plaintiff was not given notice of the Court's order dated September 15, 2009, the outcome of this case is still the same. Defendant requested interrogatories and request for first production in April 2009. In *Sundor Electric, Inc. v. E.J.T. Construction Co.*,⁸ where evasive answers were given in

³ See *Stevenson v. Swiggett*, 8 A.2d 1200, 1204-05 (Del. 2010).

⁴ *Id.*

⁵ *Id.*

⁶ Super. Ct. Civ. R. 60(b)(1).

⁷ *Stevenson*, 8 A.2d at 1205.

⁸ 337 A.2d 651 (Del. 1975).

response to an interrogatory, the Delaware Supreme Court reversed a default judgment that was granted under Super. Ct. Civ. Rule 37. Unlike in *Sundor Electric*, where interrogatories were answered, to date, Defendant's discovery requests have not been answered.

While Plaintiff's counsel withdrew from the case on September 15, 2009, Plaintiff had ample opportunity to respond to the discovery request without being represented by counsel. Litigants, whether represented by counsel or representing themselves, must diligently prepare their case or risk dismissal.⁹ "There is no different set of rules for *pro se* [litigants], and the trial should not sacrifice the orderly and efficient administration of justice to accommodate an unrepresented [party]."¹⁰ Plaintiff failed to meet his burden of establishing mistake, inadvertence, surprise, or excusable neglect under Super. Ct. Civ. R. 60(b)(1). Because Williams' inexcusable culpable conduct led to the default and he has not set forth reasons under Rule 60(b)(1) for vacating this Court's judgment, the Motion to Vacate the default judgment is **DENIED**.

⁹ *Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del. 2001).

¹⁰ *Id.*

Conclusion

Based on the forgoing, Plaintiff's Motion to Vacate the Default Judgment is

DENIED.

IT IS SO ORDERED.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.