IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BARBARA WATSON,	)	
	)	
Plaintiff,	)	C.A. No. 08C-07-030 JTV
	)	
v.	)	
	)	
ROBERT SIMMONS, and JOHN CHRISTNER TRUCKING, LLC, a foreign corporation,	)	
	)	
	)	
Defendants.	)	

Submitted: January 9, 2009
Decided: April 30, 2009

Jeffrey J. Clark, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff.

Daniel L. McKenty, Esq., Heckler & Frabizzio, Wilmington, Delaware. Attorney for Defendants.

Upon Consideration of Defendants'
Motion for Relief from Default Judgment
DENIED

VAUGHN, President Judge

Watson v. Simmons, et al.
C.A. No. 08C-07-030 JTV
April 30, 2009

ORDER

Upon consideration of the defendants' Motion for Relief from Default Judgment, the plaintiff's opposition, and the record of the case, it appears that:

1. This personal injury case arises out of an automobile accident that occurred on August 14, 2006. The plaintiff's complaint was filed on July 24, 2008. According to the docket, service of process was completed against both defendants, Robert Simmons and John Christner Trucking, LLC, and neither defendant answered, moved, or otherwise responded to the complaint within twenty days of service. The Court, upon motion, entered a default judgment against the defendants on November 26, 2008.

2. On December 1, 2008, the defendants filed the instant motion seeking to vacate the default judgment under Superior Court Civil Rules 55 and 60(b). They contend that during July, August and September 2008, the parties attempted to settle the case without the need of answering the complaint. Specifically, the defendants contend that plaintiff's counsel informed the assigned insurance adjuster that he had an open extension to file an answer. The defendants further contend that on September 16, 2008, plaintiff's counsel submitted additional medical records to the adjuster, and that a settlement offer was extended to plaintiff's counsel. They further contend that counsel for the plaintiff never responded to the settlement offer, opting instead to file a motion for default judgment without notifying the adjuster. The defendants further contend that plaintiff's counsel did not revoke his open extension of the time for answering the complaint. The defendants further contend that when the file was forwarded to defense counsel on November 14, an attorney there

immediately corresponded with plaintiff's counsel, who informed the attorney that a motion for default judgment had been filed.

3. The defendants further contend that they do not concede liability in this action, and that an independent eyewitness statement reflects that the accident was caused by the negligence of the plaintiff. The defendants contend that their defenses are not frivolous; that the plaintiff cannot demonstrate any prejudice that would result from a Court order vacating the default judgment; that the motion to vacate was made in a timely manner; and that the defendants will be substantially disadvantaged if they lose their opportunity to defend the suit.

4. The plaintiff disagrees with the defendants' recitation of the events. The plaintiff contends that the defendants were never given an open extension to file an answer. Counsel for the plaintiff contends that there was one, single conversation between the adjuster and him in which he agreed to an extension from September 16 to September 24, 2008, which is the date the plaintiff filed her motion for default judgment. The plaintiff contends that in the time frame prior to the filing of the motion for default judgment, the insurer had tendered a settlement offer that the plaintiff rejected. The plaintiff further contends that on September 2, 2008, plaintiff's counsel faxed supplemental documents to the AIG adjuster, and the adjuster assured him that the plaintiff would receive a revised position within one week.

5. The plaintiff further contends that on September 16, 2008, after two weeks had elapsed, the adjuster told plaintiff's counsel that more time was needed to revise the position. The plaintiff contends that plaintiff's counsel told the adjuster that either additional authority would be needed, or defense counsel would have to contact

the plaintiff within seven days to discuss another extension to filing the answer. The plaintiff filed her motion for default judgment on the seventh day, having, her counsel contends, not heard anything from the defendants. The motion was later re-noticed for November 14.

6. The plaintiff further contends that the defendants and the defendants' insurer, received notice of the suit at several times. For example, the plaintiff contends, courtesy copies of the Complaint were sent to the insurer; plaintiff's counsel followed up with a phone call in mid-August; defendant Simmons received a registered mail copy of the Complaint on August 23, 2008; defendant John Christner Trucking, LLC received the registered mailing on August 25, 2008; and a notice of the motion for default judgment scheduled for November 14 was sent by regular and certified mail to both defendants on October 9, 2008. The plaintiff further contends that, while she was not obligated to notify the defendants of the motion for default judgment by Court rule, the plaintiff nevertheless provided the defendants with one full month of notice prior to the default judgment hearing. Finally, the plaintiff contends that there was no excusable neglect in this case

7. Superior Court Civil Rule 55(c) provides that the Court may set aside a default judgment in accordance with Rule 60(b). Under Rule 60(b), the Court may relieve a party from a judgment for reasons including "(1) [m]istake, inadvertence, surprise, or excusable neglect" or "(6) any other reason justifying relief from the operation of the judgment."

8. A motion to vacate a default judgment under Rule 60(b) is addressed to the

sound discretion of the trial court.[1] Delaware courts favor Rule 60(b) motions, as they "promote Delaware's strong judicial policy of deciding cases on the merits and giving parties to litigation their day in court."[2] In furtherance of this policy, any doubts should be resolved in favor of the moving party.[3] While Delaware courts construe Rule 60(b) liberally, the movant must still satisfy three elements before a motion to vacate a default judgment will be 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."[4]

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[1] *Battaglia v. Wilmington Sav. Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977); *Verizon Delaware, Inc. v. Baldwin Line Constr. Co., Inc.*, 2004 WL 838610, at *1 (Del. Super. Apr. 13, 2004); *Model Fin. Co. v. Barton*, 188 A.2d 233, 234 (Del. Super. 1963); *Kaiser-Frazer Corp. v. Eaton*, 101 A.2d 345, 353 (Del. Super. 1953).

[2] *Verizon*, 2004 WL 838610, at *1; *see also Battaglia*, 379 A.2d at 1135 ("And when reviewing an order granting a motion to open a default judgment, we recognize that Rule 60(b) has been accorded a liberal construction because of the underlying policy which favors a trial on the merits to a judgment based on a default."); *Keystone Fuel Oil Co. v. Del-Way Petroleum, Inc.*, 364 A.2d 826, 828 (Del. Super. 1976) ("Liberality is highly favored where the opening of default judgments is concerned because of a basic underlying policy which prefers that a defendant have his day in court. A trial on the merits is considered superior to a default judgment."); *Model Fin.*, 188 A.2d at 234 ("The rule should be liberally construed.").

[3] *Verizon*, 2004 WL 838610, at *1; *Model Fin.*, 188 A.2d at 234-35; *Kaiser*, 101 A.2d at 353; *see also Cohen v. Brandywine Raceway Assoc.*, 238 A.2d 320, 325 (Del. Super. 1968) ("In considering the exercise of the discretion, the Court must recognize at the same time, both that the objective of legal procedure is the determination of issues upon their merits and that litigants and their counsel may not be allowed with impunity to disregard the process of the Court.").

[4] *Verizon*, 2004 WL 838610, at *1.

9. For a Rule 60(b)(1) motion, the Superior Court should consider either the possibility of a meritorious defense or possible prejudice to the plaintiff "only if a satisfactory explanation has been established for failing to answer the complaint, e.g. excusable neglect or inadvertence."[5] Excusable neglect has been defined as "that neglect which might have been the act of a reasonably prudent person under the circumstances."[6] "A mere showing of negligence or carelessness without a valid reason may be deemed insufficient."[7] A motion based on Rule 60(b)(6), on the other hand, is an independent ground for relief, and requires a showing of "extraordinary circumstances."

10. Under the Rule 60(b)(1) standard, the threshold inquiry is whether the defendants' conduct in failing to answer the plaintiff's duly served complaint amounted to excusable or inexcusable neglect. It appears that both defendants relied on the insurer to attend to the suit and take care of the procedural details. The courts have held that the neglectful acts of a defendant's insurer will not necessarily be imputed to the defendant.[8] It is considered reasonable and prudent for a defendant served with a summons and complaint to promptly turn the documents over to his

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[5] *Apartment Cmtys. Corp. v. Martinelli*, 859 A.2d 67, 72 (Del. 2004); *see also Williams v. DelCollo Elec., Inc.*, 576 A.2d 683, 685 n.4 (Del. Super. 1989).

[6] *Battaglia*, 379 A.2d at 1135 n.4.

[7] *Cohen*, 238 A.2d at 325.

[8] *See Williams*, 576 A.2d at 686 ("Generally, where a defendant's default is due solely to the neglect of the defendant's insurer, that neglect will not be attributed to the defendant, and the default will be vacated on motion.").

insurance carrier.[9] A defendant in that situation is reasonable in believing that the matter will be handled by the insurer.[10] However, while the insurer's neglect will not always be imputed to the insured, a court will still examine the conduct of the insurer under the excusable neglect standard.[11]

11. In this case I conclude that the conduct of the insurer through its adjuster was not that of a reasonably prudent person under the circumstances. The insurer's activity notes show six entries between August 1 and September 16, 2008, but none of them refer to any open-ended extension of time to file an Answer. The first

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[9] *Id*.

[10] *Id*.

[11] *See A Child's Dream, Inc. v. Mills*, 765 A.2d 950, 2000 WL 1862240, at **1 (Del. Dec. 15, 2000) (TABLE) ("[T]he trial court in *Williams* expressly considered the insurance company's conduct, and found it excusable, before setting aside the default."). In *Williams*, a case distinguishable from the case at bar, the court held that the insurer's neglect in processing the suit filed against its insured did not rise to the level of "sheer indifference," such that the neglect was excusable. *Williams*, 576 A.2d at 686. A series of factors converged to excuse the insurer's failure to act: the insurer closed its Delaware office and transferred the defendant's file to a Maryland office five months after opening the file; the adjuster assigned to the case from the beginning retired eleven days prior to the plaintiff's filing suit; a negotiator assigned to the case forwarded a copy of the complaint immediately after receipt of the same, but the materials never arrived at the intended law firm due to a typographical error; and the default was taken within a short time after expiration of the 20-day answering period and the defendant acted quickly in moving to vacate the default after the defendant had become aware of the same. *Id*. For cases where an insurer's inexcusable neglect prevented a court from granting an insured's motion to vacate default judgment, see *A Child's Dream*, 765 A.2d 950 (insurer presented no satisfactory explanation of reasons for failure to act on complaint served on insured defendant); *Cooke v. Cobbs*, 2003 WL 22535080, at *1 (Del. Super. Oct. 22, 2003) ("It appears that the failure of Nationwide to act upon the complaint prior to May 20 was caused by neglect on the part of the responsible Nationwide employee, but not excusable neglect.").

mention of such is in an activity note dated November 14.[12] It appears that the adjuster relied upon the possibility of settlement in lieu of sending the papers on to defense counsel. He did not forward the Complaint to counsel until after the default judgment was granted, despite working for a company that is in the business of handling litigation matters on behalf of its insureds.[13] The case law makes clear that it is unreasonable not to seek legal counsel upon receiving notice of a complaint.[14] Because the Court can find that the defendants' insurer's conduct in failing to process the complaint was the result of inexcusable neglect, the Court need not address

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[12] The activity note of November 14 states that the adjuster called the plaintiff's attorney and left a message on his voice mail to discuss settlement in this matter. That is the same day upon which the plaintiff presented her motion for default judgment. Whether there is any relationship between the activity note of November 14 and the presentation of the motion on the same day cannot be ascertained from the record, and I draw no inference from their coincidentally happening the same day.

[13] *See Mendiola v. State Farm Mut. Auto. Ins. Co.*, 2006 WL 1173898, at *3 (Del. Super. Apr. 27, 2006) (conduct of insurer's employees in failing to act on complaint due to "mix-up" involving a similarly-captioned personal injury case was "not the conduct of reasonably prudent persons employed by an auto insurance company, which routinely handles litigation matters involving its insureds").

[14] *See Murzyn v. Locke*, 2006 WL 1195628, at *2 (Del. Super. Mar. 13, 2006) ("Defendant did not act reasonably when he did not seek legal representation upon service of the Complaint."); *Keith v. Melvin L. Joseph Constr. Co.*, 451 A.2d 842, 846 (Del. Super. 1982) ("Upon service of process, a reasonably prudent person would have, at least, consulted with an attorney to ascertain his legal rights and obligations."). While there is authority for the view that the defendants in this case acted reasonably in turning the matter over to Christner Trucking's insurer, there is also authority for the proposition that a reasonably prudent defendant cannot rely on vague telephonic assurances from a representative of a co-defendant or other entity. *Lee v. Charter Commc'ns VI, LLC*, 2008 WL 73720, at *2 (Del. Super. Jan. 7, 2008). A defendant is obligated to question whether his interests are being properly protected by that other entity, including contacting counsel to check the status of the matter. *Id*.

whether the defendants have meritorious defenses and whether the plaintiff would be prejudiced by an order vacating the default judgment.

12. The insurer's conduct in this case similarly precludes any relief under Rule 60(b)(6), which requires a showing of "extraordinary circumstances." In a case involving an insurance claim, the defendant must show something beyond the neglect of a claims representative who fails to properly process a complaint and ensure that it reaches the hands of defense counsel.[15] The defendants have not alleged that the conditions causing the adjuster to rely on an open time extension and the possibility of a settlement were extraordinary circumstances.

13. Based on the foregoing, the defendants' motion to vacate the default judgment is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File

[15] *Mendiola*, 2006 WL 1173898, at *4 (quoting *Cooke*, 2003 WL 22535080, at *2).