

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

DAVENPORT SERVICES, INC., :  
A corporation of the State of Delaware, :  
 :  
Plaintiff, :  
 :  
v. : C.A. 011-03-34-SCD  
 :  
RUDOLPH CROSS, JR., :  
 :  
Defendant. :

Argued: October 25, 2001  
Decided: October 30, 2001

O R D E R

On this 30th day of October 2001, upon plaintiff's motion to strike defendant's answer, affidavit of defense, and affirmative defenses, it appears that:

(1) On June 4, 2001, plaintiff filed a motion for entry of default judgment. On June 28, 2001, that motion was granted. On June 29, 2001, defendant filed (1) a motion to vacate the default judgment; and (2) an affidavit of defense with an answer and affirmative defenses to plaintiff's complaint. On July 12, 2001, that motion was granted. On September 28, 2001, plaintiff filed this motion to strike defendant's answer, affidavit of defense, and affirmative defenses pursuant to Superior Court Civil Rule 12(f). On October 25, 2001, oral argument on that motion was heard.

(2) The issue is whether plaintiff's motion to strike defendant's answer, affidavit of defense, and affirmative defenses is time barred under Superior Court Civil Rule 12(f).

(3) Superior Court Civil Rule 12(f), Motion to strike, states:

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion

made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

(4) The plaintiff's motion to strike defendant's answer, affidavit, and affirmative defenses is time barred under Superior Court Civil Rule 12(f). On June 29, 2001, defendant filed their answer, affidavit, and affirmative defenses. On September 28, 2001, plaintiff filed this motion to strike defendant's answer, affidavit, and affirmative defenses pursuant to Superior Court Civil Rule 12(f). Thus, plaintiff's motion to strike was filed more than twenty days after defendant filed his answer, affidavit, and affirmative defenses. Accordingly, plaintiff's motion to strike is DENIED.

IT IS SO ORDERED.

---

Judge Susan C. Del Pesco

Original to Prothonotary  
xc: William P. Brady, Esq.  
Jane W. Evans, Esq.