SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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Re: **McMartin v. Quinn**
C. A. No. 03C-01-004-RFS

Date Submitted: November 7, 2004
Date Decided: February 3, 2004

Upon Defendant Churchville's Motion to Vacate Default Judgment. Granted
Upon Plaintiff McMartin's Motion to Enter Default Judgment. Denied.

Dear Counsel:

This is my decision regarding Defendant Maryjane Churchville's Motion to Vacate Default Judgment, and Plaintiff Lori McMartin's Motion to Enter Default Judgment. The Churchville motion is granted, and the McMartin motion is denied for the reasons set forth herein.

STATEMENT OF THE CASE

This case arises from a claim for disputed commissions and a claim of wrongful discharge. Defendants Michael Quinn ("Quinn") and Maryjane Churchville ("Churchville"), husband and wife, are the Operations (or Operating) Manager and the President, respectively, of Vanguard Financial

Corporation d/b/a First Source Funding, Inc. ("Vanguard"), a mortgage brokerage company and a Pennsylvania corporation. Churchville is the only shareholder of the company. The Plaintiff, Lori McMartin, ("McMartin") was employed by Vanguard as a loan officer until April 11, 2002 when she either left on her own volition or was discharged.

McMartin has brought suit against Vanguard, Quinn and Churchville for lost commissions under the Delaware Wage Payment and Collection Act, 19 *Del. C.* §§ 1101-1104, 1107, 1113. Her first claim contests a purported company policy that does not allow payment of commissions on loans that go to settlement more than 30 days after the loan officer leaves employment. McMartin has also brought a common law claim against Vanguard, Quinn and Churchville for breach of the implied covenant of good faith and fair dealing. Allegedly, her employment was terminated in bad faith in retaliation for the defendants' mistaken belief that she had reported to the Delaware Banking Commissioner that Vanguard was doing business without a license. Apparently, someone did report Vanguard to the Commissioner but that person was not McMartin.

The Complaint was filed on January 10, 2003, and a Motion for Default Judgment was filed on April 30, 2003 after Defendants Quinn and Churchville failed to appear. They were each mailed a copy of the Motion for Default Judgment at the same Westtown, Pennsylvania address via certified mail on April 28, 2003. An Order granting the motion was issued on May 16, 2003. Subsequently, a Motion for Default Judgment against Vanguard was filed by Plaintiff on September 2, 2003. Churchville's motion was filed on September 29, 2003.

Defendant Churchville claims that she relied on her husband, Defendant Quinn to handle this case. She thought he had secured an attorney and had responded to the complaint. Allegedly, he told her repeatedly that he was taking care of everything. Churchville claims she realized Quinn had not taken care of the case when she received the pending Motion for Default Judgment against Vanguard

(which would have been on or about September 2, 2003). In addition, there appears to have been marital discord between Churchville and Quinn around the time of the filing of this lawsuit.

DISCUSSION

A. Reasons Justifying Relief from Judgment

Superior Court Civil Rule 60(b) provides that a Court "may relieve a party . . . from a final judgment, order, or proceeding for . . . : (1) Mistake, inadvertence, surprise, or excusable neglect; . . . or (6) any other reason justifying relief from the operation of the judgment." The decision to vacate a default judgment is within the sound discretion of the court. *Battaglia v. Wilmington Savings Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977). The language of Delaware Rule 60(b) is taken almost verbatim from the Federal Rule of Civil Procedure 60(b) and Federal Courts have observed that discretion "ordinarily should incline toward granting rather than denying relief, especially if no intervening rights have attached in reliance upon the judgment and no actual injustice will ensue." 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2857 (2d ed. 1995). *See also Wagstaff-El v. Carlton Press Co.*, 913 F.2d 56, 57 (2d Cir. 1990). Delaware public policy also favors deciding cases on the merits, leading to the inference that "[a]ny doubt should be resolved in favor of the petitioner." *Model Finance Co. v. Barton*, 188 A.2d 233, 235 (Del. Super. Ct. 1963). More generally, Delaware Courts construe Rule 60(b) liberally. *See Robins v. Garvine*, 136 A.2d 549, 552 (Del. 1975) (following the Federal courts' policy of according the rule liberal construction).

Defendant Churchville has moved to vacate the default judgment under the theory that her conduct arose to the level of "mistake, inadvertence, or excusable neglect" pursuant to 60(b)(1). In addition, at oral argument, counsel for Churchville argued that judgment should be vacated pursuant to 60(b)(6), "any other reason justifying relief."

1. "Mistake, inadvertence, surprise, or excusable neglect"

The threshold requirement in deciding whether to vacate a default judgment under 60(b)(1) is to establish the defendant's conduct or neglect was that of a reasonably prudent person under the circumstances. *Battaglia*, 379 A.2d at 1135 n.4. *Accord Meyer v. American Reliance Insurance Co.*, 1991 WL 89820, at *2 (Del. Super. Ct.). "The Court must examine the facts of each case to determine whether the moving party acted reasonably." *Pinkett v. Valley Forge Ins. Co.*, 1989 WL 135750, at *3 (Del. Super. Ct.). As a preliminary matter, Churchville's conduct cannot be attributable to mistake. Delaware courts do not equate mistake to situations such as the present one, rather, there must have been a mistake of fact or of law resulting in the defendant's failure to appear. *See, e.g., Keystone Fuel Oil Co. v. Del-Way Petro., Inc.* 364 A.2d 826 (Del. Super. Ct. 1976).

Given the state of the marital relationship, Churchville's placement of trust in Quinn, as her husband, may not have arisen, in and of itself, to the level of inadvertence or excusable neglect; however, the circumstances of Quinn and Churchville's relationship, in concert with their respective roles in the corporation provides sufficient ground to persuade the Court that Churchville's reliance on Quinn was reasonable. *See Standard Linen Service v. Sezna*, 1980 WL 317950, at *2 (Del. Super. Ct.) ("All the surrounding circumstances may be considered in determining the issue.") Although Churchville was the President of the corporation, her husband, as the Operations Manager, was the one who actually directed the daily business affairs in the Delaware offices. Churchville stayed in Pennsylvania while Quinn traveled back and forth to Delaware in order to oversee the business. This is not a case in which Plaintiff simply ignored the ongoing proceedings. *See, e.g., Financial & Brokerage, Services, Inc. v. Robinson Ins. Assoc., Inc.*, 1990 WL 199503 (Del. Super.Ct.); *Ramirez v. Rackley*, 70 A.2d 18 (Del. Super. Ct. 1949). Instead, she operated under the belief (albeit mistaken) that her husband was acquiring an attorney and actively pursuing a defense to the claims.

Under the circumstances, it was reasonable that she would have relied on her husband, as manager of the business, to take care of any pending law suits against Vanguard in Delaware. *Cf. Williams v. DelCollo Electric,* 576 A.2d 683 (Del. Super. Ct. 1989) (finding excusable neglect when president of corporation relied upon insurer who failed to handle the case); *Standard Linen Service v. Sezna*, 1980 WL 317950 (Del. Super. Ct.) (finding defendant's failure to obtain counsel because of difficulty of contacting lawyer and confusion as to who should be counsel amounted to excusable neglect).

Concerning the timing of the filing of this motion to vacate, once Churchville learned of the default judgment she did not act with unreasonable delay in handling the matter. While the federal version of Rule 60(b) includes a time limit of one year for filing a motion to vacate default judgment for excusable neglect, that requirement is omitted from the Delaware rule. *Compare* Fed. R. Civ. P. 60(b), *and* Super. Ct. Civ. R. 60(b). In *Schremp v. Marvel*, 405 A.2d 119, 120 (Del. 1979), the Supreme Court observed that a movant has an obligation to act without unreasonable delay when making a motion to vacate default judgment. Churchville should have received notice of the order granting default judgment against herself sometime after May 16, 2003. She avows, however, that she only became aware of the default judgment when she received notice of a pending motion for default judgment against Vanguard. She would have received this notice on or around September 2, 2003. Thereafter, she procured an attorney and filed this motion on September 29, 2003. The *Schremp* Court measured reasonableness by comparing the amount of time that had passed (i.e., time of defaulting party's actual knowledge of dismissal to time of filing of motion) to the mandatory time for appealing adverse judgment (thirty days), moving for a new trial (ten days) or reargument (five days). 405 A.2d at 121 (finding motion to vacate default judgment untimely when the plaintiff filed two months after learning of dismissal of case). In this case, four and one-half months passed from

the time default judgment was entered to the time the motion to vacate was filed, but less than 30 days passed from the time Churchville learned of the default judgment entered against her to the time of filing of this motion. Thus the Court finds that, compared to the pace of litigation, she filed her motion to vacate in a timely fashion.

2. "Any other reason justifying relief"

Churchville also argues that the motion to vacate default judgment should be granted pursuant to paragraph (b)(6), "any other reason justifying relief." Paragraph (b)(6) is an "independent ground for relief, with a different standard to be applied than under [the] other subdivisions, in particular (1) and (3)." *Jewell v. Division of Social Services*, 401 A.2d 88 (Del. 1979). Delaware Courts have looked to the Federal Courts' interpretation of the Federal Rules and agree that Rule 60(b)(6) requires extraordinary circumstances to prevent injustice if judgment is not vacated. *See Id.* Since the Court has already determined Churchville's conduct amounted to excusable neglect under paragraph (b)(1), it is not necessary to consider the paragraph (b)(6) standard.

B. Meritorious Defenses and Prejudice

A court deciding whether to vacate default judgment must also look at (1) whether the defaulting party can show the outcome might have been different (i.e. that the party has a meritorious defense) and (2) whether the non-defaulting party would be substantially prejudiced by vacating the judgment. *Battaglia v. Wilmington Savings Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977). The defaulting party need not show definitively that there would have been a different result, just that there is the possibility of a different result. *Williams v. DelCollo Electric, Inc.*, 576 A.2d 683, 687 (Del. Super. Ct. 1989). If vacating the decision will result in prejudice to the non-defaulting party, the court may remedy the prejudice by imposing terms or conditions, such as an award of attorney's

fees, as part of the order to vacate. *See Id.*; *Battaglia*, 379 A.2d at 1136; Super. Ct. Civ. R. 60(b) ("and as upon such terms as are just, the Court may relieve a party . . . from a final judgment").

1. Defenses to the Wage Payment and Collection Act claims

Plaintiff argues that Churchville could have no defense to claims made pursuant to the Wage Payment and Collection Act ("Wage Act") because it is an act of strict liability. Upon closer examination of the Act, however, it is clear that individuals of a corporation are treated differently than the corporation itself when determining liability. Pursuant to § 1107, an employer may not withhold an employee's wages, unless it is for lawfully authorized reasons. The Wage Act defines "employer" as "any individual, partnership, . . . [or] corporation . . . employing any person." 19 *Del. C.* § 1101(a)(3). It also provides: "For the purpose of this chapter the officers of a corporation and any agents having the management thereof who *knowingly* permit the corporation to violate this chapter shall be deemed to be the employers of the employees of the corporation." 19 *Del. C.* § 1101(b) (emphasis added). The scienter element present in that definition indicates the Wage Act is not a strict liability act as regards officers. If the defendants can prove that Churchville did not knowingly permit Vanguard to withhold McMartin's wages, then there exists a meritorious defense to this claim.

Defendants also point out that commissions are contractually defined, such that Plaintiff may not have been entitled to the commissions paid on the loans settled 30 days after she had left Vanguard. There are, conceivably, other employees, also entitled to commissions, who must maintain and complete loan transactions if an employee leaves before the loans are settled. If the commissions were not Plaintiff's to claim, then under the Wage Act, they would be outside of the range of the broad sweep of the term "wages" and the defendants could not be liable under the Act for having withheld them. *See* 19 *Del. C.* § 1101(2) ("'Wages' means compensation for labor or

services rendered by an employee, whether the amount is fixed or determined on a time, task, piece, commission or other basis of calculation.")

As to the Wage Act claims, the Court is satisfied that meritorious defenses may be tenable.

2. Defenses to breach of implied covenant of good faith and fair dealing claim

Regarding the second claim, that Churchville breached the implied covenant of good faith and fair dealing ("the implied covenant"), Defendants have presented two defenses to liability. First, they have drawn the Court's attention to the fact that the situation of McMartin's alleged termination in relation to a breach of the implied covenant has not been specifically addressed in Delaware. In *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A.2d 436 (Del. 1996), the court delineated the narrow exceptions to the employment-at-will doctrine, created by the implied covenant. Plaintiffs base their claim on two of these exceptions - the public policy exception, and the exception for when an employer misuses bargaining position to deprive an employee of "'compensation that is clearly identifiable and is related to the employee's past service.'" *Id*. at 441-42.

The public policy exception requires "a clear mandate of public policy." *Id*. at 441. In other words, an employee "must assert a public interest recognized by some legislative, administrative or judicial authority, and the employee must occupy a position with responsibility for that particular interest." *Id*. at 441-42, *quoting*, *Shearin v. E.F. Hutton Group, Inc.*, 652 A.2d 578, 587-89 (Del. Ch. 1994). Upon review of case law,[1] the interaction of whistleblower protection as public policy and the implied covenant is not fully explored in Delaware. There is the possibility of a result favoring defendants if this issue is tried on its merits. The second exception is driven by the facts which have yet to be established.

Moreover, as a general principle of corporate law, an officer may not be held liable for breach of a corporate contract, unless the officer has signed the contract, in her own capacity and not just

as an agent for the corporation. *See Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P. v. Wood*, 752 A.2d 1175 (Del. Ch. 1999) ("Delaware law clearly holds that officers of a corporation are not liable on corporate contracts as long as they do not purport to bind themselves individually." (citations omitted)). This principle applies equally to employment contracts. *See Brown v. Colonial Chevrolet Co.*, 249 A.2d 439, 441 (1968) (president who acted on behalf of corporation was not personally liable on corporate employment contract). In addition, Plaintiff has, as yet, made no allegations that the corporate veil should be pierced. Indeed, if the only way judgment could stand on this issue against Churchville is by way of piercing the corporate veil, this Court would not have jurisdiction to enter it. Piercing the corporate veil is an equitable remedy; consequently, the Court of Chancery is the only court in Delaware with this power. *See Sonne v. Sacks*, 314 A.2d 194, 197 (Del. 1973); *Jezyk v. Brumbaugh*, 1995 WL 264555, at *6 (Del. Super. Ct.); *Zae Int'l Group, Inc. v. Master-Tech, Inc.*, 2002 WL 32007212, at *1 (Del. Com. Pl.).

3. Prejudice

Plaintiff McMartin claims she is prejudiced because she has not been paid the commissions and because the Wage Act requires prompt payment. McMartin has not shown proof of prejudice sufficient to leave default judgment in place, given Delaware's strong public policy to decide cases on the merits.

CONCLUSION

Considering the foregoing, Defendant Churchville's Motion to Vacate Default Judgment is granted; however, the Court awards Plaintiff reasonable attorneys' fees, court costs and other expenses connected with the entering of and the reopening of judgment.

Likewise, the motion to enter default against Vanguard is denied. Notwithstanding Vanguard's entry of appearance, Rule 55(b)(2) plainly authorizes a default judgment. *See Pinkett*

ex rel. Britt v. Nationwide Mut. Ins. Co., 832 A.2d 747 (Del. Super. 2003). The *Pinkett* court observed:

> There is no hard and fast rule that the filing of any entry of appearance or an untimely answer renders default judgment "unavailable." Rule 55(b)(2) expressly contemplates that a judgment by default may be entered against a party who has entered an appearance by the requirement that written notice of the application for default judgment be given to the party or the party's representative. An entry of appearance alone simply triggers the requirement that the party be given notice before a motion for default judgment is presented. An answer or an appropriate motion must still be filed within 20 days after being served with process or entering an appearance, whichever first occurs. The defendant's failure to file an answer or appropriate motion within the required time is a failure to defend which exposes it to default judgment under Rule 55. The filing of an untimely answer after a motion for default judgment is filed does not cure a default. The motion for default judgment may still be granted in the court's discretion.

However, it does not make sense to enter it under circumstances where bona fide defenses have been asserted and relief under Rule 60(b) would be given. The interest to decide cases on the merits has overriding importance in the context of this case. Plaintiff is awarded reasonable attorneys fees and expenses connected with this motion.

If the parties cannot agree about reimbursement in these matters, then Plaintiff shall file a motion, with an affidavit, supporting an award on or before Friday, February 27, 2004.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary

ENDNOTES

1. *See, e.g., Schuster v. DeRocili*, 775 A.2d 1029 (Del. 2001) (recognizing public policy exception when termination resulted from refusal to give in to sexual harassment; referencing Delaware Discrimination in Employment Statute to show "explicit and recognizable" public policy); *Lord v. Souder*, 748 A.2d 393, 401 (Del. 2000) (finding no public policy exception because administrative secretary was not in a position of responsibility relating to legislatively expressed public interest; referencing Nursing Facility Statute to evidence established public policy); *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A.2d 436, 442 (Del. 1996) (refusing to find public policy exception when employee was fired for questioning propriety of employer's business practices); *Allison v. J.C. Bennington Co.*, 1996 WL 944908, at *4 (Del. Super. Ct.) (finding no exception for breach of implied covenant when employee was terminated for substandard performance due to illness); *Shearin v. E.F. Hutton Group, Inc.*, 652 A.2d 578, (Del. Ch. 1994) (finding lawyer who was fired for refusing to violate professional ethics rules might have cause of action under public policy exception).