IN THE SUPREME COURT OF THE STATE OF DELAWARE

BELFINT, LYONS & SHUMAN, P.A.,	)	
	)	No. 204, 2003
Plaintiff Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
MARC D. PEVAR and THE PEVAR COMPANY,	)	C.A. No. 99C-04-223
	)	
	)	
Defendant Below,	)	
Appellees.	)	

Submitted: January 6, 2004
Decided: March 10, 2004

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices.

O R D E R

This 10th day of March, 2004, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. Plaintiff/Appellant, Belfint, Lyons & Shuman, P. A., seeks review of a Superior Court Order entered on April 2, 2003 denying a second motion for relief from judgment pursuant to Superior Court Civil Rule 60(b). Belfint sought to reopen a November 13, 2001 judgment of dismissal granted pursuant to Super. Ct. Civ. Rule 41(e). In light of the entire record, and for the reasons set forth below, we vacate the judgment of the Superior court and remand for reconsideration of Belfint's contention and associated arguments that the Rule 41 (e) dismissal was

void because a person, not a member of the Bar of the Supreme Court of Delaware, filed an answer for a Delaware corporation. We dismiss this appeal without prejudice.

2. Belfint filed suit in April 1999 against Defendants/Appellees Marc Pevar and The Pevar Company to collect a debt (C. A. No. 99C-04-223). On June 18, 1999, Pevar answered the complaint, *pro se*, in his own right *and* as president of The Pevar Company. On April 18, 2001, after there had been no action on the case for more than one year, the Prothonotary sent a Rule 41(e) notice to Belfint asking Belfint to show cause why the case should not be dismissed for Belfint's failure to prosecute the matter diligently. Belfint's counsel responded to the notice and indicated that the parties were in the process of rescheduling an arbitration hearing in the matter. Nothing further happened in the case and the Prothonotary issued another Rule 41(e) notice on October 4, 2001. Belfint failed to respond to the notice. The Superior Court dismissed the case on November 14, 2001.

3. Several weeks later, Belfint's counsel wrote a letter to the Superior Court judge who had signed the order of dismissal, and requested that the dismissal be vacated. The judge responded by letter advising Belfint's counsel to file an appropriate motion for relief under Superior Court Civil Rule 60(b). Nearly a month later, Belfint filed the first Rule 60(b) motion. At a March 22, 2002

hearing, the judge denied Belfint's motion on the ground that it failed to demonstrate excusable neglect. Belfint did not appeal.

4. On April 3, 2002, Belfint filed a new complaint. This second debt action against Pevar sought to collect the same debt that was the subject of the first complaint (C. A. No. 02C-03-265). Pevar, this time through counsel, filed a Motion to Dismiss. A Superior Court judge granted the Motion to Dismiss and Belfint appealed. Belfint, however, failed to file a notice of appeal within the time required by Supreme Court Rule 6.[1] This Court issued a Rule 29 (b) Notice to Show Cause to which Belfint responded by voluntarily dismissing the appeal. Six months later, Belfint, undaunted, filed a second Rule 60(b) motion to reopen the original action and suggested to the court that the "best course of action" would be an arbitration hearing within 30-45 days. For the first time, Belfint argued that Pevar, not being a member of the Bar, could not personally answer the complaint for The Pevar Company and as a result the corporate defendant's answer was a nullity. Belfint contended that the judgment entered in Pevar's favor was, therefore, void as a matter of law. Unable to "see a way that the Court can view this situation as having involved excusable neglect," however, a Superior Court judge rejected Belfint's second 60 (b) motion. The judge did not rule on whether

[1] Supreme Court Rule 6: Time for taking appeals and cross-appeals.
(a) Notice of appeal. -- A notice of appeal shall be filed in the office of the Clerk of this Court as follows:
(i) Civil appeals. -- Within 30 days after entry upon the docket of a judgment, order or decree from which the appeal is taken in a civil case…

Pevar's *pro se* answer on behalf of his corporation voided all later action by the court. The judge did acknowledge that "Mr. Pevar is not a lawyer, and the idea that he managed to string a law firm along definitely rings hollow."

5. This Court affirmed the judge's decision on appeal, finding that "Despite numerous opportunities to do so," Belfint never raised the issue of Pevar's defective answer *before* the Rule 41(e) dismissal of the complaint. We concluded that: (1) the 41(e) dismissal was a proper exercise of the judge's discretion; (2) Belfint's second motion to reopen the original action was properly denied on the ground that Belfint had *waived* Pevar's defective answer; and, (3) therefore, Belfint, having failed to raise the contention that the November 14, 2001 dismissal was void in a timely way, the judgment in The Pevar Company's favor was valid.

6. Belfint filed a Motion for Reargument on the grounds that the judge never ruled that Belfint had "waived" its right to raise the issue of the void judgment. Belfint argues, simply, that one cannot waive the right to challenge a judgment that was void in the first place. We granted reargument in order to more fully consider whether a Rule 41(e) dismissal of an action is void as a matter of law, voidable, or a nullity, where an individual officer of a corporation who is not a member of the Bar of this Court answers a complaint for the corporation. Further, we wished to consider at what point, if at all, a plaintiff who fails to raise the issue

before dismissal under 41(e) is deemed to have waived that opportunity. If they fail to do so, what role does "excusable neglect" play in an attack on a judgment in those circumstances?

7. We review the denial of a motion to reopen a judgment under Superior Court Civil Rule 60(b) for abuse of discretion.[2] Appellate review of legal issues is *de novo*.[3]

8. Belfint contends that we can address the "rather straight-forward issue" in this case by answering two pseudo-rhetorical questions. The first is whether a corporate officer who is not a member of the Bar of this Court may file an answer on behalf of a corporate defendant in a Delaware court. The second asks the legal effect of a judgment entered in a proceeding following a filing by a corporate officer purporting to represent his corporation. Even if we were to address the merits of this appeal as Belfint requests, we would not be required to answer those broad and inapposite questions. Belfint furthers asks that we answer a question Belfint characterizes as "related." Does a trial judge have a duty to raise the representation issue *sua sponte* on behalf of a *plaintiff* in the context of a Rule 41(e) dismissal?

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[2] *Battaglia v. Wilmington Savings Fund Society*, 379 A.2d 1132, 1135 (Del. 1977); see also *Wife B. v. Husband B.,* 395 A.2d 358 (Del. 1978).

[3] *International Telecharge, Inc. v. Bomarko, Inc.*, 766 A.2d 437 (Del. 2000).

9. We conclude that while we grant reargument, we should not address the merits of this appeal. We remand this matter to the Superior Court, who we believe is in the best position to examine the record and conclude whether Belfint waived its "voidness" argument; the necessity for finding excusable neglect under these circumstances; and, the impact of the facts of this case on the Superior Court's inherent authority to manage its own docket.[4]

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, VACATED and REMANDED for further proceedings consistent with this Order. The Appeal is Dismissed without prejudice.

/s/ Myron T. Steele
Justice

[4] See *Taylor v. LSI Logic,* 715 A.2d 837, 842 (Del. 1998) (acknowledging the inherent power of the trial court to control it's docket); See also *Lake Forest Bd. of Ed. vs. Bird & Son, Inc.*, 1983 Del. Super. LEXIS 688 (citing *Gebhart v. Ernest DiSabatino & Sons, Inc.*, 264 A.2d 157, 159 (Del. 1970) "The purpose for the involuntary dismissal statutes is to promote the 'inherent power of the Trial Court arising from the control necessarily vested in the Court to manage its own affairs and to achieve the orderly and expeditious disposition of its business'").