IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATIENCE ADEYEMI SENU-OKE,	§	
	§	No. 614, 2012
Defendant Below-	§	
Appellant	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
BROOMALL CONDOMINIUM, INC.,	§	C.A. No. N11C-01-090
	§	
Plaintiff Below-	§	
Appellee	§	

Submitted: August 7, 2013
Decided: September 16, 2013

Before **STEELE**, Chief Justice, **BERGER**, and **RIDGELY**, Justices.

O R D E R

(1) Defendant-Below/Appellant, Patience Adeyemi Senu-Oke, appeals from a Superior Court order denying her motion to vacate a default judgment entered in favor of the Plaintiff-Below/Appellee, Broomall Condominium, Inc. ("Broomall"). Senu-Oke raises one claim on appeal. She claims the Superior Court abused its discretion in failing to consider evidence that her failure to respond to Broomall's complaint was the result of mistake, inadvertence, excusable neglect, or any other reason justifying relief from judgment under Superior Court Civil Rule 60(b)(1) and Rule 60(b)(6). We find no merit to Senu-Oke's appeal and affirm the judgment of the Superior Court.

(2) In January 2011, Broomall filed a complaint in the trial court against Senu-Oke and a co-defendant. Broomall sought to recover special assessment fees, condominium fees, and interest owed on a Broomall condominium unit owned by Senu-Oke. The Sheriff attempted to serve the summons and complaint on Senu-Oke five separate times before returning service *non est*. The trial court issued an Order extending the time to serve the summons and complaint on Senu-Oke and service was completed in person by the Sheriff on July 20, 2012. Pursuant to Superior Court Civil Rule 12(a), Senu-Oke's response was due on or before August 9.[1]

(3) Prior to service being completed in April 2012, Broomall filed a notice of deposition of Senu-Oke scheduled for August 2, 2012. Senu-Oke's son notified Broomall that Senu-Oke would require an interpreter for her deposition. Broomall claims Senu-Oke called its former counsel three days prior to the voluntary deposition and cancelled. Senu-Oke's son claims Senu-Oke never called Broomall and never cancelled her deposition. Senu-Oke appeared for her August 2 deposition, but Broomall was not prepared to depose her and no interpreter was present, so she was not deposed.

(4) Senu-Oke did not answer the complaint by the August 9 deadline. Accordingly, Broomall asked the Prothonotary to enter judgment by default against

[1] Super. Ct. Civ. R. 12(a) ("A defendant shall serve an answer *within 20 days after service of process*, complaint and affidavit, if any, upon that defendant . . . ." (emphasis supplied)).

Senu-Oke pursuant to Superior Court Civil Rule 55(b)(1). The Prothonotary entered the default judgment on August 13. Senu-Oke then filed a motion to vacate default judgment on August 30. The trial court denied Senu-Oke's motion on the grounds that it had "no legally cognizant basis to reopen a default judgment." Senu-Oke filed a motion to reargue the matter, which the trial court denied. This appeal followed.

(5) Senu-Oke's claim relates to the application of Superior Court Civil Rule 60(b), which states in relevant part:

> On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; . . . (6) any other reason justifying relief from the operation of the judgment.[2]

"Under Rule 60(b)(1), excusable neglect is defined as 'neglect which might have been the act of a reasonably prudent person under the circumstances.' But, a defendant 'cannot have the judgment vacated where [the defendant] has simply ignored the process.'"[3] We have adopted the "extraordinary circumstances" test for Rule 60(b)(6) motions.[4] The "extraordinary circumstances" standard defines the words, "any other reason justifying relief," in Rule 60(b)(6) as "vest[ing] power in courts adequate to enable them to vacate judgments whenever such action

[2] Super. Ct. Civ. R. 60(b).
[3] *Stevenson v. Swiggett*, 8 A.3d 1200, 1204 (Del. 2010) (*citing Lee v. Charter Comm'ns VI, LLC*, 2008 WL 73720, at *1 (Del. Super. Jan. 7, 2008).
[4] *Jewell v. Div. of Soc. Servs.*, 401 A.2d 88, 90 (Del. 1979).

is appropriate to accomplish justice."[5] "Because of the significant interest in preserving the finality of judgments, Rule 60(b) motions are not to be taken lightly or easily granted."[6] We review a Superior Court order denying a motion to vacate a judgment under that rule for abuse of discretion.[7] "An abuse of discretion occurs when a court has . . . exceeded the bounds of reason in view of the circumstances, or . . . so ignored recognized rules of law or practices so as to produce injustice."[8]

(6) In *Stevenson v. Swiggett* we stated that "[a] trial court must consider three factors in determining whether entry of a default judgment should be set aside: first, whether culpable conduct of the defendant led to the default and, if so, was it excusable; second, whether the defendant has a meritorious defense; and third, whether the plaintiff will be prejudiced."[9] Senu-Oke contends that she satisfied all three of these conditions and that the trial court abused its discretion in denying her motion to vacate. First, Senu-Oke argues that the default was not a result of her conduct since she submitted to the Court's authority when she appeared for the August 2 deposition. Second, Senu-Oke argues that she has a meritorious defense as she submitted an affidavit to supplement the record with her

---

[5] *Id.* (*quoting Klapprott v. United States*, 335 U.S. 601, 615 (1949)).
[6] *Wilson v. Montague*, 19 A.3d 302, 2011 WL 1661561, at *2 (Del. May 3, 2011) (TABLE) (*quoting MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.*, 785 A.2d 625, 634 (Del. 2001)).
[7] *Stevenson*, 8 A.3d at 1204 (*citing Apartment Cmtys. Corp. v. Martinelli*, 859 A.2d 67, 70 (Del. 2004)).
[8] *MCA*, 785 A.2d at 633-34 (omission in original) (*quoting Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994)).
[9] *Stevenson*, 8 A.3d at 1204-05 (*citing Apartment Cmtys.*, 859 A.2d at 70).

motion for reargument, which in turn supplements the presentation at the oral arguments on the motion to vacate. Third, Senu-Oke argues that Broomall will not be prejudiced by reopening the judgment as she promptly sought to vacate the default judgment within two weeks of it being granted.

(7) The Superior Court did not expressly address the *Stevenson* factors but found that Senu-Oke failed to "state[] anything which would provide a grounds for [the trial court] to vacate the default judgment."[10] The trial court concluded the oral argument by denying Senu-Oke's motion to vacate, stating:

> Without more, without some basis, I am going to have to deny your motion as having no legally cognizant basis to reopen a default judgment. You said these circumstances, no affidavit saying what happened. All I have is your draft of what you purport would be an answer, which consists of several paragraphs, two admissions, the rest denials. I don't have anything else. So I am going to deny the motion.[11]

(8) We find no abuse of discretion by the Superior Court in denying the motion to vacate the default judgment. Senu-Oke did not respond to Broomall's complaint within the 20 days allotted by Rule 12(a), nor did she supply the trial court with a sufficient reason for her failure to respond. Senu-Oke's appearance at the August 2 deposition, her affidavit in conjunction with her motion for reargument and her timely response to Broomall's request for default judgment do

[10] Appendix to Appellant's Opening Brief at A26.
[11] *Id.* at A27.

not justify vacating the default judgment under Rule 60(b)(1) or Rule 60(b)(6). The scheduled August 2 voluntary deposition was unrelated to Senu-Oke's failure to file an answer by the deadline. Her affidavit accompanying the motion for reargument was not submitted until after the oral argument and the trial court's denial of her motion to vacate.

(9) Senu-Oke has not shown that her conduct constituted mistake, inadvertence, surprise, or "neglect which might have been the act of a reasonably prudent person under the circumstances"[12] that requires default judgment be vacated under Rule 60(b)(1). Nor do Senu-Oke's arguments constitute "extraordinary circumstances" that warrant vacating the default judgment to accomplish justice under Rule 60(b)(6).[13]

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[12] *Stevenson*, 8 A.3d at 1204.
[13] *Jewell*, 401 A.2d at 90.