

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

SHEHNAZ MOHSIN,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
INCARE, LLC AND	:	
MEHDI NIKPARVAR, M.D.,	:	
	:	
Appellants	:	No. 1196 MDA 2012

Appeal from the Judgment Entered May 31, 2012
 In the Court of Common Pleas of Columbia County
 Civil Division No(s): 2074-2010

BEFORE: BENDER, SHOGAN, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: Filed: March 1, 2013

Appellants, Incare, LLC and Mehdi Nikparvar, M.D., appeal from the judgment entered in the Columbia County Court of Common Pleas in favor of Appellee, Shehnaz Mohsin. Appellants contend that the court erred by failing to strike or open a default judgment and abused its discretion by awarding punitive damages. We grant Appellee’s motion to quash and quash the appeal because Appellants failed to file a post-trial motion following the non-jury trial on unliquidated damages.

* Former Justice specially assigned to the Superior Court.

The facts are unnecessary to our disposition. We briefly state the relevant procedural history. On November 17, 2010, Appellee filed a complaint against Appellants raising claims of breach of employment contract, fraud, and violation of the Pennsylvania Wage Payment and Collection Law¹ [hereinafter WPCL]. Appellee served the complaint and notice to defend² on November 18, 2010, via sheriff. Appellants failed to respond within twenty days. Consequently, on December 9, 2010, Appellee served a notice of intent to file a praecipe to enter a default judgment within ten days. **See** Pa.R.C.P. 237.5.

Appellants' first counsel entered his appearance on December 16, 2010. Appellants filed preliminary objections, Appellee opposed, and the court overruled Appellants' preliminary objections on March 1, 2011.³ The court also instructed Appellants to file an answer within twenty days.

Appellants' first counsel requested, and Appellee's counsel agreed to, an extension of time until April 4, 2011, to file an answer. On April 4, 2011, Appellants' first counsel filed a motion to withdraw from representation citing a "rift in the attorney/client relationship." Appellants' Mot. to Withdraw as Counsel, 4/4/11, at 2. On April 6, 2011, the court granted the motion to

¹ 43 P.S. §§ 260.1–260.12.

² A notice to defend informs a defendant that it has twenty days to respond after the complaint and notice are served. Pa.R.C.P. 1018.1.

³ The order was dated February 28, 2011, and docketed on March 1, 2011.

withdraw, instructed Appellants to file an answer within thirty days, and ordered Incare, LLC to obtain counsel within thirty days.⁴ Order, 4/6/11. Appellants did not comply with the court's order.

On May 6, 2011, Appellee filed a praecipe to enter a default judgment. The prothonotary entered default judgment on May 6, 2011.

At some point, Appellants obtained their second counsel. On May 12, 2011, Appellants' second counsel filed a petition to strike or open default judgment. Appellee opposed. The court did not immediately rule on the petition but scheduled argument for July 5, 2011.

Appellee served discovery. Appellants served objections but did not substantively respond. Appellee filed a motion to compel. The court granted the motion to compel, dismissed Appellants' objections, and ordered Appellants to respond to Appellee's discovery within twenty days. Order, 1/3/12. The court further ordered that if Appellants failed to comply, they would be subject to sanctions including counsel fees and preclusion of introducing evidence at trial. *Id.*

On January 25, 2012, Appellants' second counsel filed a motion to leave to withdraw, citing, *inter alia*, Appellants' uncooperative behavior and refusal to communicate with counsel. Appellants' Mot. for Leave to

⁴ "The federal courts and the courts of our sister states have consistently held that a corporation may appear in court only through an attorney at law admitted to practice before the court." *Walacavage v. Excell 2000, Inc.*, 480 A.2d 281, 284 (Pa. Super. 1984) (citations omitted).

Withdraw as Counsel, 1/25/12, at 2. The court granted the motion that day and ordered Appellants to obtain new counsel within forty-five days. Order, 1/25/12.

On February 6, 2012, Appellee filed a combined motion for sanctions and to proceed with a damages trial. The court scheduled a hearing on Appellee's motion for April 25, 2012. Appellants did not respond to the motion or appear at the April 25, 2012 hearing. On April 26, 2012, the court denied Appellants' petition to strike or open default judgment.

On May 3, 2012, the court entered judgment in favor of Appellee and against Appellants on liability and liquidated damages. The court also scheduled a trial for unliquidated damages: "This matter is scheduled for a non-jury **trial** commencing at 3:00 p.m. on May 29, 2012 to render a verdict with regard to the following, currently unliquidated damages," which included WPCL penalties, punitive damages, and counsel fees.⁵ Order, 5/3/12, at 2 (emphasis added). Because Appellants failed to participate in discovery, the court also barred them from entering any evidence at the non-jury trial in opposition to the unliquidated damages claim. *Id.* The order permitted Appellants to cross-examine and otherwise contest Appellee's testimony and evidence.

⁵ *Cf. Phoenix Mut. Life Ins. Co. v. Radcliffe on the Del., Inc.*, 266 A.2d 698, 702 (Pa. 1970) (holding plaintiff may proceed to trial even in absence of counsel for corporate defendant).

Appellants, however, did not appear at the May 29, 2012 non-jury trial on unliquidated damages. Appellee introduced evidence and testified regarding her unliquidated damages. The court opined:

And you've covered everything very, very thoroughly. The exhibits are well organized and well explained, and what I'd be remiss to add on to your analysis of the punitive damages is the fact that pure and simple [Appellants] were really taking advantage of [Appellee's] status as an immigrant and hoping that she would not be complaining for fear that she might jeopardize her immigrant status and, therefore, underpaid her, overworked her and didn't pay her for certain items in violation of the law. [Appellants] seem to be banking on the fact that [Appellee] wasn't going to complain because she was an immigrant.

N.T. Trial, 5/29/12, at 50-51. The court also found Appellee's testimony credible. *Id.* at 47. On May 31, 2012, the court entered judgment against Appellants for unliquidated damages in the amount of \$395,508.09. Appellants did not file a post-trial motion.

Subsequently, Appellants retained their third counsel. On July 2, 2012, Appellants filed a timely notice of appeal from the May 31, 2012 judgment. Appellants timely filed a court-ordered Pa.R.A.P. 1925(b) statement.

Pa.R.C.P. 227.1(c)(2) mandates that a post-trial motion be filed within ten days of the decision resolving a non-jury trial. Pa.R.C.P. 227.1(c)(2). Filing a post-trial motion is a prerequisite to the preservation of issues on appeal, and the failure to file a post-trial motion will result in the waiver of issues on appeal. *Lane Enters., Inc. v. L.B. Foster Co.*, 710 A.2d 54 (Pa.

1998). The trial court has broad discretion to entertain an untimely post-trial motion, and the consideration of an untimely motion will not result in the waiver of issues on appeal. **Behar v. Frazier**, 724 A.2d 943, 945 (Pa. Super. 1999).

Instantly, the court held a non-jury trial on unliquidated damages. Appellants and their counsel did not appear. At the conclusion of the trial, the court awarded unliquidated damages and entered judgment against Appellants. Appellants, upon retaining their third counsel, did not file a post-trial motion prior to filing their notice of appeal. **See** Pa.R.C.P. 227.1(c)(2). Appellants were permitted to request the trial court's permission to file an untimely post-trial motion. **See Behar**, 724 A.2d at 945. Because Appellants failed to file a post-trial motion prior to filing the instant notice of appeal, Appellants have not preserved any issues for appellate review. **See Lane Enters., Inc.**, 710 A.2d at 54. Accordingly, we are constrained to quash this appeal without prejudice to Appellants' right to seek permission to file a post-trial motion *nunc pro tunc* in the trial court. **See Behar**, 724 A.2d at 945.

Motion to quash granted. Appeal quashed. Jurisdiction relinquished.