

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

SHUN DA CLOTHES, INC.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DENIM KIN NEW YORK, INC.,	:	
	:	
Appellant	:	No. 1665 EDA 2013

Appeal from the Order May 1, 2013
 In the Court of Common Pleas of Philadelphia County
 Civil Division No(s): 120403407

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

MEMORANDUM BY FITZGERALD, J.: **FILED APRIL 29, 2014**

Appellant, Denim Kin New York, Inc., appeals from the May 1, 2013 order denying its petition to open default judgment. Appellant claims on appeal that it provided a reasonable explanation for its delay in filing an answer to Appellee’s, Shun Da Clothes, Inc., complaint, and alleged a meritorious defense to Appellee’s claims. We affirm.

The trial court summarized the factual background as follows:

This is a dispute related to the wholesale of retail clothing and, five (5) “Lot” sale contracts for the purchase of ladies’ jeans between October 2011 and December 2011. In its complaint [Appellee] states that instead of manufacturing the ladies’ jeans itself, [Appellee] arranged to have a

* Former Justice specially assigned to the Superior Court.

company in China manufacture the jeans and deliver them directly to [Appellant]. After the jeans were delivered, it was discovered that there were some problems with the sizing of the jeans and the manner in which certain embellishments were attached. As a result of the problems, [Appellee] and [Appellant] negotiated, and on January 19, 2012, agreed to a price reduction. In its complaint, [Appellee] alleges that the outstanding balance due on the contracts for Lots 1-5, [after] the price per piece reduction, is \$368,532.60.

The complaint was filed on August 13, 2012. After receiving the complaint, [Appellant's] counsel requested an extension of time to file its answer. However, since [Appellee] could not obtain proof of service for filing with the court, it had the summons and complaint reissued. The affidavit of service was filed January 24, 2013, with proper service having been effected on January 10, 2013. Pursuant to Pa.R.C.P. 1026, the complaint contains [a] notice to defend within twenty days, which would have been January 30, 2013.

[Appellant's] counsel entered an appearance on February 5, 2013. On March 12, 2013, more than a full month later, still without an [a]nswer, [Appellee] served [Appellant] with a [n]otice of [i]ntention to [e]nter [d]efault [j]udgment, as required by Pa.R.C.P. 237.1. No answer was filed within ten (10) days of the [n]otice, and on March 25, 2013, [Appellee] filed a default judgment.

Nine days later, on April 4, 2013, [Appellant] filed its [p]etition to [o]pen [d]efault [j]udgment.

Trial Ct. Op., 7/12/13, 2-3.

The trial court denied Appellant's petition to open default judgment without a hearing on May 1, 2013. Appellant filed a motion for

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reconsideration on May 13, 2013, which the trial court denied on May 16, 2013. Appellant filed this timely appeal on May 30, 2013.¹

Appellant raises one issue on appeal.

Whether the lower court improperly denied the Appellant's petition to open judgment after they [sic] met their [sic] burden of proof of a meritorious defense and an excusable reason for the delay?

Appellant's Brief at 4.

For its sole issue on appeal, Appellant argues the trial court abused its discretion in denying its petition to open the default judgment because Appellant satisfied the requirements of Rule 237.3. Appellant notes that it is undisputed that its petition to open was timely filed within ten days of entry of the default judgment. *Id.* at 9. Appellant also avers it provided a reasonable explanation for the delay in filing an answer to Appellee's complaint. *Id.* at 12. Specifically, Appellant claims Appellee granted it an extension of time to file a response and that the parties were attempting to resolve the dispute through negotiation. *Id.* Last, Appellant alleges that it attached a verified copy of an answer stating a meritorious defense to Appellee's cause of action but that the trial court "usurped its function and weighed the merits of the claim contrary to the applicable law." *Id.* at 14-17.

In general, a default judgment may be opened when the moving party establishes three requirements: (1) a

¹ Both Appellant and the trial court complied with Pa.R.A.P. 1925.

prompt filing of a petition to open the default judgment; (2) a meritorious defense; and (3) a reasonable excuse or explanation for its failure to file a responsive pleading. The standard of review for challenges to a decision concerning the opening of a default judgment is well settled.

A petition to open a default judgment is an appeal to the equitable powers of the court. The decision to grant or deny a petition to open a default judgment is within the sound discretion of the trial court, and we will not overturn that decision absent a manifest abuse of discretion or error of law.

However, we will not hesitate to find an abuse of discretion if, after our o[w]n review of the case, we find that the equities clearly favored opening the judgment.

An abuse of discretion is not a mere error of judgment, but if in reaching a conclusion, the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused.

Smith v. Morrell Beer Distribs., Inc., 29 A.3d 23, 25 (Pa. Super. 2011).

Rule of Civil Procedure 237.3 provides as follows:

Rule 237.3 Relief From Judgment of Non Pros or by Default

(a) A petition for relief from a judgment of non pros or of default entered pursuant to Rule 237.1 shall have attached thereto a verified copy of the complaint or answer which the petitioner seeks leave to file.

(b) If the petition is filed within ten days after the entry of the judgment on the docket, the court shall open the judgment if the proposed complaint or answer states a meritorious cause of action or defense.

Pa.R.C.P. 237.3(a)-(b).

This Court concluded, in ***Attix v. Lehman***, 925 A.2d 864 (Pa. Super. 2007), that a petitioner does not need to satisfy the requirement that he provide a reasonable excuse for the failure that led to the judgment by default, if his petition to open is filed within ten days of the judgment and states a meritorious defense. ***Id.*** at 867. In doing so, we recognized that Rule 237.3(b) presupposes that a petition filed within ten days of the default judgment is promptly filed and sets forth a reasonable explanation or legitimate excuse for the inactivity or delay resulting in the entry of the judgment.

With regard to the requirement that the party seeking to have judgment opened provide a legitimate excuse for its failure to act, this Court has stated, “[w]hether an excuse is legitimate is not easily answered and depends upon the specific circumstances of the case.” ***Castings Condo. Ass’n, Inc. v. Klein***, 663 A.2d 220, 223-24 (Pa. Super. 1995). “[W]here the failure to answer was due to an oversight, an unintentional omission to act, or a mistake of the rights and duties of the appellant, the default judgment may be opened.” ***Flynn v. Am. W. Airlines***, 742 A.2d 695, 699 (Pa. Super. 1999).

In order to meet the meritorious defense requirement, this Court in ***Smith*** reiterated the well-settled principle that “[t]he requirement of a meritorious defense is only that a defense must be pleaded that if proved at trial would justify relief. The defendant. . . must set forth the defense in

precise, specific and clear terms.” **Smith**, 29 A.2d at 26 (quoting **Penn-Delco Sch. Dist. v. Bell Atl.-Pa. Inc.**, 745 A.2d 14, 19 (Pa. Super. 1999).

After reviewing Appellant’s petition to open the default judgment and its verified answer, the trial court made the following conclusions:

[Appellant] did in fact file its [p]etition within ten days of the entry of the [d]efault [j]udgment. However, I have found that [Appellant] has failed to meet the next two requirements.

First, a meritorious defense must be shown. A defendant is required to allege facts of record in the petition that support a meritorious defense. [**Smith**, 29 A.3d at 27-29.] A defendant may not simply set forth in its petition conclusions of law and challenges to the plaintiff’s proof. [**Id.** at 26, 28.]

Here, [Appellant’s] petition does not provide facts upon which any alleged meritorious defenses are based. In its [p]etition and attached verified [a]nswer, [Appellant] merely states that it “alleges valid defenses, most notably the statu[t]e of limitations defense [,] doctrine of lache[s], equitable estoppels and [Appellee’s] own breaches of the contract.[]” Nowhere are there facts to support such defenses. For example, it is unclear what possible basis [Appellant] could have for asserting a statute of limitations defense, where the contracts at issue are from October 2011 and December 2011, and the current lawsuit was filed in April 2013—certainly within the four year statute of limitations for a contract action in Pennsylvania.

By further example, [Appellant] alleges a defense of [Appellee’s] own breach of contract. In its verified [a]nswer, however, [Appellant] admits at paragraph 46 that although it received defective materials, [Appellee] made a price reduction. It is impossible to glean any further defense beyond what [Appellant] admits: that the original contract price was reduced by [Appellee]. Likewise, there are no facts to support [Appellant’s] assertions of [Appellee’s] failure to state a cause of action for breach of contract, or how/why [Appellee’s] claims are

barred by the doctrines of laches, waiver, unclean hands, or estoppel.^[1]

Next, in its [p]etition, [Appellant] states: "It was understood by [Appellee's] counsel that [Appellee] had given [Appellant] additional time to file an answer.^[1] In no way is this unsupported statement a reasonable explanation or legitimate excuse for the failure to respond within the prescribed time period.^[8]

As such, [Appellant] failed to meet the requirements for this court to consider opening the default judgment.^[1]

^[8] The only allegation is that [Appellant] was given an extension to answer the complaint first filed in [August 2012], but not after the reissuance of the complaint in [January 2013]. Such facts are only alleged by [Appellee] in response to [Appellant's] [p]etition, not [Appellant's] [p]etition or verified [a]nswer. Furthermore, a [n]otice of [i]ntention to [e]nter [d]efault [j]udgment was served on March 12, 2013. This is certainly formal notice that even if there had been an understanding sometime in the past, [Appellant] was made aware that it had ten days to respond to that [n]otice (by March 22, 2013), which it did not.

Trial Ct. Op. at 4-5 (emphasis in original).

After reviewing the record and the applicable law, we discern no abuse of discretion in the trial court's decision to deny Appellant's petition to open default judgment. The trial court's determination that Appellant did not set forth a legitimate reason for failing to file a timely answer to Appellee's complaint is supported by the record.² **See Flynn**, 742 A.2d at 699.

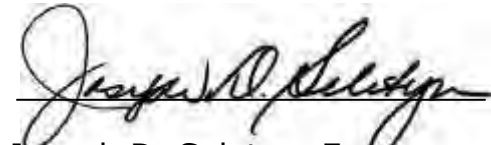
² We acknowledge that, pursuant to the holding in **Attix**, Appellant is presumed to have satisfied the requirement that it provide a reasonable excuse for the failure that led to the judgment by default by virtue of having filed the petition to open default judgment within ten days of judgment

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Appellant has not demonstrated that its claims that Appellee granted an extension of time for Appellant to file an answer to the complaint issued on January 10, 2013, or that the parties were attempting to negotiate a settlement to the underlying dispute are anything more than bald assertions. Rather, we conclude Appellant's failure to timely answer evidences an intentional omission to perform its duties. **See id.** Similarly, the trial court's conclusion that Appellant failed to support its alleged meritorious defenses to Appellee's causes of action with facts of record is amply supported by the record. **See Smith**, 29 A.3d at 25. Our review of Appellant's answer to Appellee's complaint confirms that Appellant's defenses consist of conclusory statements and denials, and inapplicable legal principles. Accordingly, having discerned no abuse of discretion, we affirm the order of the trial court denying Appellant's petition to open default judgment. **See id.**

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/29/2014

being entered. Notwithstanding, as this issue was raised by Appellant and addressed by the trial court, we dispose of it here.