

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618

**CHARLES W. WELCH, III
JUDGE**

January 4, 2011

Mr. Thomas G. Pruitt
110 Morris Drive
Dover, DE 19901

Patrick Scanlon, Esq.
203 NE Front St., Suite 101
Milford, DE 19963

RE: CreditOne, LLC v. Thomas G. Pruitt
C.A.No.: CPU5-10-002038

Decision on Motion to Vacate Default Judgment

Dear Mr. Pruitt and Mr. Scanlon:

The Court is in receipt of the Motion to Vacate Default Judgment filed by the defendant, Thomas G. Pruitt, for the above-referenced matter. This motion was made pursuant to Court of Common Pleas Civil Rule 55(c). After careful consideration by the Court, Mr. Pruitt's motion is denied because he has failed to demonstrate excusable neglect as a basis for relief.

On or about September 8, 2010, the plaintiff, CreditOne, LLC, filed a Complaint for a debt action demanding judgment against the defendant. The Complaint was served on the defendant's adult cousin, Anese Watson, on October 6, 2010 at the defendant's residence. When the defendant failed to file an answer or response to the Complaint, default judgment was entered against him by this Court on November 3, 2010. After the defendant learned of this default judgment, he filed an Answer on November 18, 2010. The defendant's responses in the Answer included "do not know" and "admitted" and did not raise any affirmative defenses. The defendant then filed this Motion to Vacate Default Judgment on November 19, 2010.

Court of Common Pleas Civil Rule 55(c) states that the Court may vacate a default judgment in accordance with Civil Rule 60(b). A party moving to vacate a default judgment under Civil Rule 60(b) has the burden of proving three elements before

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the motion will be granted: “(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on the merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.” *Perry v. Wilson*, 2009 WL 1964787, at *1 (Del. Super.) (quoting *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at *1 (Del. Super.)).

The Court will only consider the second two elements if the defendant has provided a satisfactory explanation that the failure to timely answer the Complaint was due to excusable neglect. *Id.* “Excusable neglect” is defined as “that neglect which might have been the act of a reasonably prudent person under the circumstances.” *Id.*

In his motion, the defendant contends that there was excusable neglect for his failure to file a timely answer or response to the Complaint. The basis for the excusable neglect set forth by the defendant is that he was also a party to another case, C. A. No. CPU5-10-001829, and believed that that case was the same as the instant case. The plaintiff alleges that the defendant has not established a basis for excusable neglect in his conduct when he failed to answer or respond to the Complaint.

In the instant matter, the defendant has not established that excusable neglect in his conduct resulted in the default judgment entered against him. He maintains that he believed that his actions in another case, C. A. No. CPU5-10-001829, also “covered” this case, which is C. A. No. CPU5-10-002038. In other words, the defendant contends that he believed that the two separate cases were the same action against him. However, the defendant presented no evidence that supports this allegation. As the plaintiff mentions in its Response to Motion to Vacate Default Judgment, “[t]his action [C. A. No. CPU5-10-002038] involves a different Plaintiff, a different attorney for the Plaintiff, a different civil action number and a different credit card account from C.A. No. C[PU]5-10-001829.” The Court is persuaded that a reasonably prudent person under the same circumstances faced by the defendant would not conclude that the aforementioned cases

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were the same. The two cases are two distinct civil actions and the defendant needed to respond to both. Since the defendant has failed to present evidence that demonstrates excusable neglect on his part, the second two elements of the test articulated above need not be discussed.

In conclusion, insufficient evidence was presented to this Court to show that there was excusable neglect by the defendant in his failure to answer or respond to the Complaint filed against him by the plaintiff. Therefore, the defendant's Motion to Vacate Default Judgment is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive, flowing style.

Charles W. Welch, III

CWW:mek