

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

)
VANESSA E. RANDOLPH,)
Individually,)
)
Plaintiff)
v.) C.A. No. 06C-06-103 RRC
)
ALPHONSO’S II SPLIT ENDS,)
)
Defendant)
_____)

Submitted: February 1, 2007
Decided: February 26, 2007

Upon Defendant’s “Motion for Dismissal of Plaintiff’s Complaint.”
DENIED.

ORDER

James P. Hall, Esquire, Wilmington, Delaware, Attorney for Plaintiff.

Alphonso Seabrook, Wilmington, Delaware, *pro se*.

COOCH, J.

This 26th day of February 2007, upon consideration of Defendant’s
“Motion for Dismissal of Plaintiff’s Complaint,” it appears to the Court that:

1. On June 9, 2006, Plaintiff filed a complaint in this Court seeking damages for injuries that occurred as a result of having her hair dyed at Defendant's salon. Defendant was served with the summons and complaint on July 8, 2006. Defendant did not file an answer to the complaint and subsequently this Court granted Plaintiff's motion for a default judgment pursuant to Superior Court Civil Rule 55 on December 12, 2006. Plaintiff sent Defendant notice of the default judgment hearing, however, no one attended the hearing on Defendant's behalf.

2. Defendant's motion is styled "Motion for Dismissal of Plaintiff's Complaint," but it is in effect a motion to vacate default judgment coupled with a motion to dismiss the complaint. A motion to vacate a default judgment pursuant to Superior Court Civil Rule 60(b)(1) is addressed to the sound discretion of the trial court.¹ Although Rule 60(b) should be construed liberally, a party moving to vacate a default judgment still must satisfy three elements before a motion under that rule 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 its merits; and (3) a

¹ *Battaglia v. Wilmington Sav. Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977).

showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.”²

3. Therefore, this Court must first determine whether Defendant’s failure to answer Plaintiff’s complaint was due to excusable neglect. “Excusable neglect” has been defined as “that neglect which might have been the act of a reasonably prudent person under the circumstances.”³ Defendant’s motion offers no reason whatsoever for the failure to respond to the complaint. Defendant, therefore, has not met its burden.⁴ Because Defendant cannot satisfy the first of the three pronged burden under Rule 60(b)(1), the Court need not consider the second two prongs.⁵ For the above reasons, Defendant’s motion to vacate default judgment is **DENIED**.

4. The inquisition hearing before Commissioner Reynolds will proceed as scheduled on March 1, 2007 at 1:00 p.m.

IT IS SO ORDERED.

cc: Prothonotary

² *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at *1 (Del. Super.).

³ *Battaglia*, 379 A.2d at 1135 n. 4.

⁴ *See Apt. Cmtys. Corp. v. Martinelli*, 859 A.2d 67, 72 (Del. 2004) (holding that the defendant did not produce enough evidence in support of its motion to vacate default judgment to meet its burden of proving excusable neglect).

⁵ *Id.* (stating that a court should only consider the second two elements of the three pronged test “if a satisfactory explanation has been established for failing to answer the complaint, e.g. excusable neglect or inadvertence”).