IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

SERVPRO DOVER,	)	
	)	C.A. No. K10A-06-003 JTV
Plaintiff Below,	)	
Appellee,	)	
	)	
v.	)	
	)	
CHRIS WALTERS,	)	
	)	
Defendant Below,	)	
Appellant.	)	

Submitted: October 1, 2010
Decided: January 28, 2011

Adam R. Elgart, Esq., Newark, Delaware. Attorney for Appellee.

Heather A. Long, Esq., and Michael D. Bednash, Esq., Kimmel, Carter, Roman & Peltz, P.A., Newark, Delaware. Attorneys for Appellant.

Upon Consideration of Appellant's
Appeal From Decision of the Court of Common Pleas
AFFIRMED

VAUGHN, President Judge

Servpro Dover v. Chris Walters
C.A. No. K10A-06-003 JTV
January 28, 2011

ORDER

Upon consideration of the appellant's appeal of a Court of Common Pleas denial of his motion to vacate a default judgment entered in that court, the briefs of both parties, and the record of the case, it appears that:

1. This case began as a suit filed by Servpro Dover against Chris Walters in the Justice of the Peace Court. Servpro alleged that Walters owed it money for services rendered, specifically for restoration of some of Walter's property after it was damaged by fire.

2. Trial in the Justice of the Peace Court was set for August 18, 2009; however, Walters failed to appear, either personally or by counsel. He contends that on July 31, 2009, his counsel requested a continuance. The Justice of the Peace docket entries do not show receipt of that letter, but show that on August 24 that court received a request for a continuance by facsimile. However, default judgment had been entered on August 18.

3. After learning of the default judgment, Walters appealed to the Court of Common Pleas. Servpro filed its complaint with the Court of Common Pleas on October 29, 2009. On March 25, 2010, Servpro filed a motion for default judgment, no answer having been filed. The Clerk of the Court of Common Pleas then informed Servpro that a direction for default judgment, not a motion for default judgment, should be filed. The direction for default judgment was filed on April 8, 2010. On April 22, 2010, Walters filed a motion to vacate the default judgment, contending that he was unaware that an answer to the complaint had not been filed, attributing the failure to an error in the Court of Common Pleas electronic filing system. The Court

of Common Pleas denied the motion, leading to this appeal. In its order denying the motion to set aside the default judgment, the Court of Common Pleas found that there was no excusable neglect and that Walters did not have a reasonable defense.

4. Walters contends that the default judgments entered in both the Justice of the Peace Court and the Court of Common Pleas were the result of excusable neglect; that the continuance sought was disregarded by the Justice of the Peace Court; and that an error in the court's electronic filing system was to blame for the absence of an answer in the Court of Common Pleas. He also contends that he attempted to remedy the problem by filing an answer on April 13, 2010. That answer was rejected by the Court of Common Pleas, due to the fact that default judgment had been entered against Walters.

5. Servpro contends that there was no abuse of discretion in the Court of Common Pleas' denial of Walters' motion to set aside the default judgment, and that the court correctly held that Walters failed to demonstrate excusable neglect sufficient to open the judgment.

6. Upon appellate review of a decision by the Court of Common Pleas denying a motion to set aside a default judgment, the appellant must show that there was an abuse of discretion.[1]

7. Motions to set aside a default judgment in the Court of Common Pleas are brought pursuant to that court's civil rule 60(b), which in all pertinent parts is

[1] *First State Communication Systems, Inc. v. Motorola, Inc.*, 1998 WL 960767, *2 (Del. Super. Oct. 15, 1998).

identical to this Court's same rule.

8. In a motion to set aside a default judgment due to alleged excusable neglect, the moving party must establish the following elements:

> I. [E]xcusable neglect in the conduct that allowed the default judgment to be taken;[2]
>
> ii. [A] meritorious defense to the action that would allow [a] different outcome to the litigation if the matter was heard on the merits;[3] and
>
> iii. [T]hat substantial prejudice will not be suffered by the plaintiff if the motion is granted.[4]

9. While "[a]ny doubt should be resolved in favor of the moving party because of the sound public policy favoring determination of actions on the merits,"[5] carelessness and negligence are not necessarily excusable neglect.[6] In my review of the record below, my conclusion is that Walters has not demonstrated that the Court of Common Pleas abused its discretion in finding that there was no excusable neglect.

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[2] *State Farm Fire & Casualty Ins. v. Laborers Eastern Organization*, 2009 WL 81290, *2 (Del. Super. April 20, 2009); (citing *Mendiola v. State Farm Mut. Auto Ins., Co.*, 2006 WL 1173898, *2 (Del. Super. Apr. 27, 2006)).

[3] *Id.*

[4] *Id.*

[5] *Williams v. DelCollo Elec., Inc.,* 576 A.2D 683, 684 (Del. Super. 1981).

[6] *Mendiola,* 2006 WL at *2; (citing *McDonald v. S & J Hotel Enters., LLC*, 2002 WL 1978933, *2 (Del. Super. 2002)).

The appellant merely states that his counsel "did not have electronic access to the EFLEX system"[7] and "mistakenly believed that an Answer to the Complaint . had already been filed."[8] There does not seem to be an indication as to why he believed the answer was filed, or why he could not access EFLEX.

10. The movant relies on the Court's decision in *Williams v. Delcollo Electric*[9] in support of his contention that excusable neglect existed. That case, however, can be distinguished from this case. In *Williams*, the defendant's behavior was found to be that of a reasonably prudent person.[10] The defendant, who was injured at work, forwarded both a letter from opposing counsel and a complaint to his insurer, and the insurance company failed to act. Therefore, the neglect was occasioned not by the defendant or his attorney but his insurer. The moving party also articulated five additional exculpatory explanations as to why the insurance company failed to file an answer to the complaint.[11] Each explanation went into detail as to how a series of unpredictable events – for example, the retirement of an adjuster and closing of an office – led to the failure of the insurance company to file an answer.[12]

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[7] Pet'r's Reply Br. 4.

[8] *Id.*

[9] 576 A.2d 683 (Del. Super. 1989).

[10] *Id.* at 686.

[11] *Id.*

[12] *Id.*

11. In this case, the Court of Common Pleas found that Walters failed to give any adequate reason as to why a timely answer was not filed. The record supports that finding. As the court stated in *Mendiola v. State Farm*, "[a] mere showing of negligence or carelessness without a valid reason may be deemed insufficient."[13] I perceive no abuse of discretion in the Court of Common Pleas' decision.

12. For the reasons stated above, the judgment of the Court of Common Pleas is ***affirmed***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
PRESIDENT JUDGE

oc: Prothonotary
cc: Order

[13] *Mendiola*, 2006 WL at *2; (citing *McDonald v. S & J Hotel Enters., LLC*, 2002 WL 1978933, at *3 (Del. Super. 2002)).