

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Suburban Mezial d/b/a Neighborcare)	
King of Prussia Pharmacy)	CIVIL ACTION NUMBER
)	
Plaintiff)	07C-07-197-JOH
v.)	
)	
Franciscan Care Center at Wilmington,)	
Inc., Tilton Terrace of Delaware, LLC,)	
and JHA Wilmington, Inc., d/b/a)	
Tilton Terrace)	
)	
Defendants)	

ORDER

And now this 12th day of July, 2010, plaintiff Suburban Medical d/b/a Neighborcare King of Prussia Pharmacy having made an application pursuant to Supreme Court Rule 42 for an order certifying an appeal from an interlocutory order/opinion of this Court dated June 10, 2010, and it further appearing that:

1. This is a contract dispute filed by Suburban Medical against several defendants, including Franciscan Care Center at Wilmington, Inc., and Tilton Terrace of Delaware, Inc.
2. Suburban Medical filed its original action on July 23, 2007, claiming damages in excess of \$400,00.00.
3. Tilton Terrace was served, through its registered agent on August 9, 2007.

4. Since Tilton Terrace had not responded, Suburban Medical filed a Direction for Entry of Default Judgment on January 9, 2008, in the specific amount of \$459,262.00.

5. On May 10, 2010, Tilton Terrace moved to vacate the default judgment against it.

6. On June 10, 2010, this Court granted Tilton Terrace's motion. The Court said in a bench ruling that the Direction for Default Judgment had not been entered properly under Superior Court Civil Rules 5 and 55 and further that under Superior Civil Rule 60(b)(4) and/or (b)(6), the default judgment would be vacated. The Court found that there was no excusable neglect in Tilton Terrace's failure to respond in a timely fashion as would be provided in Rule 61(b)(1). The Court noted, however, that Tilton Terrace likely had a valid defense to Suburban Medical's claim.

7. Suburban Medical seeks an interlocutory appeal claiming this Court erred in so holding. It concurrently alternatively seeks reconsideration of this Court's June 10th decision vacating the default judgment. The Court has denied that motion as untimely filed.

8. Suburban Medical contends this Court's June 10th decision determines a substantial issue and establishes a legal right between these parties.

9. Tilton Terrace opposes Suburban Medical's request for certification of an interlocutory appeal. It argues the request should be denied. First, it should be denied because the request was filed in the same motion as the alternative motion for reconsideration. Second, it contends this Court's decision did not establish a legal right

or determine a substantial issue.

10. This Court concurs that its June 10, 2010 ruling did not establish a new right or determine a substantial issue.

IT IS SO ORDERED.

J.