

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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MASTER IN CHANCERY

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May 10, 2017

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Wilfrieda Anna Vleugels
2201 Concord Pike, #420
Wilmington, DE 19803

Re: *Deutsche Bank National Trust Company v. Wilfrieda A. Vleugels*,
Civil Action No. 12140-MZ

Dear Ms. Vleugels and counsel,

Pending before me is defendant Wilfrieda Vleugels' request that this Court vacate the default judgment entered in favor of the plaintiff, Deutsche Bank National Trust Company. The issue is whether the defendant is entitled to reopen the default judgment after she failed to respond to the plaintiff's complaint seeking to foreclose on a mortgage. The defendant has not established excusable neglect for her failure to answer the complaint and appear before the Court, and has failed to present a meritorious defense to the action that would allow for the possibility of a different outcome to the litigation if the matter were heard on the merits. I therefore recommend that the Court deny the request to vacate the default judgment.

I. Background¹

On April 26, 2006, Wilfrieda Vlugels (“Vlugels”) executed a mortgage on a property known as 2001 North Washington Street, Milford, Delaware 19963, which Vlugels used as her residence. The mortgage was originally executed with Mortgage Electronic Registration Systems Inc. as nominee for Pinnacle Financial Corporation d/b/a Tri-Star Lending Group. The mortgage was subsequently assigned to plaintiff Deutsche Bank National Trust Company (“Deutsche Bank”). Vlugels has failed to pay the monthly installments of the mortgage when due.

At Deutsche Bank’s request, the Court issued a summons to the Kent County Sheriff dated April 1, 2016.² The sheriff’s return dated April 8, 2016, stated the sheriff was unable to personally serve Vlugels: “Four attempts made April 4, 5, 6, & 7, 2016[.] Lefts [sic] notes no response[.]”³ Vlugels was in Wilmington for medical treatment during that time, and came home to a notice on her door asking her to contact the sheriff. She did not do so.

On April 4, Deutsche Bank caused to be posted on Vlugels’ door the “Notice to Lienholders, Owners and/or Tenants of Filing of Action.”⁴ On May 19,

¹ The following facts are derived from the parties’ papers filed in connection with the motion, as well as the docket and underlying complaint.

² Resp. Ex. C.

³ *Id.*

⁴ D.I. 4 Ex. D.

2016, Deutsche Bank sent that same notice by certified mail to “Occupant/Tenant” at 211 North Washington Street. The certified mailing was returned unclaimed.⁵ The Post Master of the Milford branch of the United States Post Office submitted a letter to the Court stating that due to a technical error by a postal worker, Vlugels did not receive “70 to 90%” of her mail from April 15 through August 15, 2016, and that Vlugels’ mail may have been returned or misplaced during that time.⁶

On June 7, 2016, Deutsche Bank filed a motion to effectuate service via publication and posting. On July 15, 2016, the Court granted the motion and set the matter for a hearing on August 30, 2016. On July 26, 2016, Brandywine Process Servers, Ltd. posted a “Notice to Lienholders, Owners and/or Tenants Order to Publish,” which included notice of the hearing, on the common entrance door of 211 North Washington Street.⁷ Notice of the hearing was also published in the Delaware State News on July 28, August 4, and August 11 of 2016.⁸

Vlugels did not appear for the August 30 hearing. Deutsche Bank filed an affidavit of publication and posting on October 31, 2016, and a motion for entry of judgment by default on December 12, 2016. Deutsche Bank sent notice of the

⁵ D.I. 4.

⁶ Reply Ex., Letter from Kim Clark, Post Master (Aug. 22, 2016).

⁷ Resp. Ex. B.

⁸ Resp. Ex. D.

motion to 211 North Washington Street by first class mail.⁹ Based on Vleugels' nonappearance at the August 30 hearing, I granted Deutsche Bank's motion for entry of judgment by default on December 13, 2016.¹⁰ On December 28, 2016, on Deutsche Bank's request, the Court issued a writ of *levari facias* for sale of 211 North Washington Street to the Sheriff of Kent County.

On January 4, 2017, Vleugels filed a *pro se* letter with the Court contesting the manner in which she was served with the initial complaint. She requested a hearing and additional information such as the name of the sheriff who left the note on her door, proof of the Delaware State News publication, the original signed deed, and proof of alleged outstanding escrow advances. She also contested Deutsche Bank's selection of the Delaware State News as the source of publication. Finally, she alleged she withheld mortgage payments after a dispute with Ocwen, as servicer of her mortgage, about the handling of prior payments. I deemed Vleugels' letter to be a motion for relief from default judgment under Court of Chancery Rule 60(b), and asked Deutsche Bank to respond.

On February 1, 2017, Deutsche Bank described its efforts to serve Vleugels personally, pointed out that Court of Chancery Rule 5(g) and this Court's July 15, 2016, order permitted service by publication in the Delaware State News, and

⁹ D.I. 11.

contended that possession and production of the original signed need was not necessary. Deutsche Bank also alleged Vleugels' outstanding escrow advances were due to Deutsche Bank's payments of taxes and insurance on Vleugels' property, and stated it would provide Vleugels with supporting documentation. Deutsche Bank concluded Vleugels' dispute with Ocwen did not excuse her from making the required payments.

Vleugels replied on February 15, 2017. She requested more documentation regarding the sheriff's attempt to serve her. She alleged that in April 2016, she found an Ocwen lock box on her back door and somebody in her kitchen, and that the person left when Vleugels arrived. Vleugels enclosed evidence that her mail was interrupted from April through August 2016.

Vleugels also explained that she was in Wilmington three to four days a week for medical treatments, from February through September 2016. Vleugels stated she did not realize she was missing her mail because she suffers from a closed head injury. She enclosed a letter from Bruce H. Grossinger, D.O., in Wilmington DE, to Matthew McIlrath, D.C. dated August 30, 2016, in which Dr. Grossinger described Vleugels as suffering from "moderate right tarsal tunnel syndrome" and traumatic plantar fasciitis. He went on:

¹⁰ See 10 *Del. C.* § 365.

She suffers from a closed head injury with concussion as well as posttraumatic encephalopathy which arises in forgetfulness. Wilfrieda notes that there are certain aspects of her life where her forgetfulness impacted negatively on a responsibility or requirement and I have written this note to verify that as a Board certified neurologist the memory loss is organic, not related to poor effort and very real.¹¹

II. Analysis

When a default judgment results from a defendant's failure to respond, Delaware courts will err on the side of granting relief to promote the policy of deciding litigation on the merits.¹² In furtherance of this policy, the Court will resolve any doubts raised by the motion in favor of the moving party.¹³ Although Delaware courts construe Rule 60 liberally, before a motion to vacate a default judgment will be granted, the movant must satisfy three elements: "(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 showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted."¹⁴ Because the first element is a threshold requirement, this Court will only consider the second and third factors if the defendants can give a satisfactory explanation for

¹¹ Reply Ex.

¹² See *Battaglia v. Wilmington Sav. Fund Soc.*, 379 A.2d 1132, 1135 (Del. 1977).

¹³ *OneWest Bank, F.S.B. v. Feeney*, 2013 WL 5977066, at *3 (Del. Ch. June 27, 2013).

failing to answer the complaint, such as excusable neglect or inadvertence. This Court has analyzed excusable neglect in terms of “how a reasonably prudent person would act under the circumstances.”¹⁵ A judgment will not be vacated where the defendant “has simply ignored the process.”¹⁶

The issue before me is whether Vleugels has simply ignored the process, or whether her neglect of this action is excusable due to her documented memory issues and interruption of her mail. I find Vleugels’ neglect is not excusable. Vleugels ignored one or more notes the Kent County Sheriff left on her door from between April 4 and 6; an April 4 posting on her door giving notice that the action had been filed; and a July 26 posting on her door giving notice of the August 30 hearing. She did so knowing Ocwen was taking steps toward foreclosure, as evidenced by the lockbox installed in April 2016. A reasonably prudent person would not have ignored these signs of imminent foreclosure.

Vleugels’ neglect is not excused by the interruption of her mail or her memory issues. Vleugels is a Delaware resident, so she benefits from rules

¹⁴ *Id.*

¹⁵ *Greystone Digital Tech., Inc. v. Alvarez*, 2007 WL 2088859, at *3 (Del. Ch. July 20, 2007).

¹⁶ *OneWest Bank*, 2013 WL 5977066 at *3 (quoting *Stevenson v. Swiggett*, 8 A.3d 1200, 1205 (Del. 2010)).

requiring service to be personal or by publication and posting.¹⁷ Where an in-state defendant cannot be found to be served with process and there is just ground to believe that the defendant intentionally avoids such service, the Court may order the defendant's appearance on a certain day and publish such order as the Court directs.¹⁸ Court of Chancery Rule 5(g) provides that such publication may be in either the Delaware News Journal or the Delaware State News. The Court permitted service by publication and posting after the Kent County Sheriff received no response to the note(s) on Vleugels' door. Deutsche Bank published notice accordingly, and caused Brandywine Process Servers to post notice of the action and August 30 hearing date on Vleugels' door on July 26, 2016. Vleugels' interrupted mail does not excuse her ignoring an attempt at personal service and proper service by publication and posting.

It does not appear that Vleugels' memory issues have impeded her ability to litigate this case with promptness and specificity after the default judgment was entered. I cannot conclude that she was excused from doing so while the case was still open.

Finally, Vleugels has not presented any meritorious defense to the action that would allow a different outcome to the litigation if the matter were heard on its

¹⁷ DEL. CT. CH. RS. 4(da), 5; 10 *Del. C.* § 365.

merits. As explained, she has not shown any failure of service of process.¹⁹ She admits to withholding payment, and alleges she did so due to a dispute with Deutsche Bank's mortgage servicer. Vleugels has failed to show that her nonpayment was warranted or excusable.

III. Conclusion

For the foregoing reasons, I recommend the Court deny Vleugels' request to vacate the default judgment. This is a final report pursuant to Court of Chancery Rule 144.

Sincerely,

/s/ Morgan T. Zurn

Master in Chancery

MTZ/

¹⁸ *Id.*

¹⁹ *See Church v. Bank of New York*, 959 A.2d 27 (Del. 2008) (affirming denial of a motion to vacate default judgment where the record reflects service was proper).