

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

**CHARLES W. WELCH, III
JUDGE**

June 17, 2015

Mr. Geoffrey Oglesby Jr.
343 South Wynnwood Circle
Camden-Wyoming, DE 19934
Defendant Pro se

Stephen P. Doughty, Esq.
Lyons, Doughty, and Veldhuis, P.A.
15 Ashley Place, Suite 2B
Wilmington, DE 19804
Attorney for Plaintiff

RE: Midland Funding LLC v. Geoffrey Oglesby, Jr.

C.A.No.: CPU5-13-000920

Decision on Motion to Vacate Default Judgment

Dear Mr. Oglesby and Mr. Doughty:

The Court is in receipt of the defendant's motion to vacate the default judgment that was entered against him for the above-referenced matter on or about October 23, 2013. This motion, which was filed with the Court on May 28, 2015, has been made pursuant to Court of Common Pleas Civil Rule 55(c). After careful consideration by the Court, the defendant's motion is denied because he has failed to demonstrate excusable neglect as a basis for relief.

On or about August 27, 2013, the plaintiff, Midland Funding, LLC, filed a Complaint for a debt action demanding judgment against the defendant Geoffrey Oglesby Jr. The Complaint and Summons were served on the defendant's father, Geoffrey Oglesby Sr., on September 14, 2013, at the defendant's residence. The Summons advised the defendant that he had to file an Answer to the Complaint within 20 days and that [f]ailure to file an Answer denying the allegations will result on judgment against you. . .” When the defendant failed to file an Answer or response to the Complaint, default

judgment was entered against him by this Court on October 23, 2013. In his motion, the defendant alleges that he has tried to negotiate a settlement with the plaintiff and that he never received a court date for this matter.

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 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.*

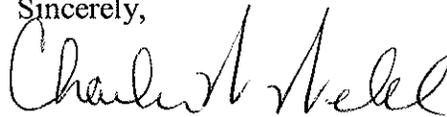
In his motion, the defendant contends that he was denied an opportunity to appear before a judge and that the plaintiff refused to negotiate a settlement offer. The reasons provided by the defendant in support of his motion to vacate the default judgment against him do not establish that excusable neglect in his conduct resulted in the default judgment entered against him. The Court is persuaded that a reasonably prudent person under the same circumstances faced by the defendant would have taken notice by the Summons that he was required to answer the Complaint against him or risk a default judgment being entered. The defendant failed to answer the Complaint, and thus, a default judgment was properly entered.

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In conclusion, the defendant did not present sufficient evidence to this Court to show that the judgment against him resulted from conduct by him that constituted excusable neglect. Therefore, the defendant's Motion to Vacate Default Judgment is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles W. Welch, III".

Charles W. Welch, III

CWW:mek