SUPERIOR COURT OF THE STATE OF DELAWARE

RICHARD F. STOKES

JUDGE

SUSSEX COUNTY COURTHOUSE 1 THE CIRCLE, SUITE 2 GEORGETOWN, DE 19947 TELEPHONE (302) 856-5264

September 6, 2013

Dean A. Campbell, Esquire Law Office of Dean A. Campbell 401 North Bedford Street P.O. Box 568 Georgetown, DE 19947

RE: Green Tree Servicing LLC (servicing agent for U.S. Bank, N.A. as Trustee on behalf of Manufactured Housing Contract Senior/Subordinate Pass Through Certificate Trust 1993-3) vs. David A. Hawkins

Case ID: S112C-09-015 RFS

Dear Counsel:

This is my decision regarding Plaintiff Green Tree Servicing LLC (servicing agent for U.S. Ban, N.A. as Trustee on behalf of Manufactured Housing Contract Senior/Subordinate Pass Through Certificate Trust 1999-3)'s Motion to Vacate Dismissal Due to Excusable Neglect. The motion is granted for the reasons set forth herein.

Facts

The Motion stems from a Replevin Complaint filed by Plaintiff's counsel, Dean A. Campbell, on September 21, 2012. A hearing date was scheduled for November 2, 2012. On October 31, 2012, Campbell successfully moved to cancel the hearing

because of possible settlement agreements. On May 10, 2013, a 41(e) Notice letter was filed. Campbell states that from May 17, 2013 to May 26, 2013, he was on vacation, after which he began a six-day Superior Court trial, ending June 12, 2013. Campbell serves as local counsel in this case for Secured Legal Services, Inc., a Maryland firm. Under their arrangement, Secured Legal prepares the litigation documents, which are subject to Campbell's review. The 41(e) Notice letter was forwarded to Secured Legal to prepare the pre-notice pleading documents. Campbell claims that he did not receive the 41(e) Notice letter by U.S. mail until the afternoon of June 10, 2013, that he did not see the necessary pre-notice documents which Secured Legal emailed to him until the evening of June 10, 2013, and that he filed the documents on June 11, 2013, although we do not have a record of this filing. Defendant is still in default of the agreement with Plaintiff, and remains in possession of the respective collateral. Campbell claims that Defendant will not be prejudiced or put in a different position by granting the motion.

Discussion

Superior Court Civil Rule 60(b) permits granting relief from a judgment or order for "mistake, inadvertence, surprise, or excusable neglect." In *McMartin v. Quinn*, I discussed the law relating to excusable neglect. In that case, I granted the defendant's Motion to Vacate Default Judgment, stating that "Delaware public policy

¹ Super. Ct. Civ. R. 60(b).

favors deciding cases on the merits, leading to the inference that any doubt should be resolved in favor of the petitioner. More generally, Delaware Courts construe Rule 60(b) liberally." In analyzing whether the Plaintiff has shown excusable neglect, I first determine whether Plaintiff's conduct was reasonable. Reasonableness results when a movant believes in good faith that the litigation, though not under his direct guise, is proceeding smoothly, in contrast to when the petitioner "simply ignore[s] the ongoing proceedings." Reasonableness also depends on the timing of the movant's filing his Motion to Vacate. Rule 60(b) does not have an actual time limit, but in *McMartin*, I stated that the movant's timeframe, measured from the point the movant learned of the default judgment to the point when the Motion to Vacate was filed, should be in the ballpark of thirty, ten, or five days.

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² 2004 WL 249576, at *1 (quoting and citing, *inter alia*, *Model Finance Co. v. Barton*, 188 A.2d 233, 235 (Del. Super. Ct. 1963) (internal quotation marks and brackets omitted).

³ *Id.* at *2 (citations omitted).

⁴ See id. In McMartin, the husband-and-wife co-defendants were officers of a corporation. I found that, based on co-defendants' relationship and the structure of their corporation, the wife co-defendant's placement of trust in the husband co-defendant to handle the litigation was reasonable. *Id.*

⁵ *See id.* at *3.

⁶ See id. (citing Schremp v. Marveli, 405 A.2d 119, 120–21 (Del. 1979) ("The Schremp Court measured reasonableness by comparing the amount of time that had passed (i.e. time of defaulting party's actual knowledge of dismissal to time of filing motion) to the mandatory time for appealing adverse judgment (thirty days), moving for a new trial (ten days) or reargument (five days)").

I also determine whether the movant could be successful on the merits, and whether the non-moving party is not "substantially prejudiced." Regarding the merits of the case, the movant need only show "the possibility of a different result." Regarding prejudice, "the court may remedy . . . prejudice by imposing terms or conditions, such as an award of attorney's fees, as part of the order to vacate." Prejudice to the respondent is checked by "Delaware's strong public policy to decide cases on the merits."

Based on *McMartin*, I will grant Plaintiff's Motion. Campbell's conduct was reasonable because ever since October of 2012, the parties seem to have been attempting to reach a settlement. Campbell claims that between May and June of 2013, Plaintiff and Defendant continued to try to reach a settlement, but to no avail. The earliest point Campbell could have received notice of the possibility of a default judgment was May 10, 2013, the date of the 41(e) Notice letter. Due to his busy schedule from mid-May to June 11th, as well as Campbell's arrangement with Secured Legal, Campbell had good faith reasons for being unaware of the default judgment until June 10th. Regarding Campbell's timing, he learned of the Rule 41(e)

⁷ *Id.* (citing *Battaglia v. Wilmington Savings Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977)).

⁸ Id. (citing Williams v. DelCollo Electric, Inc., 576 A.2d 683, 687 (Del. Super. Ct. 1989).

⁹ *Id.* (citing *Williams v. DelCollo Electric, Inc.*, 576 A.2d 683, 687 (Del. Super. Ct. 1989); *Battaglia*, 379 A.2d at 1136).

¹⁰ See id. at *5.

Notice letter on June 10th, allegedly filed the necessary paperwork on June 11th, and

filed this Motion on August 2nd. Although more than thirty days lapsed between

Campbell's discovering the problem on June 10th and filing this Motion August 2nd,

Campbell's timeframe does not seem to be an unreasonable time. Plaintiff could very

likely be successful on the merits because Defendant is still in default and in

possession of the collateral. Moreover, Defendant would not suffer prejudice if we

granted the Motion.

For the above reasons, Plaintiff's Motion to Vacate Dismissal Due to

Excusable Neglect will be **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

RFS

cc: Prothonotary

Judicial Case Manager

David A. Hawkins (Defendant(s))