IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

KENNETH PONZO,)	
Plaintiff,)	
V.)	C.A. No.: CPU4-12-003747 SPEED
NATIONWIDE MUTUAL)	of ELD
INSURANCE COMPANY, d/b/a Victoria Insurance Co.,)	
Defendant.)	

Submitted: September 19, 2013 Decided: October 4, 2013

Richard A. DiLiberto, Jr., Esq. YOUNG CONAWAY STARGATT & TAYLOR, LLP 1000 North King Street Wilmington, DE 19899 Attorney for Plaintiff Sean A. Dolan, Esq. LAW OFFICE OF CYNTHIA G. BEAM 131 Continental Drive, Suite 407 Newark, DE 19713 Attorney for Defendant

ORDER

Plaintiff Kenneth Ponzo ("Ponzo") brings this request for an award of compensatory and punitive damages against Nationwide Mutual Insurance Company, d/b/a Victoria Insurance Co. ("Nationwide") for Nationwide's failure to pay Ponzo's personal injury protection ("PIP") benefits.

Procedural History

On October 17, 2012, Ponzo brought this action against Nationwide, seeking: payment for personal injury protection ("PIP") benefits, including medical expenses; general damages including pain and suffering; punitive damages; attorney's fees; costs; and interest.

On December 27, 2012, having received no responsive pleading from Nationwide, Ponzo filed an affidavit for default judgment for a sum certain, pursuant to *Court of Common Pleas Civil Rule* 55(b)(1). Default judgment was entered by the Clerk of the Court in the amount of \$9,771.19.1

On February 1, 2013, Ponzo filed a letter with the Court, requesting that the case be assigned to a judge and that an inquisition hearing be held on the general and punitive damages requested in the Complaint.²

On February 27, 2013, Nationwide filed a motion to vacate the default judgment. A hearing on the motion was held on March 22, 2013. The Court found no excusable neglect attributable to Nationwide, and the motion was denied. At the conclusion of the hearing, the Court ordered a hearing to address only the issue of attorney's fees, and denied Ponzo's previous request for a damages hearing on the principal sum.

On June 4, 2013, a damages hearing on the issue of attorney's fees was held. The Court heard testimony from Ponzo, as well as oral argument from both parties. On July 30, 2013, the Court entered an order in favor of Ponzo, awarding attorney's fees in the amount of \$15,250.00.

Over two months later, on August 30, 2013, Ponzo filed a letter with the Court, in which he asserts that "the only outstanding issues are the amount to be awarded to Mr. Ponzo for compensatory damages . . . and punitive damages." Ponzo argues that, at the

¹ This figure represents the sum of \$3,003.19 in principal, \$129.00 in prejudgment interest, \$134.00 in filing fees, and \$6,505.00 in attorney's fees.

² On February 5, 2013, the Court notified Ponzo that a teleconference was to take place on February 12, 2013, to discuss the outstanding issues prior to the hearing; however, circumstances required the Courthouse to close on the date of the teleconference.

June 4, 2013 hearing, Ponzo testified to the general damages he suffered and, since the Court found that Nationwide acted in bad faith, compensatory and punitive damages are appropriate.

On September 4, 2013, Nationwide filed a letter in response to Ponzo's request for additional damages. Nationwide argues that Ponzo's request is effectively a Motion for Reargument, which is untimely as such motions must be filed within five days of the Court's decision.

On September 18, 2013, Ponzo filed a reply letter, arguing that his claim for compensatory and punitive damages is not a Motion for Reargument, since the Court's July 30 Order addressed only attorney's fees. Thus, Ponzo concludes, the issue of compensatory and punitive damages is still outstanding.

DISCUSSION

The present request for a hearing on punitive and compensatory damages is, in effect, a motion for reargument, as Ponzo seeks to have the Court reconsider its previous decision. The Court, on record at the March 22, 2013 hearing, denied Ponzo's request for a damages hearing on the principal sum, and ordered that only the issue of attorney's fees was to proceed to a damages hearing. Thus, Ponzo's present request for additional damages is effectively a motion for reargument, and the Court will address it as such.

Motions for Reargument are governed by *Court of Common Pleas Civil Rule* 59(e), which provides, in relevant part:

[a] motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground

asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted.

Ponzo's request for compensatory and punitive damages comes over six months after the Court first denied Ponzo's request for additional damages. Ponzo's request is untimely under *Court of Common Pleas Civil Rule* 59(e), which requires motions for reargument to be filed within five days of the Court's decision. Furthermore, Ponzo has offered nothing to suggest that the Court overlooked any principle or misapplied any law or fact that would result in a different outcome of the Court's original decision. Accordingly, Ponzo's request for punitive and compensatory damages must be denied.

Even assuming *arguendo* that Ponzo's request is not a motion for reargument, the request would nevertheless be denied. Ponzo obtained a default judgment against Nationwide by filing with the Clerk of the Court for a sum certain, pursuant to Rule 55(b)(1), which provides, in relevant part:

[w]hen the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the Clerk of the Court upon written direction of the plaintiff and upon affidavit of the amount due, shall enter judgment against the defendant, if the defendant has failed to appear in accordance with these Rules.³

Now, over eight months after default judgment for a sum certain was entered against Nationwide, Ponzo wishes to increase the amount of judgment by adding compensatory and punitive damages, which were not included in his original application for default judgment. The Court is not obligated to hold a damages hearing in this instance. *Court of Common Pleas*

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³ Court of Common Pleas Civil Rule 55(b)(1).

Civil Rule 55(b)(2), which governs default judgments entered by the Court, allows for such

hearings at the Court's discretion:

In all other cases the party entitled to a judgment by default shall apply to the Court therefor . . . [i]f, in order to enable the Court to enter judgment or to

carry it into effect, it is necessary to take an account or to determine the amount of damages or, to establish the truth of any averment by evidence or

to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper (emphasis

added).

Ponzo elected to file for a sum certain with the Clerk of the Court, instead of

obtaining default judgment by application to the Court under Rule 55(b)(2). The Court

determined that only the issue of attorney's fees required a hearing. Ponzo has not

presented anything to the Court to suggest that a Rule 55(b)(2) hearing on additional

damages is necessary and proper, and the Court is not compelled to grant Ponzo's untimely

request for additional damages.

Conclusion

For the foregoing reasons, it is hereby ORDERED that Plaintiff Kenneth Ponzo's

request for a damages hearing is **DENIED**.

IT IS SO ORDERED this 4th day of October, 2013.

Alex Smalls Chief Judge

Ponzo-ORD Oct 4 2013

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