**IN THE SUPERIOR COURT OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

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| DAVID J. FERRY, JR. and, MARY S. FERRY, | ) | |
| Plaintiffs, | ) | |
| v. | ) | C.A. No. N11C-03-261 WCC |
| CARL A. NUZUM, II d/b/a NUZUM DRIVE MOTOR SALES, MUSCLE CAR GARAGE, LLP, GEORGE P. BEEZEL, MELODIE NUZUM, and SHARON K. DENNISON | ) | |
| Defendants. | ) | |

Submitted: May 28, 2014
Decided: August 27, 2014

**On Defendants' Sharon Dennison's, Melodie Nuzum's, and Carl Nuzum's Motion for Relief from Judgment**
**GRANTED IN PART, DENIED IN PART**

**ORDER**

Kristopher T. Starr, Esquire, Thomas R. Riggs, Esquire, and James Gaspero, Jr., Esquire, Ferry, Joseph & Pearce, P.A., 824 N. Market Street, Suite 1000, P.O. Box 1351, Wilmington, DE 19899. Attorneys for Plaintiffs.

Douglas A. Shachtman, Esquire, The Shachtman Law Firm, 1200 Pennsylvania Avenue, Suite 302, Wilmington, DE 19806. Attorney for Carl A. Nuzum, Melodie Nuzum, and Sharon K. Dennison.

**CARPENTER, J.**

Upon consideration of the Motion for Relief from Judgment, in which Sharon Dennison, Melodie Nuzum, and Carl Nuzum (hereinafter, the "Defendants") urge the Court to set aside the default judgment entered against them, it appears to the Court that:

1. David J. Ferry, Jr. and Mary S. Ferry ("Plaintiffs") initiated suit against Defendants on March 26, 2011. On May 4, 2011, Stephen P. Norman, Esquire, ("Defendants' Counsel") entered his appearance on behalf of all Defendants. Through their attorney, Defendants filed a Motion to Dismiss on May 10, 2011, arguing lack of personal jurisdiction, absence of contract, and failure to plead with particularity. This Court denied the Motion on July 13, 2011, allowing Defendants the opportunity to re-file it after discovery. Plaintiffs initiated discovery shortly thereafter and also filed an Amended Complaint (the "Complaint") on September 23, 2011.

2. On October 25, 2011, Defendants' Counsel filed a Motion to Withdraw indicating that he was only retained to file the Motion to Dismiss and, since such was denied, he felt his involvement with the matter was over. Plaintiffs did not object to Defendants' Counsel's withdrawal, however, the Court denied such request after argument.

3. Plaintiffs, receiving no answer to the Complaint and no responses to discovery, filed a Motion to Compel Discovery and a Motion for Default Judgment in November of 2011. Both were granted by this Court on November 23, 2011, and December 7, 2011, respectively.

4. After the default was entered, Defendant Carl Nuzum, through Defendants' Counsel, filed an answer to the Complaint and responses to discovery. Shortly thereafter, Carl Nuzum also filed a Motion to Set Aside Default Judgment, through Defendants' Counsel. A hearing was set for the Motion, however, Defendants' Counsel requested the hearing be taken off the Court's calendar and such was never rescheduled nor pursued by the parties. Thereafter on December 12, 2011, Defendants' Counsel filed another Motion to Withdraw but on December 29, 2011 he advised the Court that the parties were attempting to resolve the matter and that all counsel had agreed that the Motion would be re-noticed if their attempts to settle the case were unsuccessful. A subsequent Motion to Withdraw as Counsel was filed on May 28, 2013, asserting as grounds the unresponsiveness of Defendants, and as such, the Motion was granted by the Court on June 25, 2013.

5. On September 6, 2013, the Court sent notice to all parties that an inquisition hearing would be held on October 8, 2013. However, Defendants did

not appear and the Commissioner who presided at the hearing ordered judgment against them for $88,020.15 plus interest. Defendants, through new counsel, filed the underlying Motion for Relief from Judgment on April 18, 2014, more than five months after judgment was entered at the inquisition hearing and over two years after default judgment was entered.

6. Defendants filed the underlying Motion for Relief from Judgment, arguing that they should be granted relief from the default judgment entered against them due to Delaware's public policy of hearing cases on their merits. The Motion sets forth a number of meritorious defenses Defendants would have presented, had the default not been entered against them. Further, the Motion states that Defendants were unaware of the failures to meet court deadlines, which preceded this Court's granting of default judgment. Instead, Defendants argue that Defendants' Counsel failed to communicate with them as to the deadlines and did not inform them of his motion to withdraw as their counsel until almost two months after such request was denied by this Court. Defendants also point out that Defendants' Counsel, while initially entering his appearance for all Defendants, was unclear about whom he actually represented and took some actions solely for Defendant Carl Nuzum, without acting on behalf of the others, to their detriment.

7. Superior Court Civil Rule 60(b) provides, in pertinent part, that "[o]n motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect ... or (6) any other reason justifying relief from the operation of the judgment."[1] At issue here are two judgments entered against Defendants; first, the default judgment and second, the damages imposed after the inquisition hearing. Each will be addressed separately.

A. **Default Judgment**

8. Defendants argue that they should be relieved from the default judgment entered against them December 7, 2011, nearly three years ago. Not only is this request untimely,[2] but Defendants have not established any excusable neglect or other sufficient justification for their failure to respond to the allegations against them.

9. While the Court appreciates there may have been a lack of communication between Defendants and their counsel, such does not negate Defendants' responsibility to defend a lawsuit filed against them. Defendants were personally served with the Complaint and sent notices of actions taken in the

[1] Super. Ct. Civ. R. 60(B).
[2] *See, e.g.*, *Young v. Reynoso*, 2001 WL 880128 (Del. Super. July 25, 2001) (finding that when filing a Rule 60 motion, a delay of two and a half years was unreasonable).

lawsuit. Defendants took little, if any, action to defend the lawsuit for nearly three years and, if that was the result of counsel's conduct, the complaint is with counsel and not this Court. To claim now that they were wholly unaware and surprised at the entering of default judgment against them is simply not convincing.

10. Therefore, the Court will not grant Defendants relief from the default judgment entered nearly three years ago.

## B. **Inquisition Hearing**

11. Defendants also challenge the damages assessed against them after the inquisition hearing held on October 8, 2013. While the Court finds that Defendants could and should have done more, in fairness, the Court will reopen the inquisition hearing.

12. The confusion over whom Defendants' Counsel was representing (if anyone) coupled with Defendants' assertion that, when notified, Defendants "did not know the meaning of 'inquisition hearing' or that they personally needed to attend"[3] relieves Defendants of some responsibility for the damages imposed at the inquisition hearing. Because of this lack of certainty and confusion on whether they needed to appear at the inquisition hearing, the Court finds excusable neglect

[3] Def. Mot. at 12.

in Defendants' failure to attend the inquisition hearing.[4] Reopening the inquisition hearing will allow Defendants to present evidence as to the amount of damages, if any, that should be awarded. However, they may not argue the merits of the Complaint as that part of the case is completed.

13. Accordingly, for the aforementioned reasons, the Motion is DENIED in part, insofar as the default judgment remains in place, and GRANTED to allow Defendants to present evidence at the reopened inquisition hearing. Counsel should arrange a new hearing with Commissioner Vavala who conducted the inquisition hearing.

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

cc: Commissioner Vavala

[4] Super. Ct. Civ. R. 60(B).