Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
Telephone (302) 255-0665

Date Submitted: January 18, 2006
Date Decided: April 27, 2006

Susan D. Ament, Esquire
Morris, Jams, Hitchens and Williams, LLP
803 North Broom Street
P.O. Box 2328
Wilmington, Delaware 19899

Sherry Ruggiero Fallon, Esquire
Tybout, Redfearn and Pell
750 S. Madison Street, Suite 400
Wilmington, Delaware 19801

Re: ***Mendiola v. State Farm Mutual Automobile Insurance Co.***
C.A. No.: 05C-06-159 JRJ

Dear Counsel:

The Court has reviewed the post hearing submissions and case law relating to the Defendant State Farm Mutual Automobile Insurance Company's Motion to Vacate Default Judgment. As you are aware, this is one of two cases before the Court arising from the same May 20, 2004 auto accident. The first case is a personal injury action filed April 12, 2005, against Scott Branton alleging, *inter alia*, negligent failure to yield the right of way.[1] The Court permitted State Farm to intervene in that action on June 27, 2005.[2] The case *sub judice*, filed June 15, 2005, is a breach of contract action against the Defendant State Farm, the Plaintiff's personal injury protection carrier, for payment of medical bills and lost wages related to the accident.[3]

[1] *Mendiola v. Branton*, C.A. No. 05C-04-102 PLA (Del. Super. filed Apr. 12, 2005).
[2] *Mendiola v Branton*, Del. Super., C.A. No. 05C-04-102, Ableman, P. (June 27, 2005) (ORDER).
[3] *Mendiola v. State Farm Mut. Auto. Ins. Co.*, C.A. No. 05C-06-159 JRJ (Del. Super. filed June 15, 2005).

In this case, the Plaintiff served her Complaint upon State Farm on July 5, 2005, through the Office of the Delaware Insurance Commissioner.[4] On July 6, 2005, the Department of Insurance for the State of Delaware forwarded the Summons and Complaint to the Defendant's Regional Office in Fredrick, Maryland (the "Regional Office").[5] The Defendant did not answer, appear, or in any other way respond. On October 26, 2005, the Plaintiff filed a Motion for Default Judgment.[6] Again, the Defendant failed to respond.[7] On November 9, 2005, the Court heard and granted the Plaintiff's uncontested Motion for Default Judgment.[8] On December 15, 2005, the Defendant forwarded the Complaint and the Motion for Default Judgment to Counsel, who entered her appearance on December 19, 2005.[9] Defense Counsel filed the present Motion to Vacate on January 3, 2006.[10] On January 13, 2006, the Plaintiff filed her opposition.[11] The Court heard argument on January 18, 2006. At the conclusion of oral argument, the Court allowed the Defendant five days to supplement the record with an affidavit explaining its delay in responding to this action.[12] The Defendant submitted the supplemental affidavit of Vinnie G. McCoy ("McCoy affidavit") on January 26, 2006.[13]

According to affidavits submitted on behalf of the Defendant, an unidentified State Farm employee "signed for this specific lawsuit" at the Regional Office.[14] Then a "mix-up" occurred.[15] Apparently, State Farm's Regional Office employees "inadvertently assumed" the Complaint related to, or "mistakenly assumed" it was duplicative of, the earlier filed personal injury action.[16] The affidavits aver both cases are "captioned the same," "proceeding on the same schedule," in the same court and involve the same Plaintiff.[17] According to State Farm, these similarities prevented (1) the employees who open mail, (2) a claims manager's secretary, (3) the Scanning Department and (4) a "UM Handler," from discerning that the Complaint related to a "new" lawsuit until December 13,

[4] Sheriff's Return, D. I. 2. (July 18, 2005).
[5] Def. State Farm Mut. Auto. Ins. Co.'s Mot. to Vacate Default J. at ¶ 5, *Mendiola v. State Farm Mut. Auto. Ins. Co.*, C.A. No. 05C-06-159 JRJ (Jan. 3, 2006) (D.I. 6).
[6] D.I. 3.
[7] Tr. Mot. Default J. at 2-3, *Mendiola v. State Farm Mut. Auto. Ins. Co.*, C.A. No. 05C-06-159 JRJ (Nov. 9, 2006).
[8] D.I. 4.
[9] *See* Def. Mot. to Vacate, D.I. 6, at ¶¶ 2, 4.
[10] D.I. 6.
[11] D.I. 7.
[12] D.I. 8.
[13] D.I. 9.
[14] *See* Aff. of McCoy at ¶ 2, *Mendiola v. State Farm Mut. Auto. Ins. Co.*, C.A. No. 05C-06-159 JRJ (Jan. 25, 2006) (D.I. 9).
[15] Def. Mot. to Vacate, D.I. 6, at Ex. F, ¶ 6 (the "Aff. of Matarese").
[16] Aff. of Matarese at ¶ 3; Aff. of McCoy at ¶ 7.
[17] Aff. of Matarese at ¶ 5; Aff. of McCoy at ¶ 7.

2005.[18] Further, according to State Farm, it was not until that date that the Claims Adjuster become aware of this suit, even though "Notices" related to the Motion for Default Judgment bore his name.[19]

DISCUSSION

A. Positions of the Parties

Neither party disputes that service on State Farm at its Regional Office was proper and timely.[20] State Farm moves to vacate the Court's November 9, 2005 entry of default judgment pursuant to Superior Court Civil Rule 60(b)(1) or (b)(6), arguing that its employees' conduct constitutes "inadvertence and/or excusable neglect;" it would have meritorious defenses based on a medical expert's opinion; and the Plaintiff will suffer no prejudice if the Court grants the Motion.[21] State Farm further asserts that the Court can, for any reason, vacate the judgment in favor of a trial on the merits.[22] The Plaintiff opposes this Motion arguing that the inadvertent or mistaken handling of her Complaint by the Defendant's employees over a four month period cannot be characterized as the reasonable conduct of reasonably prudent persons.[23] Accordingly, she maintains that State Farm has failed to demonstrate excusable neglect or the existence of any extraordinary circumstances causing its delayed response. Finally, she contends it is unlikely a trial will result in a different outcome because she was the Defendant's insured at the time of the May 20, 2004 accident and, as result of that accident, she incurred the medical expenses and lost wages the Defendant refuses to pay.[24]

B. Rule 60(b)(1) – Excusable Neglect and/or Inadvertence

"A motion to open a default judgment pursuant to Rule 60(b)(1) … is addressed to the sound discretion of the Trial Court."[25] Rule 60(b)(1) allows the Court to "relieve a party … from a final judgment, order, or proceeding" for reasons that include "inadvertence … or excusable neglect[.]" Delaware courts favor such motions "because they promote Delaware's strong judicial policy of

---

[18] Aff. of McCoy at ¶¶ 3-8; Aff. of Matarese at ¶¶ 3-6.
[19] Aff. of Matarese at ¶ 7; Aff. of McCoy at ¶ 8.
[20] Def. Mot. to Vacate, D.I. 6, at ¶¶ 1, 5; Pl. Op. to Def. Mot. to Vacate Default J., *Mendiola v. State Farm Mut. Auto. Ins. Co*., C.A. No. 05C-06-159 JRJ (Jan. 11, 2006) (D.I. 7).
[21] Def. Mot. to Vacate, D.I. 6, at ¶¶ 11-12.
[22] *Id*. at ¶ 13.
[23] *See* Pl. Op. to Def. Mot., D.I. 7.
[24] *Id*.
[25] *Battaglia v. Wilmington Sav. Fund Soc.*, 379 A.2d 1132, 1135 (Del. 1977).

deciding cases on the merits and giving parties to litigation their day in court."[26] In support of this policy, the Court resolves "any doubts raised by the motion in favor of the moving party."[27]

While the Court liberally construes Rule 60(b), the "movant still must satisfy three elements before a motion under that rule 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 its merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.[28]

Further, it is "well-established that the Superior Court should consider either 'the possibility of a meritorious defense' or possible prejudice to the plaintiff, only if a satisfactory explanation has been established for failing to answer the complaint, e.g. excusable neglect or inadvertence."[29] "Excusable neglect" is "neglect which might have been the act of a reasonably prudent person under the circumstances."[30] "Carelessness and negligence are not necessarily 'excusable neglect'…. A mere showing of negligence or carelessness without a valid reason may be deemed insufficient."[31] Moreover, "negligence may be so gross as to amount to sheer indifference, to open and vacate judgment upon such excuse would cease to give meaning to the words 'excusable neglect.'"[32]

The Court finds that State Farm has failed to establish its "threshold requirement" that the conduct of its Regional Office employees was that of reasonably prudent persons.[33] The affidavits establish that the Defendant's failure to respond to the properly served Complaint resulted from its employees' failure to recognize the Complaint as the beginning of a new lawsuit and their mistaken assumption it related to the Plaintiff's previously filed personal injury action. The Court agrees with Plaintiff that the conduct of State Farm's employees is not the conduct of reasonably prudent persons employed by an auto insurance company,

---

[26] *Verizon Delaware, Inc. v. Baldwin Line Const. Co., Inc*., 2004 WL 838610, at *1 (Del. Super. 2004); *see Apt. Cmtys. Corp. v. Martinelli*, 859 A.2d 67, 69 (Del. 2004).
[27] *Verizon Delaware, Inc.*, 2004 WL 838610, at *1.
[28] *Verizon Delaware, Inc.*, 2004 WL 838610, at *1; *see Apt. Cmtys. Corp.*, 859 A.2d 67, at 69-70.
[29] *Apt. Cmtys. Corp.*, 859 A.2d 67 at 72, *citing Battaglia*, 379 A.2d 1132 at 1135.
[30] *Apt. Cmtys. Corp.*, at 70.
[31] *McDonald v. S & J Hotel Enters., L.L.C.*, 2002 WL 1978933, at *2 (Del. Super.).
[32] *Id*.
[33] *Meyer v. Am. Reliance Ins. Co*., 1991 WL 89820, at *2 (Del. Super.).

which routinely handles litigation matters involving its insureds.

Contrary to the Defendant's assertions, the Regional Office employees' handling of this Complaint does not constitute excusable neglect. The supplemental McCoy affidavit indicates certain employees deviated from established procedures and failed to adequately process the Complaint. For example, contrary to the Defendant's established procedure requiring claims managers' secretaries to review and forward suits by mail to the appropriate claims office, the Plaintiff's Complaint was forwarded to the Electronic Scanning Department.[34] And, also contrary to the established procedure, it is apparent that one or more Regional Office employees failed to review the Complaint.[35] The reviewing employees failed to ascertain this Complaint did not relate to the earlier filed action, even though it bears a different civil action number, names only State Farm as a defendant, and asserts breach of contract claims for PIP benefits. The presence of this information belies the argument that a mix-up is excusable, because the Complaint in this action is not "captioned the same" as the personal injury action. Finally, nothing in the affidavits explains why documents related to the Motion for Default Judgment, served in October 2005, failed to reach a claims adjuster or an attorney until December 2005.[36]

In *Apartment Communities Corporation v. Martinelli*, after considering a defendant corporation's appeal from final judgment, the Supreme Court held the defendant responsible for ensuring its employees knew how to handle a properly served complaint.[37] The Supreme Court explained that:

> it was the responsibility of the defendant, … to ensure that all employees who are capable of accepting service of process know when and to whom the complaint should be forwarded. Where the sheriff has properly served process upon a defendant corporation, that corporation is thereby responsible for dealing with the complaint in a timely manner.[38]

It is State Farm's responsibility to ensure that its employees know how to handle

[34] Aff. of McCoy at ¶¶ 3-4.
[35] Aff. of McCoy at ¶¶ 3, 5, 6, 7.
[36] Def. Mot. to Vacate, D.I. 6, at ¶ 2.
[37] *Apt. Cmtys. Corp. v. Martinelli*, 859 A.2d 67 (Del. 2004).
[38] *Apt. Cmtys. Corp.*, 859 A.2d 67 at 68, 71 (affirming the Trial Court's conclusion that the failure of an employee leasing agent to recognize the significance of a complaint and advise appropriate personnel of service did not establish excusable neglect).

and process a complaint in a timely manner.

The Court finds that the neglect of the State Farm's Regional Office employees caused the Defendant's delayed response to both the Complaint and the Motion for Default Judgment. Their conduct fell below that of reasonably prudent persons. Consequently, the Court finds State Farm has failed to satisfy the first of its three-prong burden under Rule 60(b)(1).[39] Therefore, the Court need not consider its alleged meritorious defenses or the prejudice to the Plaintiff.

C. Rule 60(b)(6) – Extraordinary Circumstances

Motions to open a default judgment pursuant to Rule 60(b)(6) are addressed "to the sound discretion of the Trial Court."[40] Superior Court Civil Rule 60(b)(6) permits the Court to "relieve a party … from a final judgment, order, or proceeding" for "any other reason justifying relief from the operation of the judgment." Rule 60(b)(6) "is an independent ground for relief, with a different standard to be applied than under its other subdivisions."[41] Relief under this subsection "is an extraordinary remedy," so the Court applies the "extraordinary circumstances" test.[42] In determining whether the moving party has shown "extraordinary circumstances" "the court should bear in mind that Rule 60(b)(6) 'vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'"[43] However, in order to establish "extraordinary circumstances" justifying relief, the defendant "must show something beyond the neglect" of a claims representative who fails to properly process a complaint "into the hands of defense counsel."[44]

The Court finds the Regional Office employees' "inadvertent mix-up of the two cases" shows neglect, and not extraordinary circumstances explaining State Farm's failure to properly process the Complaint.[45] As the Court notes above, State Farm's employees are responsible for reviewing litigation documents pursuant to its established procedure. In this instance, they neglected to recognize the Complaint as a new lawsuit, unrelated to the Plaintiff's personal injury action. It does not strike the Court as "extraordinary" that an auto accident spawned two

---

[39] *Verizon Delaware, Inc.*, 2004 WL 838610, at *2.
[40] *Battaglia*, at 1135.
[41] *Keith v. Melvin L. Joseph Const. Co.*, 451 A.2d 842, 847 (Del. Super. Ct. 1982).
[42] *Cooke v. Cobbs,* 2003 WL 22535080, at *1 (Del. Super. 2003); *Jewell v. Div. of Soc. Serv.,* 401 A.2d 88, 90 (Del. 1979).
[43] *Cooke*, 2003 WL 22535080 at *1.
[44] *Id.* at *2.
[45] Aff. of Matarese at ¶ 6.

lawsuits involving the same Plaintiff and auto insurance company. Neither affidavit offers any facts or circumstances that explain why the Notice of Default Judgment failed to reach a claims adjuster or an attorney before December 13, 2005. Therefore, the Court finds State Farm has failed to demonstrate "extraordinary circumstances" justifying relief from the default judgment entered in this case.

CONCLUSION

For the aforementioned reasons, the Defendant's Motion to Vacate Default Judgment is **DENIED**.

IT IS SO ORDERED.

_____
Judge Jan R. Jurden