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

KEPHA B. NYAMWANGE,	)	
Defendant Below/Appellant,	)	
	)	
	)	
v.	)	**C.A. No. CPU4-12-001405**
	)	
DAHLINK FINANCIAL	)	
CORPORATION,	)	
Plaintiff Below/Appellee.	)	

Submitted: July 27, 2012
Decided: July 27, 2012

ORDER GRANTING APPELLEE'S MOTION TO AFFIRM

Carla A. K. Jarosz, Esquire, 203 West 18th Street, Wilmington, Delaware, 19802. *Attorney for Plaintiff.*

Kepha B. Nyamwange, 138 Three Rivers Drive, Newark, Delaware, 19702. *Self Represented Defendant*.

ROCANELLI, J.

This is an appeal from the Justice of the Peace Court. On March 2, 2012, the matter was scheduled for trial but Defendant failed to appear. Accordingly, on March 6, 2012, the Justice of the Peace Court entered judgment by default in favor of Plaintiff. On March 9, 2012, Defendant filed a Motion to Vacate Default Judgment in the Justice of the Peace Court, which was heard on March 23, 2012. On March 27, 2012, the Justice of the Peace Court issued a written order denying Defendant's Motion to Vacate and stating the basis for the court's decision.

On April 5, 2012, Defendant filed a Notice of Appeal in this Court, seeking review of the Justice of the Peace Court's March 27, 2012 Order denying Defendant's Motion to Vacate Default Judgment. Pursuant to CCP Civil Rule 72.2(b), Plaintiff filed the Motion to Affirm the March 27, 2012 decision of the Justice of the Peace Court which is now before the Court. On July 27, 2012, the Court held a hearing on Plaintiff's Motion to Affirm.

Pursuant to Court of Common Pleas Civil Rule 72.2(b)(3), upon motion of the appellee in an appeal on the record from the Justice of the Peace Court to the Court of Common Pleas, the Court may affirm the decision of the court below if "the issue on appeal is one of judicial…discretion, and clearly there was no abuse of discretion." Accordingly, the standard of review for an order denying a motion to vacate a default judgment is whether the court below abused its discretion.

Abuse of discretion is defined as:

> The exercise of judgment directly by the conscience and reason, as opposed to capricious and arbitrary action; where a court has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law or practice, so as to produce injustice, its discretion has not been abused; for the question is not whether the reviewing court agrees with the court below, but, rather, whether it believes that the judicial mind in view of the relevant rules of law and upon due consideration of the facts of the case could reasonably have reached the conclusion of which the complaint is made.[1]

[1] *Gland v. Smith*, 1999 WL 1847381, at *1 (Del. Com. Pl.).

Justice of the Peace Court Civil Rule 60(b) controls motions to vacate default judgment filed in the Justice of the Peace Court and provides:

> [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.

The granting or denial of such motion is within the sound discretion of the Justice of the Peace Court.[2] This rule is liberally construed to further the underlying preference of the Court that matters be resolved on their merits rather than by judgment by default.[3] Nevertheless, in order to prevail on such motions, the moving party must assert a meritorious defense to the underlying action and establish that the non-moving party will not suffer substantial prejudice by reopening the action.[4]

This Court finds that the Justice of the Peace Court did not abuse its discretion in denying Defendant's Motion to Vacate Default Judgment on March 27, 2012. The Justice of the Peace Court engaged in a reasoned analysis of each factor required to be analyzed under Justice of the Peace Court Civil Rule 60(b).

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[2] *Battaglia v. Wilmington Sav. Fund Soc.*, 379 A.2d 1132, 1135 (Del. 1977).

[3] *Id.*

[4] *Id.*

This Court will not substitute its own judgment for the reasoned judgment of the court below. Therefore, Plaintiff's Motion to Affirm must be granted.

AND NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion to Affirm the March 27, 2012 Order of the Justice of the Peace Court denying Defendant's Motion to Vacate the Default Judgment entered on March 6, 2012 is hereby GRANTED.

IT IS SO ORDERED this 27th day of July, 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli