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

CREDIT ACCEPTANCE CORP.,)
Plaintiff,	<u> </u>
v.) C.A. No. U408-05-097
NANCY WILSON BURTON,)
Defendant.)

ORDER GRANTING DEFENDANT'S MOTION TO VACATE DEFAULT JUDGMENT AND DISMISSING THE CASE WITH PREJUDICE

Submitted:

December 7, 2012

Decided:

December 7, 2012

Charles S. Knothe, Esquire, Wilmington, Delaware, for Plaintiff

Nancy Wilson Burton, Newark, Delaware, self-represented Defendant

ROCANELLI, J.

This is a consumer debt collection action. On May 8, 2008, Credit Acceptance Corporation filed a Complaint against Defendant Nancy Wilson Burton alleging that Ms. Burton signed a loan agreement to finance a vehicle, and had defaulted on those payments. A default judgment was entered by the Clerk of the Court pursuant to CCP Civ. R. 55(b)(1) for \$15,973.74, plus interest at the rate of 10% on the balance from the date of the judgment.

On August 7, 2012, Plaintiff filed an attachment FIFA for Ms. Burton, and the attachment FIFA was returned by Ms. Burton's employer in September 2012. Soon after her wages were garnished, Ms. Burton filed a Motion to Vacate Default Judgment on

October 18, 2012, claiming that she did not receive service. On November 15, 2012, Plaintiff filed a response in opposition to Ms. Burton's motion. The Court scheduled a hearing for November 16, 2012 and gave notice of the hearing to the parties.

On November 16, 2012, the Court held a hearing on the motion and Ms. Burton failed to appear to present her motion. The Court, due in large part to Ms. Burton's failure to appear at the hearing, denied Ms. Burton's motion at the hearing on November 16, 2012 by Order dated November 20, 2012.

On November 19, 2012, before the Court entered a written Order that was sent to the parties, Ms. Burton re-noticed the prior Motion to Vacate Default Judgment. Ms. Burton claimed she did not receive notice of the November 16 hearing. Today, both parties appeared on the re-noticed motion.

New information developed from the parties' discussion relating to this action. Plaintiff insisted that, even though service was proper, other facts warrant the vacating of the default judgment and the dismissal of the case. Plaintiff informed the Court that Ms. Burton's driver license signature does not match the signature on the loan agreement for the vehicle. Plaintiff then moved to dismiss the debt collection action against Ms. Burton.

"A motion to vacate a default judgment pursuant to . . . Civil Rule 60(b) is addressed to the sound discretion of the Court." "Delaware courts receive such motions with favor because they promote Delaware's strong judicial policy of deciding cases on

¹ Verizon Delaware, Inc. v. Baldwin Line Const. Co., Inc., 2004 WL 838610, at *1 (Del. Super. Apr. 13, 2004).

the merits and giving parties to litigation their day in court." As such, all doubts should be resolved in favor of the movant. CCP Civ. R. 60(b)(1) states that "[o]n motion and upon such terms that are just, the Court may relieve a party . . . from a final judgment" when there is a mistake.

In this case, the mistake is that a default judgment was entered against Ms. Burton on a loan agreement that was not Ms. Burton's agreement. Plaintiff conceded that the signature on the agreement is not Ms. Burton's signature and moved to dismiss the case. The Court finds that justice requires vacating the default judgment against Ms. Burton because Ms. Burton cannot be liable for a debt collection judgment of \$15,973.74 when there was never an agreement between the parties.

AND NOW, THEREFORE, IN THE INTEREST OF JUSTICE, IT IS HEREBY ORDERED THAT:

- 1. DEFENDANT'S MOTION TO VACATE DEFAULT JUDGMENT IS GRANTED; and
- 2. THE CASE IS DISMISSED WITH PREJUDICE AS TO MS. BURTON; and
- 3. THE WAGE GARNISHMENT IS LIFTED; and

² *Id*.

 $^{^{3}}$ Id.

4. PLAINTIFF SHALL RETURN TO MS. BURTON ANY FUNDS
RECEIVED PER THE WAGE ATTACHMENT FOR THE JUDGMENT
NOW VACATED.

