

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
KENT COUNTY COURTHOUSE  
DOVER, DELAWARE 19901  
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III  
JUDGE**

July 26, 2012

Ms. Rochelle Little  
39 Barnsley Court  
Dover, DE 19904-1493

Stephen P. Doughty, Esq.  
Lyons, Doughty and Veldhuis, P.A.  
15 Ashley Place, Suite 2B  
Wilmington, DE 19804

RE: Asset Acceptance v. Rochelle Little  
C.A. No. CPU5-09-002533

Decision on Motion to Vacate Default Judgment

Dear Ms. Little and Mr. Doughty:

The Court is in receipt of the Motion to Vacate Default Judgment that has been filed by the defendant, Rochelle Little, for this matter along with the response that has been filed by the plaintiff, Asset Acceptance, LLC. The plaintiff commenced this civil debt action on October 8, 2009, when it filed a Complaint demanding judgment against the defendant in this Court. The Court entered default judgment against the defendant on January 10, 2010, when she failed to answer the plaintiff's Complaint within 20 days of being served with it, pursuant to Court of Common Pleas Civil Rule 12(a). The Court has carefully considered the defendant's Motion to Vacate Default Judgment, and it is denied.

The defendant filed her Motion to Vacate Default Judgment pursuant to Court of Common Pleas Civil Rule 55(c) on May 7, 2012. The motion alleges that at the time of being served the Complaint, the defendant was traveling interstate between Delaware and Virginia and caring for her ill father, who passed away on October 24, 2009.

Furthermore, the defendant asserts as her meritorious defense that due to being a per diem employee, garnishment of her wages would constitute a violation of federal law.

The plaintiff opposes the Motion to Vacate Default Judgment. It submits that caring for a sick family member at the time the Complaint was served does not constitute an “excusable neglect” in conduct, invalidating the default judgment. Plaintiff further contends that the defendant has failed to set forth a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on its merits.

## DISCUSSION

### **A. Excusable Neglect**

Court of Common Pleas Civil Rule 55(c) provides that the Court may vacate a default judgment in accordance with Civil Rule 60(b). A party moving to vacate a default judgment in accordance with Civil Rule 60(b) must establish three elements before the motion 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 the merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.”

*Perry v. Wilson*, 2009 WL 1964787, at \*1 (Del. Super.) (quoting *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at \*1 (Del. Super.)).

The Court will only consider the second two elements if the defendant has provided a satisfactory explanation that the failure to answer the Complaint was due to excusable neglect. *Id.* “Excusable neglect” is defined as “that neglect which might have been the act of a reasonably prudent person under the circumstances.” *Id.* No specific time limit is placed upon a defendant to attack a judgment by motion under Civil Rule 55(c) and 60(b). *Robins v. Garvine*, 136 A.2d 549, 552 (Del. Super. 1957). Yet,

unreasonable delay in bringing such a motion will preclude the Court from granting relief. *Schremp v. Marvel*, 405 A.2d 119, 121 (Del. Super. 1979).

In *Schremp v. Marvel*, the Court measured reasonableness by comparing the amount of time that had passed (i.e., time of the defaulting party's actual knowledge of final judgment to time of filing of the motion) to the mandatory time for appealing an adverse judgment (thirty days), moving for a new trial (ten days), or reargument (five days). *Id.* The court found the motion to vacate default judgment untimely when the plaintiff filed it two months after learning of the dismissal of the case. *Id.* Consequently, the Court must examine the facts of each case to determine whether the moving party acted reasonably. There are times when the party's "negligence may be so gross as to amount to sheer indifference." *Financial & Brokerage, Servs., Inc. v. Robinson Ins. Assocs.*, WL 199503, at\*3 (Del. Super. 1990). For instance, the court in *Perry* states: "A defendant cannot have a judgment vacated where it has simply ignored the process." *Perry*, 2009 WL 1964787, at \*1.

In the present case, the defendant was properly served with a copy of the Complaint. Therefore, she has the burden to show why she did not file a timely response to it. The defendant asserts that she was caring for her sick father who later passed away and due to her family obligations she was unable to file a timely response. However, contrary to the defendant's assertions that she was taking care of her father during service of the Complaint, she was physically served on November 20, 2009 – almost one month after her father's passing and was, therefore, made aware of the lawsuit against her. Under the *Schremp* analysis, after judgment was entered against her, there was an unreasonable delay in the filing of her Motion to Vacate Default Judgment of approximately two and a half years.

Although it can be argued that caring for a sick family member may constitute “excusable neglect” depending on the circumstances, in this case, the issue is irrelevant because it simply did not occur at the time of service of process. Consequently, the Court finds that there was a disregard of the service of process on the part of the defendant. Pursuant to *Perry*, a Motion to Vacate Default Judgment may not be granted when the defendant has ignored service of process. The defendant has failed to establish excusable neglect in her conduct when she failed to file a timely response to this matter as required by Civil Rule 60(b). Since the defendant has failed to establish excusable neglect, the Court need not consider the second two elements to vacate a default judgment as set forth by Civil Rule 60(b).

#### CONCLUSION

Based on the foregoing analysis, the Court finds that the plaintiff properly served the defendant with a copy of the Complaint in this case and that it was not answered by the defendant in a timely manner. Therefore, default judgment against the defendant was properly entered. In addition, the defendant has failed to establish excusable neglect in her conduct that would allow the default judgment to be vacated. Therefore, the defendant’s Motion to Vacate Default Judgment is denied.

**IT IS SO ORDERED.**

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive, flowing style.

Charles W. Welch, III