

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

INDEPENDENT INVESTORS, LLC,)	
Defendant-Below/Appellant,)	
)	
v.)	C.A. No. CPU4-11-003143
)	
MELISSA ROTSIDES,)	
KELLY McPARTLAND,)	
LAUREN DECANDIA,)	
AMANDA SOLGE, and)	
LAUREN GRANNEY,)	
Plaintiffs-Below/Appellees.)	

**ORDER DENYING APPELLANT’S
MOTION TO VACATE ORDER OF DISMISSAL**

Submitted: December 21, 2012
Decided: December 21, 2012

Michael P. Morton, Esquire, Wilmington, Delaware, for Appellant
Melissa Rotsides, Succasunna, New Jersey, self-represented Appellee
Kelly McPartland, Highland Mills, New York, self-represented Appellee
Lauren Decandia, Ridgfield Park, New Jersey, self-represented Appellee
Amanda Solge, Wilmington, Delaware, self-represented Appellee
Lauren Graney, Laurel, Maryland, self-represented Appellee

ROCANELLI, J.

This is a case on appeal from the Justice of the Peace Court. On May 3, 2011, the Justice of the Peace Court Order entered judgment against Defendant-Below, Independent Investors, LLC (“Appellant”), and in favor of Plaintiffs-Below (collectively, “Appellees”) for \$5,600.00, plus court costs of \$40.00 and 5.75% post-judgment interest. The Justice of the Peace Court held that Appellant’s renovation projects deprived Appellees’ of use and enjoyment of the rental property. The record reflects that

Appellant filed an appeal of the Justice of the Peace Court's decision in this Court on May 24, 2011.

Appellant and Appellees filed cross-motions to dismiss the appeal. On December 16, 2011, the Court held a hearing on the motions. The Court granted Appellees' motion to dismiss for lack of jurisdiction because the Court determined that Appellant did not file the Notice of Appeal within the required 15 day jurisdictional limit. At the hearing, Appellant contended that the appeal was filed on May 16, 2011. The Court concluded, however, that Appellant filed the appeal on May 24, 2011, not May 16, 2011. The Court came to this determination because Appellant failed to produce credible evidence at the hearing, failed to subpoena necessary witnesses for the hearing, and Appellant's own Motion to Dismiss stated that the appeal was filed on May 24, 2011.

Appellant's Counsel filed a letter with the Court on December 16, 2011, after the Court ruled on the motion to dismiss that attached counsel's timesheets, which counsel contended shows that the appeal was timely filed. Counsel was notified by the Court that a formal motion was required for the Court to consider the issues raised by the letter.

Eleven months later, on November 15, 2012, Appellant filed the Motion to Vacate the Order of Dismissal now before the Court. Appellant argues that the Order of Dismissal should be vacated pursuant to CCP Civil Rule 60(b) and the Notice of Appeal should be treated as timely filed, relating back to May 16, 2011 *nunc pro tunc* pursuant to CCP Civil Rule 79.1(h). Appellees filed a response in opposition to Appellant's motion on December 19, 2012. Both parties appeared for a hearing on the Motions on December 21, 2012.

DISCUSSION

CCP Civil Rule 60(b) controls Motions to Vacate Orders and provides:

[o]n motion and upon such terms as are just, the Court may relieve a party . . . from a final judgment, order or proceeding for . . . (1) Mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of the judgment.

A motion to vacate a judgment or order “pursuant to . . . Civil Rule 60(b) is addressed to the sound discretion of the Court.”¹ “Delaware courts receive such motions with favor because they promote Delaware's strong judicial policy of deciding cases on the merits and giving parties to litigation their day in court.”² As such, all doubts should be resolved in favor of the movant.³ Rule 60(b) implicates two important values: (1) “ensuring the integrity of the judicial process” and (2) “the finality of judgments.”⁴ “Because of the significant interest in preserving the finality of judgments, Rule 60(b) motions are not to be taken lightly or easily granted.”⁵

While Rule 60(b) does not require a movant to file a motion within a particular time period, Delaware courts have held that unreasonable delay in bringing such a motion will preclude the Court from granting relief.⁶ The party seeking relief under Rule 60(b) is

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

² *Verizon Delaware, Inc.*, 2004 WL 838610, at *1.

³ *Id.*

⁴ *Wilson v. Montague*, 2011 WL 1661561, at * 2 (Del. May 3, 2011) (Ridgely, J.) (citations omitted).

⁵ *Wilson*, 2011 WL 1661561, at *2.

⁶ *Schremp v. Marvel*, 405 A.2d 119, 120 (Del. 1979).

“obliged to act without unreasonable delay.”⁷ In determining whether there is unreasonable delay, the Court must look at all circumstances surrounding the delay.⁸

Delaware case law varies on what constitutes an unreasonable delay. In *Schremp v. Marvel*, the Delaware Supreme Court affirmed the Superior Court’s denial of the plaintiff’s Rule 60(b) motion because it was untimely when the plaintiff waited two months after the plaintiff had knowledge of the dismissal to file a motion to vacate.⁹ In *Opher v. Opher*, the Delaware Family Court ruled that a Rule 60(b) motion was untimely when petitioner waited eleven months to file the motion.¹⁰ The Family Court stated, “[t]o allow relief in such egregious circumstances would encourage parties to disregard the procedures and time limits imposed elsewhere in the Court Rules.”¹¹ In *Christina Board of Education v. 322 Chapel St.*, the Superior Court noted the purpose behind Rule 60(b). Even though Rule 60(b) provides “relief to a party who for one of the articulated reasons has missed the time for a direct appeal, it is not available to a party who has shown an unexplained disregard of the court rules as well as his own interest.”¹²

The finality of judgments is an important consideration to the Court, and there is an issue of whether Appellant’s eleven-month delay in filing a motion to vacate precludes the Court from reaching the merits of the motion. The Court does not have to reach the

⁷ *Schremp*, 405 A.2d at 120.

⁸ *Id.* at 120, 121.

⁹ *Id.* at 120 (delay of two months unreasonable). *See also Opher v. Opher*, 531 A.2d 1228, 1234 (Del. Fam. Ct. 1987) (delay of eleven months unreasonable); *Ramirez v. Rackley*, 70 A.2d 18 (Del. Super. 1949) (delay of sixteen months unreasonable).

¹⁰ *Opher v. Opher*, 531 A.2d 1228, 1234 (Del. Fam. Ct. 1987).

¹¹ *Opher*, 531 A.2d at 1234.

¹² *Christina Bd. Of Ed. v. 322 Chapel St.*, 1995 WL 163509, at *6 (Del. Super. Feb 9, 1995).

merits of Appellant's Rule 60(b) motion if the Court determines that the motion was untimely.¹³

The Court must consider all the circumstances surrounding Appellant's delay to determine if the delay is unreasonable.¹⁴ This Court entered the Order of Dismissal on December 16, 2011. Appellant's Counsel then sent a letter to the Court on December 16, 2011, providing the same documentation now presented to the Court in this motion to vacate.¹⁵ However, the Court notified Appellant's Counsel that a formal motion *must* be filed in order for the Court to consider the information and Counsel's argument. Counsel did not file a formal motion until November 15, 2012, one day shy of eleven months after counsel was directed to file a motion by the Court.

In the motion, Appellant fails to provide any sufficient explanation for the eleven-month delay in filing a 60(b) motion. Appellant argued at the hearing that Appellant could not have filed the motion sooner than eleven months because of claimed sophisticated forensic computer analysis and attempts to retrieve files. The Court rejects Appellant's claim that a delay of eleven months was not unreasonable under the circumstances present here because the evidence Appellant produced for this motion was the same evidence the Appellant had in December of 2011. Appellant's failure to file a 60(b) motion for eleven months, especially after being instructed by the Court to do so,

¹³ *Schremp*, 405 A.2d at 120.

¹⁴ *Schremp*, 405 A.2d at 120, 121.

¹⁵ The documentation included a receipt of filing date from the e-flex system and Counsel's timesheets.

shows an “unexplained disregard of the court rules as well as his own interest.”¹⁶ Allowing Appellant’s motion to proceed on the merits, after eleven months of intentional deferral on Appellant’s part, “would encourage parties to disregard the procedures and time limits imposed elsewhere in the Court Rules.”¹⁷ Furthermore, Appellant’s lengthy delay is inconsistent with Delaware’s “significant interest in preserving the finality of judgments.”¹⁸ The Court rejects the claim that a delay of eleven months was not unreasonable under the circumstances presented. It was an unreasonable delay.

Moreover, even if the Court did not find Appellant’s motion untimely, Appellant’s motion would fail on the merits because extraordinary circumstances have not been presented to the Court. Appellant failed to prove a “mistake, inadvertence, surprise, or excusable neglect” under CCP Civil Rule 60(b)(1). Therefore, the only provision under which the Court would grant Appellant’s motion is under CCP Civil Rule 60(b)(6), which allows the Court to vacate the Order “for any other reason justifying relief from the operation of judgment.”

The words “any other reason justifying relief” of Rule 60(b)(6) vests power in the Court to enable it to vacate judgments whenever such action is appropriate to accomplish justice.¹⁹ Subsection (b)(6) is an independent ground for relief, with a different standard to be applied than under the other paragraphs of Rule 60.²⁰ The movant must

¹⁶ *Christina Bd of Ed.*, 1995 WL 163509, at * 6.

¹⁷ *Opher v. Opher*, 531 A.2d 1228, 1234 (Del. Fam. Ct. 1987).

¹⁸ *Wilson v. Montague*, 2011 WL 1661561, at * 2 (Del. May 3, 2011) (Ridgely, J.) (citations omitted).

¹⁹ *Jewell v. Div. of Social Servs.*, 401 A.2d 88 (Del. 1979).

²⁰ *Id.*

demonstrate a showing of “extraordinary circumstances.”²¹ Similar to the other subsections of Rule 60(b), “the interest of justice provision is addressed to the Court's sound discretion.”²²

The Delaware Superior Court stated that “[d]espite the broad power inherent in the provision, the Court must, of course, identify a valid reason to grant relief from a judgment, and must recognize that such reasons exist only in ‘extraordinary situation[s] or circumstances.’”²³ Whether extraordinary circumstances exist is a case-by-case determination under the facts of the particular case.²⁴ Appellant fails to identify any extraordinary circumstances.

CONCLUSION

Therefore, the Court finds that the eleven-month delay in filing this Rule 60(b) motion is an unreasonable delay under Delaware law. In addition, extraordinary circumstances under Rule 60(b)(6) have not been presented.

²¹ *Id.*

²² *Wife B v. Husband B*, 395 A.2d 358 (Del. 1978).

²³ *Rembrandt Technologies, L.P. v. Harris Corp.*, 2009 WL 2490873, at *2 (Del. Super. Ct. Aug. 14, 2009) (citing *Jewell*, 401 A.2d at 90).

²⁴ *Cristina Bd. of Educ. v. 322 Chapel St.*, Civ. A. No. 88C-08-227, 1995 WL 163509, at *7 (Del. Super. Ct. Feb. 9, 1995) (emphasis added).

AND NOW, THEREFORE, IN THE INTEREST OF THE PRESERVATION OF THE FINALITY OF JUDGMENTS, IT IS HEREBY ORDERED THIS 21ST DAY OF DECEMBER 2012, THAT APPELLANT'S MOTION TO VACATE THE ORDER OF DISMISSAL DATED DECEMBER 16, 2011 IS DENIED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli