# IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE IN AND FOR SUSSEX COUNTY

DUEL L. BALLARD	)	
Plaintiff,	)	
	)	
VS.	)	
	)	C.A. No. CPU6-12-000042
	)	
FIRST STATE COMMUNITY ACTION	)	
AGENCY	)	
Defendant,	)	

Submitted February 18, 2013 Decided April 4, 2013

Andrew A. Whitehead, Esquire, Attorney for Plaintiff Tasha M. Stevens, Esquire, Attorney for Defendant

# **DECISION ON MOTION**

On February 18, 2013, the Court heard Plaintiff's Motion to Enter Judgment Pursuant to Court of Common Pleas Rule 16(A)(6). After a thorough review of the case history and applicable law, the Motion is hereby DENIED.

## **FACTS**

On January 6, 2012, Plaintiff, Duel Ballard filed a Complaint in the above-mentioned case for breach of contract and wrongful termination. Defendant, First State Community Action filed its Answer on March 30, 2012. Under this Court's Civil Rule 16, the matter proceeded to Alternative Dispute Resolution (hereinafter "ADR"). A non-binding arbitration hearing was held on December 7, 2012. The Arbitrator issued his decision on December 11, 2012. Pursuant to our Rule 16(a)(6), Plaintiff filed the Arbitrator's decision on December 19, 2012, and Defendant filed its objection to the decision on January 2, 2013. On January 23, 2013, Plaintiff moved for entry of the Arbitrator's decision. Defendant filed its response on January 25, 2013.

### **DISCUSSION**

In his motion, Plaintiff contends that Defendant's objection to the Arbitrator's decision was untimely. Court of Common Pleas Rule 16(a)(6) states, in pertinent part, that "[t]he parties shall file a copy of the ADR Practitioner's decision or other resolution or report with the Court with[in] fifteen (15) days of the issuance thereof...Unless binding arbitration was selected, either party may file written objection[s] to the arbitration or neutral assessment decision with the Civil Clerk within fifteen (15) calendar days of the decision and the matter shall then proceed in accordance with these Rules of Court."

The salient issue is whether the date of issuance or the date of filing of an Arbitrator's decision commences the time for filing objections to that decision. Defendant contends that the 15 day period runs from the date of filing of the Arbitrator's decision, rendering its January 2, 2013 objection timely. Plaintiff contends the period is measured from the date the Arbitrator issued his decision, rendering the filing of Defendant's objection thereto untimely.

Admittedly, the practical application of Rule 16(a)(6) is somewhat kludgy, inasmuch as it simultaneously instructs the "parties" to file the ADR decision "within 15 calendar days of [its] issuance," and "either party" to file objection to the decision "within 15 calendar days of the decision." Nonetheless, the plain meaning of the language refers strictly to the number of days past the "decision," and makes no direct reference to the date of its filing with this Court. The date of issuance of the decision, therefore, is the controlling date. Defendant's objection was not timely filed.

The general purpose of Rule 16, however, is to encourage parties to resolve their disputes through an ADR process. The specific intent of the language is to provide the

2

<sup>&</sup>lt;sup>1</sup> Id.

parties flexibility in using ADR to resolve matters short of trial, while at the same time ensuring that the Court is kept apprised of the ADR progress so that resolutions are properly docketed with finality, or matters are efficiently tracked back to the pretrial process when necessary. It is not primarily intended as a mechanism for obtaining a default judgment. To hold otherwise would do disservice to the spirit of alternative dispute resolution.

The present situation bears a striking resemblance to the circumstances in *Keener v. Isken*,<sup>2</sup> one of our Supreme Court's most recent cases regarding delayed filings. In *Keener*, as here, counsel failed to meet a deadline based upon a mistaken belief as to the proper filing.<sup>3</sup> In reversing the Superior Court's refusal to reopen the case, the Supreme Court concluded that trial courts must afford adequate weight to Delaware's policy of favoring trials on the merits, and should consider all the surrounding circumstances before determining that a party should be deprived his or her day in court.<sup>4</sup> Following a thorough examination of counsel's error under a Rule 60(b) analysis, the Supreme Court stated that the appellant "was wrong, but a person can be reasonably prudent yet still be mistaken." Here, defense counsel was mistaken. However, as in *Keener*, in light of the all surrounding circumstances, her actions were that of a reasonably prudent person.<sup>6</sup>

Moreover, a review of the record reveals that after the arbitration hearing the parties continued their good-faith negotiations and both attorneys represented to this Court that they believed, at that time, that they were close to a resolution. Our Civil Rule 6 provides that the Court may enlarge time "upon motion made after the expiration

<sup>&</sup>lt;sup>2</sup> 58 A.3d 407 (Del. 2013).

<sup>&</sup>lt;sup>3</sup> <u>Id</u>.

<sup>4 &</sup>lt;u>Id</u>.

<sup>&</sup>lt;sup>5</sup> <u>Id.</u> at 401 citing *Dishmon v. Fucci*, 32 A.2d 338, 346 (Del. 2011).

<sup>6</sup> Id

of the specified period to permit the act to be done where the failure to act was the result of excusable neglect...."

In conclusion, the Court is inclined to grant Defendant's oral motion for an enlargement of time given the parties' good-faith attempts to resolve the dispute following the arbitration hearing and our long-standing preference to hear cases on their merits.<sup>8</sup>

#### **CONCLUSION**

Plaintiff's Motion to Enter Judgment Pursuant to Court of Common Pleas Rule 16(A)(6) is **DENIED**. Defendant's Motion for Enlargement of Time Pursuant to Court of Common Pleas Rule 6 is **GRANTED**, and its filed Objection to the Arbitrator's Decision is **ACCEPTED**. This matter shall proceed through the Court's pretrial process, and be scheduled for trial.

IT IS SO ORDERED this day of		, A.D. 2013.	
	Kannath S	Clark, Jr., Judge	

<sup>7</sup> Id

<sup>&</sup>lt;sup>8</sup> Keystone Fuel Oil Co. v. Del-Way Petroleum, Inc., 364 A.2d 826, 828 (Del. Super. 1976).