IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

EDWIN LONG,)	
Plaintiff-Below/Appellant,)	
)	
v.)	C.A. No. CPU4-12-002234
)	
K & J AUTOMOTIVE)	
Defendant-Below/Appelle)	

Submitted: April 27, 2013 Decided: May 16, 2013

MEMORANDUM OPINION AND ORDER

Edwin Long
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Pro Se Plaintiff-Below/Appellant

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This is an appeal of a decision of the Justice of the Peace Court. The appeal by Edwin Long, the plaintiff-below (herein plaintiff), was couched as a request for a trial de novo pursuant to 10 <u>Del.C.</u> §9570 and Rule 72-3 of the Court of Common Pleas Civil Rules. Before trial, the Court determined that the matter was not properly a request for a trial de novo on the merits of case originally filed, but was limited to a review of the propriety of the Justice of the Peace's decision and order denying the motion of the plaintiff-below to vacate a default judgment that had been entered in favor of defendant-below, the appellee, K & J Automotive.

The parties were directed to address this issue on the record of the proceeding in the

Justice of the Peace Court and to submit their written arguments to the Court. This is the Court's decision and order on this limited issue.

DISCUSSION AND DECISION

The record in the Justice of the Peace Court shows that plaintiff filed a debt action on January 27, 2012; a notice of a trial date was given to the parties on February 22, 2012; after a continuance and new notice, trial was scheduled for and held on May 7, 2012; plaintiff failed to appear and non suit and judgment for defendant was entered on May 8, 2012; a motion to vacate the judgment was timely filed and after hearing the Court denied the motion on May 31, 2012; plaintiff then filed this appeal on June 14, 2012.

The finding and order of the Justice of the Peace denying the motion to vacate is pointed and direct. The Court stated:

"May 30, 2012. Motion hearing held. All parties present. Plaintiff Edwin Long's motion to vacate the non suit judgment is denied. Plaintiff stated that he received notice for continuance and simply did not read the same."

The issue before this Court is whether the trial court abused its discretion in denying the motion to vacate the default judgment.

"An appeal from denial of a motion to vacate a default judgment does not bring the matter to this court for a trial de novo but only brings for a review of Justice of the Peace's Order denying the motion to vacate." *Gilliespie v. Chelsea on Square Apartments,* 2008 WL 352131, at *2 (Del. Com. Pl.) citing *Ney v. Polite,* 399 A.2d 527,529 (Del. 1979)). The standard is as stated in *Pitts v. White*:

The essence of judicial discretion is the existence of judgment by conscience and reason, as opposed to capricious arbitrary action and where a Court has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law of practice, so as to produce injustice its legal 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 judicial mind in view of the relevant rules of law and upon due consideration of the facts of the case could have reasonably reached the conclusion of which complaint is made.

Pitts v. White, 109 A.2d 786 (Del. 1954)

The procedure in appeals of this nature is detailed in Rule 72.3 of the civil rules of this Court. The rule was not followed precisely in this case, but this does not preclude a decision on the issue.

In his submission, plaintiff argues "... that he never received notice of a new trial date ... and therefore failed to appear " This is patently at odds with the finding of the Court which is that plaintiff "... stated that he received notice for continuance and simply did not read same."

The moving party seeking to vacate a default judgment must demonstrate three elements:

(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 its merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.

Verizon Delaware Inc. Baldwin Line Constr. Co. Inc., 2004 WL 838610, at *1 (Del. Super. April 13, 2004).

As noted by the Supreme Court in <u>Centralia Mining Co. v. Crawford, et al.</u>, 14 A.3d 519, at 523 (Del. 2011):

The first factor is a threshold such that the trial court need

consider the second and third factors only if a satisfactory explanation has been established for failing to answer the complaint, e.g., excusable neglect or inadvertence.

Plaintiff has shown nothing in the record or in his argument to meet the second and third elements. At best, he has argued only that the first element applies. But the finding of the Court below that he "simply did not read" the notice clearly shows plaintiff did not meet the requirement of the first element.

There is nothing in the record to show that the reasoning and decision of the trial court was either arbitrary, capricious, not found on reason or otherwise was fatally defective.

CONCLUSION AND ORDER

The denial of plaintiff's motion to vacate the default judgment by the Justice of the Peace Court is affirmed.

IT IS SO ORDERED.

Alfred Fraczkowski ¹		

¹ Sitting by appointment pursuant to Del. Const. Art. IV, §38 and 29 Del. C. §5610.