IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Fleetwood Estates Homeowners Association, Plaintiff	)	Civil Action No. 8263-MA
v.	)	
Mary Lex a/k/a Maria Lex Defendant	)	

MASTER'S REPORT

Date Submitted: December 10, 2013
Draft Report: February 19, 2014
Final Report: March 6, 2014

Pending before me is Defendant Mary Lex's motion to vacate the default judgment this Court entered in favor of the Plaintiff, Fleetwood Estates Homeowners Association (hereinafter "HOA") on November 4, 2013. The issue is whether Defendant is entitled to reopen the default judgment that was entered against her after Defendant failed to respond to a complaint by the HOA that sought to compel her compliance with the restrictive covenants governing Fleetwood Estates. Defendant has failed to demonstrate any extraordinary circumstances that would justify the relief she is requesting. Therefore, I am issuing a draft report in which I recommend that the Court deny Defendant's motion to vacate the default judgment.

Factual Background.

According to the Verified Complaint, the Plaintiff is the owner of real property at 14047 E. Jana Circle, Seaford, Delaware, which is located within the Fleetwood Estates subdivision. The HOA is charged with maintaining, administering and enforcing the recorded covenants and restrictions for owners of lots in the Fleetwood Estates subdivision. The following are the restrictive covenant sections that are relevant to this action.

Section 2 of the Restrictive Covenant states:

> Fleetwood Estates is hereby established as a restrictive development of single family detached dwellings. For the purpose of these restrictions, the word "family" shall mean a single person occupying the dwelling unit and maintaining household; two or more persons related by blood or marriage or adoption occupying a dwelling, living together and maintaining a common household or, not more than (3) unrelated persons occupying a dwelling, living together and maintaining a common household.

Section 3 of the Restrictive Covenants states:

> No house, dwelling, accessory building or landscape design shall be commenced, erected, nor any addition to, or alteration therein shall be made until house plans, specifications, and landscaping design showing nature, shape, height, materials, floor plan, color scheme, location and approximate cost shall have been submitted to and approved in writing by Fleetwood estates Architectural Committee, its successors or assignee and a copy thereof as finally approved with the Fleetwood Estates Architectural Review Committee or its successor or assignee.

Section 8(d) of the Restrictive Covenants states:

> No boat trailer, boat, travel trailer or camper of any type shall be semi-permanently or permanently placed or stored forward of the front of the dwelling.

Section 8(e) of the Restrictive Covenants states:

No wholly or partially stripped down motor vehicle or battered motor vehicle shall be permitted to be parked on any lot or on any street in Fleetwood Estates.

According to the Verified Complaint, in September 2009, Defendant submitted plans to the Fleetwood Estates Architectural Review Committee (hereinafter "the Committee") and received approval to construct a detached garage. The specifications did not include a bathroom, plumbing or mention of any intended use of the building as an apartment. Around the same time, Defendant received approval from the Sussex County Planning and Zoning Commission (hereinafter "the Commission") for construction of a detached garage with an unfinished second floor to be used for storage. In October 2010, Defendant received another approval from the Commission to finish the upstairs portion of the detached garage and install a bathroom. The proposed use listed on the building permit application was for an exercise room. Defendant never submitted any building plans or specification to the Committee for the refinishing of the upstairs portion, construction of a bathroom or exercise room prior to her application to the Commission.

According to the Verified Complaint, Defendant's adult son is currently using the finished room above the garage as an apartment. Defendant also is storing a boat, flatbed trailer, and travel trailer in front of the property, has a pickup truck permanently parked in her front yard and a piece of machinery, apparently a

motor vehicle transmission, stored indefinitely in front of the property, in violation of the restrictive covenants. The HOA sent Defendant notice of these violations by certified mail on July 23, 2012, and again on November 9, 2012. To date, Defendant has refused to accede to HOA's demand to abate the use of her garage as an apartment and to remove the boat, trailers, and car parts from her property.

Procedural Background.

The Verified Complaint was filed on January 29, 2013.[1] Upon the filing of an action involving the enforcement of deed covenants or restrictions, a mandatory mediation hearing must be scheduled within 60 days of the filing. *See* 10 *Del. C.* §348(c). On February 1, 2013, I appointed a mediator in this matter, and notified the parties by letter of the mediator's appointment, the requirement that mediation take place within 60 days and, if the mediation was unsuccessful, that a trial would be scheduled within 120 days thereafter.[2] On February 6, 2013, a Sussex County Deputy Sheriff served the summons and a copy of the complaint on the Defendant.[3] By letter dated May 23, 2013, the mediator informed the Court that although the HOA had cooperated with his requests, he had not received any portion of the mediator's fee from Defendant nor had Defendant provided any

[1] Docket Item No. 1 (hereinafter "DI No. *").
[2] DI No. 4.
[3] DI No. 5.

dates when she would have been available for mediation.[4] Thus, the time period for mandatory mediation had elapsed without a mediation being scheduled.

On August 16, 2013, HOA moved for a default judgment under Court of Chancery Rule 55.[5] A Rule to Show Cause was granted on September 10, 2013, for Defendant to appear in court on October 9, 2013, and show cause why a default judgment should not be entered against her in this case.[6] On October 9th, Defendant appeared *pro se* at the hearing.[7] I gave her until October 29th to file an answer to the complaint unless the Court was notified that the parties had reached a settlement.[8] In a letter dated October 30, 2013, counsel for the HOA notified the Court that settlement discussions with Defendant had been unsuccessful and requested that the default judgment be entered since Defendant had not filed an answer to the complaint.[9] I signed an amended Final Order and Judgment granting the default judgment on November 4th, in which Defendant was ordered to remove the vehicles, trailers, trash, and car parts from her property and to render the garage apartment a non-residential storage space.[10] If Defendant failed to act by November 30th, the Final Order and Judgment authorizes the HOA to remove the

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[4] DI No. 6.
[5] DI No. 7.
[6] DI No. 8.
[7] DI No. 10.
[8] *Id.*
[9] DI No. 11.
[10] DI No. 14.

trash from Defendant's property and to demolish the non-conforming area of her garage to bring the property into compliance with the restrictive covenants.[11]

The Motion to Vacate.

On November 25, 2013, Defendant filed a handwritten note stating:

> This is in regards to Fleetwood Estates Homeowners Association vs. Mary Lex, C.A. # 8263-MA. I wish to participate in the complaint and ask that [the Master] re-open my case and vacate her judgment so that I can present my evidence. I have a deadline in Final Order of November 30, 2013.[12]

On November 27th, an attorney entered his appearance on behalf of Defendant, and joined in the motion to vacate the default judgment that had been filed by his client *pro se*.[13]

Thereafter, on December 3rd, Plaintiff filed a response to Defendant's *pro se* filing.[14] In its response, Plaintiff complains that the *pro se* filing was never served upon Plaintiff or Plaintiff's counsel as instructed by the Court and in violation of Court of Chancery Rule 5. Nor had the entry of appearance by Defendant's counsel been served on Plaintiff or Plaintiff's counsel in violation of Rule 5. Moreover, the email address of Plaintiff's counsel had been misspelled, thus

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[11] *Id.*

[12] The handwritten note is dated November 18, 2013. D.I. No. 16. It was initially mailed to the Court without payment of filing fee, and was returned to Defendant with a letter from the Register in Chancery dated November 20, 2013, instructing Defendant that her document would not be made part of the docket without the proper scanning and uploading payment of $2.00 per page. DI No. 15. Defendant was also instructed that any documentation or correspondence filed with this Court must also be served on the other party. *Id.*

[13] DI No. 17.

[14] DI No. 18.

service of the entry of appearance was not received via email. Plaintiff points out several other deficiencies in the documents and the manner in which they were filed that I need not address in this report. Finally, Plaintiff argues that if the Court was to view Defendant's *pro se* filing as a motion to vacate the default judgment, then it must be denied because none of the reasons enumerated in Rule 60(b) for setting aside a judgment by default were set forth in Defendant's filing, and none of them have occurred. Plaintiff argues that Defendant simply wants to delay enforcement of the judgment by Plaintiff.

In her reply,[15] Defendant argues that Rule 60(b)(6) provides broad grounds upon which relief for judgment may be sought. Defendant claims that as a formerly *pro se* litigant, she did not understand the process. Now that she is represented by an attorney, she would like an opportunity to be heard. In addition, Defendant refers to the time-honored tradition favoring matters being resolved on their merits rather than on technicalities, citing *Keener v. Isken*, 58 A.3d 407 (Del. 2013).

Analysis.

Under Court of Chancery Rule 55(c), the Court may set aside a default judgment in accordance with Rule 60(b). Commonly-cited grounds for relief are mistake, inadvertence, surprise or excusable neglect. *See* Rule 60(b)(1). In

[15] D.I. No. 20.

addition, a party may cite newly discovered evidence,[16] fraud, misrepresentation or other conduct of an adverse party,[17] the judgment is void,[18] the judgment has been satisfied, released, or discharged,[19] or "any other reason justifying relief from the operation of judgment,"[20] to reopen a closed case.

Rather than claiming excusable neglect under Rule 60(b)(1), Defendant relies instead upon the catchall provision of Rule 60(b)(6). However, Rule 60(b)(6) "only encompasses circumstances that could not have been addressed using other procedural methods, [that] constitute an 'extreme hardship,' or [when] 'manifest injustice' would occur if relief were not granted." *Cancan Development, LLC v. Manno*, 2011 WL 4379064, at *4 (Del. Ch. Sept. 21, 2011) (quoting *Wolf v. Triangle Broadcasting Co., LLC*, 2005 WL 1713071, at *1 (Del. Ch. July 18, 2005) (footnote omitted)). Furthermore, the moving party has the burden of demonstrating why there are "extraordinary circumstances" that justify reopening the case. *Re: T.R. Investors, LLC v. Genger*, 2012 WL 5471062, at *3 (Del. Ch. Nov. 9, 2012) (citing *MCA, Inc. v. Matsushita Elec. Indus. Co.*, 785 A.2d 625, 634 n.9 (Del. 2001)).

Defendant has not alleged, let alone demonstrated, extreme hardship or that manifest injustice would occur if the case were not reopened. To the contrary, I

[16] Rule 60(b)(2).
[17] Rule 60(b)(3).
[18] Rule 60(b)(4).
[19] Rule 60(b)(5).
[20] Rule 60(b)(6).

find that the integrity of the judicial process would be compromised if this case was reopened at the request of a litigant who has disregarded a sheriff's summons, a court-ordered mediation hearing, and a court-ordered deadline to file an answer. Only the approach of the November 30th deadline appears to have motivated Defendant to retain counsel and to attempt to reopen the case since, if the violations were not corrected by November 30th, the Final Order authorizes Plaintiff to remove the trash and dismantle the garage apartment at Defendant's expense.

Had Defendant retained counsel sooner, as recommended by the court-appointed mediator and the Court,[21] a default judgment could have been avoided. Instead, more than nine months elapsed without any meaningful attempt by Defendant to participate in this litigation before a default judgment was entered against her. Defendant's plight is of her own making, and does not warrant the relief she is seeking. Therefore, I recommend that the motion to vacate be denied.

The parties are referred to Rule 144 for the process of taking exceptions to a Master's Draft Report.

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[21] In a letter dated April 15, 2013, the court-appointed mediator recommended that Defendant consult with an attorney. Exhibit C to Plaintiff's Response in Opposition to Defendant's Most Recent Undated Handwritten Filing. DI No. 18. At the hearing on October 9, 2013, I also recommended that Defendant seek the assistance of an attorney. *See* Plaintiff's Letter dated October 30, 2013. DI No. 11.