IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

76 CARRIAGE COMPANY, INC. d/b/a PHILADELPHIA TROLLEY WORKS,	:	MARCH TERM 2007
Plaintiff,	:	No. 3432
v.	:	
TORGRO LIMOUSINE SERVICE, INC.,	:	(Commerce Program)
Defendant.	:	
	:	Superior Court Docket
	:	No. 263 EDA 2008

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O P I N I O N

Albert W. Sheppard, Jr., J. ……..…… February 27, 2008

This Opinion is submitted relative to the defendant's appeal of this court's Order of December 11, 2007, denying defendant's Petition to Open Default Judgment.

For the reasons discussed, that Order should be affirmed.

B A C K G R O U N D

Plaintiff, 76 Carriage Company, Inc. d/b/a Philadelphia Trolley Works ("plaintiff") sued defendant Torgro Limousine Service, Inc. ("defendant") for breach of contract. The parties entered into an agreement in 2006 pursuant to which plaintiff was to provide transportation services for defendant's clients in exchange for monetary

consideration. Defendant failed to pay plaintiff for the services provided. Plaintiff brought this action.

The Complaint was filed on March 28, 2007, and personal service effectuated at defendant's place of business in Pennsauken, New Jersey. Defendant failed to file an answer to the Complaint within the 20 days but filed a single piece of paper, entitled "Answer to New Matter," on May 1, 2007. The Court later learned at oral argument that this document was intended to be defendant's answer to the Complaint. This document, however, contains serious flaws beyond its erroneous title, which ultimately resulted in it being overlooked by the court at the time.[1]

On May 8, 2007, plaintiff filed a Praecipe for Entry of Default Judgment and notified defendant on May 9, 2007. Ultimately, a default judgment for plaintiff in the amount of $51,277.30 was entered on May 30, 2007.

In an effort to execute on property in New Jersey, plaintiff requested that Superior Court of New Jersey record the Pennsylvania Judgment in New Jersey. On August 28, 2007, defendant was once again notified of plaintiff's judgment when the New Jersey Superior Court served written notice stating that it had recorded the Pennsylvania Judgment.

On October 3, 2007, plaintiff filed a Praecipe for Writ of Attachment naming two garnishees, U.S. Airways Group, Inc. and Commerce Bancorp, Inc. The very next day, October 4, 2007, defendant filed the instant Petition to Open and/or Strike the Default

[1] Defendant's alleged "answer" contained the following errors: 1) listed Mr. Conrad J. Benedetto, Esquire, the attorney who represented defendant in the action, as plaintiff's attorney, 2) the document responds to the allegations in the Complaint with one blanket denial, instead of specific responses to each allegation, as required by the Rules of Civil Procedure and 3) the denial states that all of plaintiff's allegations are conclusions of law requiring no responsive pleadings, but this was clearly not the case.

Judgment. After oral argument on December 10, 2007, this court denied the defendant's Petition. This appeal ensued

D I S C U S S I O N

Defendant's Petition sought to either open and/or strike the default judgment. These remedies are distinct and require separate consideration.

"A petition to strike a judgment will be granted only for defects appearing on the face of the record."[2] Defendant's Petition to strike fails to set forth any basis to support it. The court finds that no defect exists and the Petition was denied.

"A petition to open a judgment is addressed to the equitable powers of the court and is a matter of judicial discretion."[3] Three requirements must be proven: 1) the petition has been timely filed; 2) a meritorious defense is shown; and 3) the failure to appear can be excused.[4] The court finds that the defendant has failed to demonstrate any of the necessary requirements. Accordingly, the Petition to open the judgment was denied.

I. Defendant's Petition Was Not Promptly Filed

In determining the promptness of a petition to open a judgment, the court does not subscribe to a bright line test, rather it evaluates promptness based on all of the factual circumstances before the court.[5] However, two factors are suggested to help in making

[2] *Pennwest Farm Credit, ACA v. Hare*, 600 A.2d 213, 215 (Pa. Super. 1991).

[3] *Schultz v. Erie Ins. Exchange*, 477 A.2d 471, 472 (Pa. 1984).

[4] *Id.*

[5] *Dumoff v. Spencer*, 754 A.2d 1280, 1282 (Pa. Super. 2000); *Hofer v. Loyal Order of Moose of World, Mt. Pleasant Lodge No. 27*, 365 A.2d 1254, 1255 (Pa. Super. 1976).

such determination: 1) the length of the delay between discovery of the entry of a default judgment and filing the petition to open, and 2) the reason for the delay.[6]

On May 30, 2007, the default judgment was entered. A little over four months later, and after numerous court-provided notices,[7] the defendant filed its Petition to open the default judgment on October 4, 2007. Therefore, the length of delay between defendant's discovery of the entry of default judgment and the filing of the Petition was 127 days.

In the absence of a bright line test to determine promptness, the Pennsylvania Supreme Court has held that a "petition to open after two and one-half weeks can hardly be considered prompt."[8] Further, our Superior Court has stated that "[i]n cases where we have held that the filing was prompt, the period of delay was generally less than one month."[9] On its face, defendant's delay appears excessive and untimely. However, the court should also consider defendant's explanation for the delay.

Here, defendant claims that because of an administrative error committed by a "disgruntled former employee," the response to plaintiff's Complaint was erroneously titled, "Answer to New Matter," and defendant's counsel was mistakenly listed as counsel for plaintiff. This mistake resulted in the court overlooking the "pleading" as an

[6] *Dumoff*, 754 A.2d at 1282.

[7] Aside from the notice of default judgment provided by the court on May 30, 2007, defendant was notified by the New Jersey Superior Court in August regarding New Jersey's recognition of the Pennsylvania Judgment and again on October 3, 2007 by the court regarding a Writ of Attachment against defendant's two garnishees.

[8] *Hofer*, 365 A.2d at 700.

[9] *Dumoff*, 754 A.2d at 1282.

"answer". Defendant urges that it will be unduly prejudiced if the court does not open the judgment due to this error. The court disagrees.

Even were the court to look beyond the erroneous title and mistaken parties, the "answer" violates Pa. R.C.P. Rule 1019 by failing to offer a meritorious defense and fails to respond properly to the allegations in the Complaint in violation of Pa. R.C.P. Rule 1029(a).[10] Further, it is not verified in violation of Pa. R.C.P. 237.

Beyond this, defendant was alerted on four separate occasions that its "answer" had not been recognized by the court. All but the last notice, issued over four months after the default judgment had been entered, were ignored.

In light of the 127-day delay between defendant's discovery of the default judgment and the filing of the Petition, coupled with defendant's reason for delay - - loosely described as "administrative error" - - this court concludes that the filing of the Petition to open was not prompt.

II. Defendant Has Failed to Show a Meritorious Defense

Pennsylvania R.C.P. Rule 237.3(a) states: "A petition for relief from a judgment…of default…shall have attached thereto a verified copy of the…answer which the petitioner seeks leave to file." According to the Rule's comments, this is to enable the court to determine whether a meritorious defense is alleged in the answer to be filed. Defendant failed to comply with Rule 237.3(a) in that the purported "answer" attached to the Petition was not verified as required and did not contain a meritorious defense.

[10] Though the Complaint contains 10 separate averments (plaintiff mistakenly skipped number 3 in numbering the paragraphs in its Complaint) against defendant, the "answer" includes one blanket denial stating that all of the allegations are conclusions of law. It is clear that ¶¶ 1, 2, 4, 7, 8, 9,10, and 11 of the Complaint are factual allegations requiring a specific denial.

"The requirement of a meritorious defense is only that a defense must be pleaded that if proved at trial would justify relief."[11] "The [defendant] does not have to prove every element of its defense[;] however, it must set forth the defense in precise, specific and clear terms."[12] The document defendant relies upon contains merely one blanket denial, stating that all of plaintiff's averments in the Complaint are conclusions of law. The document fails to propose a defense. In sum then, after careful review of both defendant's Petition and the attached "answer," this court finds that no meritorious defense has been demonstrated.

C O N C L U S I O N

For these reasons, defendant's Petition to Open and/or Strike the Default Judgment was properly denied. This court's Order should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

[11] *Seeger v. First Union Nat'l Bank*, 836 A.2d 163, 166 (Pa. Super. 2003).

[12] *Id.*