

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL

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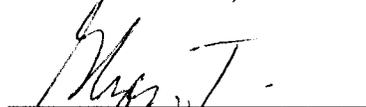
<b>BETHPAGE FEDERAL CREDIT UNION</b>	:	September Term, 2017
	:	Case No. 03660
<i>Plaintiff</i>	:	
	:	
<b>v.</b>	:	Commerce Program
	:	
<b>ARNOLD BELLUNE and D.N.T. CAB CO.</b>	:	
	:	
<i>Defendants</i>	:	Control No. 18070483

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**ORDER**

AND NOW, this 7<sup>th</sup> day of May, 2019, upon consideration defendants' petition to open judgment entered by default, the response of plaintiff, and the respective briefs, it is **ORDERED** that the petition is **DENIED**.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

DOCKETED

MAY - 7 2019

R. POSTELL  
COMMERCE PROGRAM

Bethpage Federal Credit-ORDOP



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## OPINION

Before the court is defendants' petition to open default judgment. For the reasons below, the petition is denied.

## BACKGROUND

In July 2013, individual defendant and taxicab owner, Arnold Bellune ("Borrower"), received from an entity named Montauk Credit Union ("Montauk"), a loan in the amount of \$175,000.00. Borrower promised to repay Montauk by executing a balloon promissory note (the "Note").<sup>1</sup> Montauk, as a lender, secured the obligation of Borrower by obtaining a security agreement. Under the terms of the security agreement, Montauk was entitled to claim possession and ownership of collateral – a taxicab medallion– if Borrower failed to timely repay his obligations.<sup>2</sup> On March 31, 2016, Montauk merged into herein plaintiff, Bethpage Federal Credit Union ("Creditor"), and any assets and credits owned by Montauk became the assets and credits of Creditor.<sup>3</sup>

On September 29, 2017, Creditor commenced the instant action against Borrower and his taxicab company (the "Taxicab Company."). The complaint avers that Borrower and his Taxicab Company failed to make payments as due under the Note.<sup>4</sup> On June 4, 2018, more than eight months after the complaint had been filed, Creditor entered judgment by default against Borrower and the Taxicab Company. On July 3, 2018, thirty days after the entry of judgment by default, counsel entered an appearance on

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<sup>1</sup> Balloon Note, Exhibit A to the complaint.

<sup>2</sup> Security Agreement, Exhibit B to the complaint.

<sup>3</sup> Certification of Completion of Merger, Exhibit A to the answer of Bethpage Credit Union to the petition to open judgment.

<sup>4</sup> Complaint, ¶ 9.

behalf of Borrower and the Taxicab Company.<sup>5</sup> Less than two hours later, Borrower and the Taxicab Company filed the instant petition to open the judgment and incorporated thereto a proposed set of preliminary objections.

#### DISCUSSION

The Pennsylvania Rules of Civil Procedure require that—

[a] petition for relief from judgment ... of default ... shall have attached thereto a copy of the ... preliminary objections ... which the petitioner seeks leave to file....<sup>6</sup>

**If the petition is filed within ten days after the entry of a default judgment on the docket, the court shall open the judgment if one or more of the proposed preliminary objections has merit....<sup>7</sup>**

In this case, the petition to open was filed more than ten days after the entry of default judgment; therefore, to determine whether the petition may be granted, this court must follow the instructions contained in the Explanatory Comment—1994 to Pa. R.C.P. 237.3. The explanatory comment to Pa. R.C.P. 23.7.3 instructs that when a “defendant files a petition to open the judgment more than ten days of the date of entry of judgment on the docket,” such a petition “is not within the scope of Pa. R.C.P. 237.3(b)(2).” In addition, if a petition is not within the scope of Pa. R.C.P. 237.3(b)(2), then the defendant “must proceed pursuant to case law and meet the standards of Schultz v. Erie Insurance Exchange, 477 A.2d 471 (Pa. 1984).”<sup>8</sup>

In “Schultz,” plaintiff filed a complaint on February 14, 1979, and served it upon defendant on March 8, 1979.<sup>9</sup> On March 14, 1979, twenty eight days after service of the

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<sup>5</sup> Entry of appearance of counsel on behalf of Borrower, dated July 3, 2018.

<sup>6</sup> Pa. R.C.P. 237.3(a) (2019).

<sup>7</sup> Pa. R.C.P. 237.3(b)(2) (2019) (emphasis supplied).

<sup>8</sup> Pa. R.C.P. 237.3, Explanatory Comment—1994, illustration 5.

<sup>9</sup> Schultz v. Erie Insurance Exchange, 477 A.2d 471, 471-472 (Pa. 1984).

complaint, the court entered judgment by default against defendant.<sup>10</sup> The following day, March 15, 1979, defendant drafted a letter requesting an extension of time to answer the complaint; however, the request was mailed to plaintiff only on March 26, 1979.<sup>11</sup> Two days later, on March 28, 1979, defendant received notice of the entry of default judgment dated March 14, 1979.<sup>12</sup> Much later, on October 5, 1979, more than five months after receiving the complaint, defendant filed a petition to open the default judgment. The trial court denied the petition explaining that defendant did not adequately articulate why it had failed to file a timely answer to the complaint.<sup>13</sup> The Pennsylvania Superior Court reversed the trial court's decision, and plaintiff appealed.

Reversing, the Pennsylvania Supreme Court provided the following standards:

[a] petition to open a judgment is addressed to the equitable powers of the court and is a matter of judicial discretion. The court will **only** exercise this discretion when

- (1) the petition has been promptly filed;
- (2) a meritorious defense can be shown; **and**
- (3) **the failure to appear can be excused.**<sup>14</sup>

The Pennsylvania Supreme Court further stated that—

[a]s the lower court correctly concluded that [defendant had] failed to plead an adequate explanation of the causes of the delay in answering the Complaint, its refusal to open the default judgment was not an abuse of discretion....<sup>15</sup>

In this case, Borrower filed his petition to open default judgment more than ten days after the entry of judgment on the docket. Since the petition was untimely filed, this court was compelled to determine whether the untimely petition complied with the

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<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

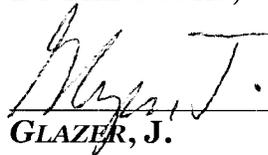
<sup>13</sup> Id.

<sup>14</sup> Id. at 472.

<sup>15</sup> Id. at 473.

standards articulated in Schultz, *supra*. Those standards not only require that a petition to open default judgment be filed as promptly as possible: they additionally require that the filing party offer an adequate explanation as to why defendants failed to file an answer to the complaint. Here, Borrower compellingly explains that he is a kidney patient undergoing dialysis treatments three times a week, and that the exhaustion and pain from such treatments prevented him not only to grasp the significance of the judgment, but also to timely hire an attorney.<sup>16</sup> But he offers no explanation as to why he failed to file an answer to the Creditor's complaint over a period in excess of eight months –namely, from the day the complaint was filed, September 29, 2017, to the day the judgment was docketed, June 4, 2018. The failure to adequately explain why no answer to the complaint was filed over such a prolonged period of time is fatal, and the petition to open judgment by default is denied.

**BY THE COURT,**

  
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**GLAZER, J.**

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<sup>16</sup> Affidavit of Borrower, Exhibit C to the petition to open default judgment.