





the Default Judgment on that date and mailed Notice of entry to defendants at the address listed for them on the docket: 1442 Pottstown Pike, West Chester, Pennsylvania.

On January 30, 2006, the court listed this case for a damages hearing. On February 2, 2006, the Prothonotary mailed Notice of the hearing to defendants at 1442 Pottstown Pike, West Chester, Pennsylvania. On March 6, 2006, after the hearing, the court awarded plaintiffs \$58,550.00 in damages, and the Prothonotary mailed Notice of the award to defendants at 1442 Pottstown Pike, West Chester, Pennsylvania. On April 18, 2006, plaintiffs' counsel entered Judgment on the court's award, and the Prothonotary mailed Notice of the entry of Judgment to defendants at 1442 Pottstown Pike, West Chester, Pennsylvania.

Almost a year later, on March 9, 2007, plaintiffs' commenced garnishment proceedings against the corporate defendant's account at Citizens Bank. Citizens Bank was served with a Writ of Attachment and Interrogatories on March 27, 2007. On June 22, 2007, Judgment was entered against Citizens Bank by admission in the amount of \$10,179.65, and the Prothonotary mailed Notice of the entry of Judgment to defendants at 1442 Pottstown Pike, West Chester, Pennsylvania.

On July 2, 2007, defendants filed a Petition to Strike/Open the Default Judgment entered on December 22, 2005. In their Petition, defendants argue that service of the Notice of Default on them at 1811 S. 28<sup>th</sup> Street, Philadelphia, Pennsylvania was improper because that is not either defendant's address.<sup>2</sup> Defendants claim that the proper address for service on the corporate defendant was 1442 Pottstown Pike, West Chester, Pennsylvania.<sup>3</sup> Although the court

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<sup>2</sup> Memorandum of Law in Support of Petition, p. 2. Despite defendants' claim that this is not a good address for them, plaintiffs effected original service of the Complaint upon defendants at 1811 S. 28<sup>th</sup> Street.

<sup>3</sup> Petition, ¶ 16. Defendants do not set forth the proper address(es) for service on the individual defendant. Plaintiffs have attached to their Answer to the Petition property tax records showing that the property at 1811 S. 28<sup>th</sup> Street, Philadelphia, Pennsylvania is owned by the individual defendant. Answer, Ex. F.

mailed four Notices of different docket entries to defendants at 1442 Pottstown Pike, West Chester, Pennsylvania between December 22, 2005 and June 22, 2007, defendants deny that they received two of those notices.<sup>4</sup> Defendants admit that they learned of the Default Judgment on or about March 27, 2007, when Citizens Bank was served with the Writ of Attachment, because Citizens Bank contacted defendants regarding the Writ.<sup>5</sup>

“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>6</sup> Under the Rules of Civil Procedure, if defendants had filed the Petition within ten days after the entry of the default, and if they had attached a proposed answer containing a meritorious defense, they could have satisfied the requirements to open the default judgment.<sup>7</sup> Instead, defendants filed their Petition a year and a half after the Default Judgment was entered and after notice of the Judgment was sent to them at an address they admit was proper.

The Prothonotary is required immediately to send notice of entry of any order or judgment to every party.<sup>8</sup> In this case, the docket reflects that the Prothonotary mailed the Notice of entry of Default Judgment to defendants on December 22, 2005. In addition, the Prothonotary mailed the Notice of the damages hearing to defendants on February 2, 2006,

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<sup>4</sup> Petition, ¶¶ 11-12. Defendants deny receiving the Notice of the damages award and the Notice of entry of Judgment on that award. Defendants do not specifically deny receiving the Prothonotary’s Notice of entry of the Default Judgment and the Notice of the damages hearing.

<sup>5</sup> Petition, ¶¶ 13-14.

<sup>6</sup> Schultz v. Erie Ins. Exchange, 505 Pa. 90, 93, 477 A.2d 471, 472 (1984).

<sup>7</sup> Pa. R. Civ. P. 237.3.

<sup>8</sup> Pa. R. Civ. P. 236.

mailed the Notice of the award of damages to defendants on March 2, 2006, and mailed the Notice of entry of Judgment regarding damages to defendants on April 18, 2006.

“[I]t has long been the law of our Commonwealth that proof of a mailing raises a rebuttable presumption that the mailed item was received and it is well-established that the presumption under the mailbox rule is not nullified solely by testimony denying receipt of the item mailed.”<sup>9</sup> Instead, corroborative evidence of lack of receipt is required to overcome the presumption of receipt.<sup>10</sup> In this case, the docket entries constitute proof that the Notices were properly mailed, so the presumption that defendants received them is established.<sup>11</sup> In their Petition, defendants simply deny that they received two of the court’s Notices, even though they admit the Notices were sent to a proper address. The presumption that defendants received the Notices is not overcome by such uncorroborated testimony. Defendants are presumed to have received the Notice of the Default Judgment and the Notices of subsequent orders and judgments. Their Petition to Open, filed months and even years after their receipt of such Notices, was not promptly filed.

Even if defendants were able to overcome the presumption that they received the Notices, their Petition is still untimely. Defendants failed to file the Petition for more than two months after they admit Citizens Bank put them on notice of the Judgment and the execution proceedings. In their Petition, defendants offer no excuse for this delay in filing. Furthermore, defendants’ Petition is defective because they offer no explanation for their failure to respond to

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<sup>9</sup> Samaras v. Hartwick, 698 A.2d 71, 73 (Pa. Super. 1997).

<sup>10</sup> *Id.*, 698 A.2d at 74; Donegal Mutual Insurance Company v. Insurance Department, 719 A.2d 825, 827 (Pa. Cmwlt. 1998).

<sup>11</sup> Breza v. Don Farr Moving & Storage Co., 828 A.2d 1131, 1136 (Pa. Super. 2003) (the court held that “entry on the docket was sufficient to establish these items had been mailed.”)

the Complaint for eight months between the time they were served and the entry of default judgment. Accordingly, defendants' Petition to Open or Strike is denied.

**BY THE COURT,**

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**MARK I. BERNSTEIN, J.**