

LEGAL NOTICES

being known as Lot No. 6 on a "Subdivision Plan of Vaughn and Eileen Moore," said plan being recorded in Deed Book 288F, Page 485. Tax Parcel #09-C-08-157. Having a street address of 874 Pine Stump Road, Fayetteville, Pa. 17222.

SALE #13
AD1998-531
NORWEST MORTGAGE, INC.
VS
ERIC W. HARRISON
ATTY: FRANK FEDERMAN,, ESQ.

Certain tract of land situate in Green Township, Franklin County, Pennsylvania, Recorded in Deed Book 288F, Page 1390 Tax parcel No. 09-C-19-311. Having a street address of 2773 Tattoo Drive, Chambersburg, Pa. 17201

SALE #14
AD1998-560
FRANKLIN CREDIT MANAGEMENT CORPORATION
VS
JOHN A. & DEBRA L. FLORA
ATTY: FRANK FEDERMAN, ESQ.

Real estate, lying and being situate in the Borough of Waynesboro, Franklin County, Pennsylvania. Recorded in Deed Book Volume 1361, Page 532. Parcel No. 25-5A-64-29 Having A street address of 220 W. North St., Waynesboro, Pa. 17268

SALE #15
AD1998-131
COUNTRYWIDE HOME LOANS INC.
VS
LAURIE A. BREON
ATTY: LEON P. HALLER,

Real estate together with improvements erected thereon known as 1247 Candice Lane Being situate in Green Township, Franklin County, Pennsylvania. Recorded in Deed Book Volume 1256 Page 431. Tax Map C-12, Parcel 328

TERMS

LEGAL NOTICES

As soon as the property is knocked down to purchaser, 10% of the purchase price or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property. The balance due shall be paid to the Sheriff by NOT LATER THAN October 18, 1999 at 4:00 PM, prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on October 22, 1999 1:00 PM, prevailing time, in the Franklin County Court House, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be the higher, shall be paid in full.

Robert B. Wollyung
Sheriff
Franklin County
Chambersburg, Pa

OCTOBER 8, 1999
SHERIFF SALE

MARYLAND INS. GROUP A/S/O KENNETH SHEAFFER et al., Plaintiffs vs. D.M. BOWMAN, INC. and STEVEN WEATHERBEE, Defendants, C.P. Franklin County Branch, Civil Action - Law, No. 1997-253

Sheaffer v. Bowman

Nolli Prosequi

1. To open a non pros judgment, the petition to open must be timely filed, the default/delay must be reasonably explained, and the case must exhibit a meritorious cause of action.
2. Confusion over the opponent's representation after the law firm breaks up is a reasonable explanation of delay.
3. In balancing the equities, the court finds that a good faith effort to move the case forward is an important factor to vacate a non pros judgment.

Brian J. Walker, Esquire, Counsel for the Plaintiffs
James J. Musial, Esquire, Counsel for the Defendants

OPINION AND ORDER OF COURT

WALKER, P.J., July 8, 1999:

Factual and Procedural Background

On July 8, 1996, Kenneth Sheaffer, an employee of A. Annandale, Inc., and Steven Weatherbee, an employee of D.M. Bowman, Inc., were involved in a motor vehicle accident in Franklin County that resulted in an injury to the plaintiff. It is alleged that both men were working within the scope of their employment when the accident occurred. Maryland Insurance Group insured A. Annandale, Inc. at the time with a worker's compensation policy and a property damage and collision policy. A complaint was brought by the plaintiffs in September of 1997 alleging that Weatherbee's negligence caused the accident and demanding judgment of approximately forty-thousand dollars (\$40,000).

In June of 1998, the law firm representing the defendants, Palmer, Biezup & Henderson, became disjoined. Several attorneys of the firm left to begin their own practice, and the defendants chose to be represented by the new law firm, Rawle & Henderson LLP. An appearance had already been made in the case by an attorney from the previous firm, and by this time in the case, discovery had already begun by both sides. One month after the defendants' initial law firm disbanded, the plaintiffs filed an arbitration praecipe indicating that they believed that the defendants were no longer represented by counsel in the matter. Counsel for defendants then notified the plaintiffs of the situation and relayed that they were experiencing a delay in obtaining a withdrawal of appearance by former counsel.

In September of 1998, the defendants, under new representation, served the plaintiffs with a second request for production of documents and answers to interrogatories. The defendants had previously served the plaintiffs with a request for production of documents and answers to interrogatories in December of 1997. Following the defendants' second request on September 25, 1998, this Court ordered the plaintiffs to comply with the defendants' discovery requests. Then again in December of 1998, this Court ordered the plaintiffs to comply with the defendants' discovery requests. The defendants ultimately filed a motion for sanctions on December 9, 1998 in response to the plaintiffs' failure to comply with this Court's orders.

One month later, in January of 1999, a deposition of the plaintiffs was scheduled to take place at the law offices of the plaintiffs' attorney. While both plaintiff Sheaffer and a representative from plaintiff A. Annandale had notice of their depositions, neither attended. Counsel for both sides then agreed to reschedule the deposition for April 19, 1999, at the law offices of the defendants' counsel. But at that deposition counsel for the defendants did not attend.

Finally, the depositions were scheduled to take place in Franklin County on June 7, 1999. However, before that deposition took place, the defendants' re-filed motion for sanctions was granted on May 6, 1999. Additionally, this Court entered a judgment of *nolli prosequi* (non pros) against the plaintiffs for failure to comply with discovery and proceed with the case.

The plaintiff filed a petition to open/vacate this Court's prior judgment of non pros on May 26, 1999. Argument by counsel for both sides was heard on July 1, 1999.

Discussion

For a non pros judgment to be opened, three factors must be present. The petition to open must be timely filed, the delay/default must be reasonably explained, and the facts of the case must exhibit a meritorious cause of action. *Valley Peat & Humes v. Sunnylands, Inc.*, 398 Pa.Super. 400, 581 A.2d 193, 196 (1992). Such a petition calls upon the conscience of the court to balance the equities. *Id.* In the instant matter, two of the three elements are present and readily ascertainable. First, having been filed within two weeks of plaintiffs' notice of the non pros, the petition is timely. Second, the merits of the underlying cause of action appear to be present. There was a motor vehicle accident, a party was injured, and fault must be determined by the judicial process. The final element, however, requires more reflection and consideration.

The plaintiffs first argue that there was some confusion concerning the break up of the defendants' initial law firm. This court is sympathetic to this argument, as it has some evidential support. At the July 1 hearing, counsel for the defendants explained to the Court that the breakup was in June of 1998. The plaintiffs' confusion as to the representation of the defendants is further evidenced by the arbitration praecipe in which they indicated that the

defendants were no longer represented by counsel. When counsel for the defendants contacted the plaintiffs to inform them otherwise, he indicated that there had been difficulty in obtaining a withdrawal of appearance by previous counsel. Confusion is inherent when a client changes attorneys. While the same particular attorney may have been involved in the case from its inception, a change in representation leaves the opposing counsel in the dark as to where to direct communications for a time.

Secondly, the plaintiffs argue that they were moving forward in the case. After they were first ordered to comply with discovery requests by the defendants, the plaintiffs argue that they supplied the necessary information. As exhibited in the plaintiffs' memorandum, they mailed discovery to the defendants in October following the order. Then again in December the plaintiffs issued more discovery and the requested interrogatories after an ensuing order from this Court. Each of these discovery disclosures made by the plaintiffs were accompanied by a letter which closed with an appeal to the defendants to notify them of any missing information. While the defendants ardently oppose the argument that the closing appeals were in good faith, this Court is inclined to give the plaintiffs the benefit of the doubt in this instance.

The plaintiffs also argue that the scheduling of the depositions of Sheaffer and Maginniss display a forward progression of the case to a final disposition. While the depositions were originally scheduled for January of 1999, delays caused by *both* sides forced them to eventually be scheduled for June of 1999. The plaintiffs have shown that they are not loath or reluctant to continue moving the case along. As such, this Court finds that there is evidence of some forward progression to the disposition of the matter and that the plaintiffs have provided the Court with a reasonable explanation of the delay.

In balancing the equities of both sides, this Court finally must determine whether the defendants would be unjustly prejudiced or unfairly burdened by a decision to vacate the non pros. The defendants argue that the plaintiffs have thwarted their own efforts to prepare for the final disposition of this matter. They argue that the efforts made by the plaintiffs to comply with the discovery orders were less than satisfactory, and as such have impeded their own preparation. The Court recognizes the incorrigible appearance of the plaintiffs' discovery disclosure to the defendants. However, it concludes that the plaintiffs' behavior has stopped short of willful defiance of this Court.

The plaintiffs have successfully argued that (1) some delay was caused by confusion over the defendants' representation, (2) that they believed they had satisfied the defendants' discovery requests, and (3) that they have made a good faith effort to move forward with the case. In retrospect, this Court finds that the previous judgment of non pros was harsh and perhaps impetuous. Therefore, the proverbial sword of Damocles will be put back in its sheath as the judgment of non pros is vacated.

ORDER OF COURT

July 8, 1999, upon consideration of the plaintiff's petition to open/vacate judgment of non pros, defendant's answer thereto, and argument by counsel, the Court hereby vacates the judgment of non pros.