

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

<b>MYRA TEASLEY,</b>	:
<b>Plaintiff</b>	: <b>No. 06-01948</b>
	:
<b>vs.</b>	: <b>CIVIL ACTION – LAW</b>
	:
	:
<b>NELSON ALLEN and NEIL EBERT,</b>	: <b>Petition to Strike/Open</b>
<b>Defendant</b>	: <b>Judgment</b>

**ORDER**

This matter came before the Court on Defendants Petition to Strike or Open Default Judgment. Defendant Ebert first claims that the judgment should be stricken because an answer was filed on November 7, 2006. Although Defendant Allen, through his attorney Michael Groulx, filed an answer on November 7, 2006, the Court cannot agree that this document also constitutes an answer for Defendant Ebert. Defendant Ebert supports his position by noting that the answer refers to the plural “Defendants.” Only Defendant Allen is listed in the caption of the answer and only Defendant Allen verified the answer. The Court does not believe that the mere fact that paragraph 8 and the wherefore clause use the plural would transform this answer to one of Mr. Ebert. Furthermore, it is clear from Mr. Ebert’s own testimony that: (1) he never met with Attorney Groulx prior to the answer being filed; (2) nobody told him that an answer had been filed; and (3) he had never seen the answer filed by Attorney Groulx prior to the hearing held on his petition to open or strike judgment. In light of all the facts and circumstances of this case, the Court finds that Defendant Ebert never filed an answer to Plaintiff’s complaint. Therefore, the Court denies his request to strike the default judgment.

There is some confusion whether default judgment also was entered against

Mr. Allen. Plaintiff only filed for a default judgment against Mr. Ebert. To the extent the judgment was entered or indexed against Mr. Allen, it was done in error. The Court will direct the Prothonotary to correct any such error.

With respect to the request to open the default judgment, the Court finds Defendant Ebert has neither complied with the Rules of Civil Procedure nor met the standard for opening a default judgment. Initially, the Court notes that Rule 237.2(a) mandates that the petition shall have attached thereto a **verified** copy of the defendant's proposed answer. Pa.R.Civ.P. 237.3(a). Defendant Ebert has never filed a **verified** answer or proposed answer.

A trial court may only open a default judgment if the petitioner proves: (1) the petition has been timely filed; (2) the proposed answer states a meritorious defense; and (3) the failure to appear can be excused. Schultz v. Erie Insurance Exchange, 505 Pa. 90, 93, 477 A.2d 471, 472 (Pa. 1984); Graziani v. Randolph, 856 A.2d 1212, 1224 (Pa.Super. 2004). Plaintiff obtained the default judgment on November 28, 2006. Plaintiff served Defendant Ebert with notice of the default judgment. On December 15, 2006, Plaintiff filed a praecipe for writ of execution and sent a copy to Defendant Ebert. The Prothonotary issued the writ of execution and, pursuant to the writ, the sheriff levied on Defendant Ebert's truck on January 11, 2007. In his testimony, Defendant Ebert acknowledged receiving the 10-day notice of intent to seek the default judgment and the default judgment. He did not recall the praecipe for writ of execution, but he was fully aware that the sheriff levied on his truck, as he was present when the levy took place. Despite the notices and the sheriff's levy on his truck, Defendant Ebert did not file a petition to strike or open the default judgment until March 16, 2007, four days before the truck was to be sold at a sheriff's sale. According to both Ebert and Allen, they went to see Attorney Groulx to find out what was going on shortly

after the sheriff levied on Ebert's truck; Attorney Groulx advised them to seek different counsel. Defendant Ebert offered no circumstances which would have prevented him from responding to the complaint or the default judgment sooner, such as illness, being out of the area or not receiving service or notice of the various filings to obtain the judgment and levy; he simply called Mr. Allen and relied on him to handle the matter through Mr. Groulx. Under these circumstances, the Court cannot find that the petition was timely filed or that Mr. Allen's lackadaisical approach to this case provides a reasonable excuse.

AND NOW, this \_\_\_ day of May 2007, the Court DENIES the petition to strike or open judgment with respect to Defendant Ebert. The parties agree that the default judgment was only sought against Defendant Ebert. To the extent the Prothonotary entered or indexed the judgment against Defendant Nelson Allen the judgment is stricken and the Prothonotary is directed to take any and all measures necessary to correct this error.

By The Court,

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Kenneth D. Brown,  
President Judge

cc: William Burd, Prothonotary  
Thomas Waffenschmidt, Esquire  
Jason Poplaski, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)