

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DISCOVER BANK,	:	NO. 06 - 00,788
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
KIMBERLY B. WADE,	:	
Defendant	:	Petition to Open Judgment

OPINION AND ORDER

Before the court is the petition to open judgment filed by Defendant on July 16, 2015, by which Defendant seeks to open the default judgment obtained by Plaintiff on May 30, 2006. Argument was heard August 25, 2015.

Plaintiff filed this credit card collection case by way of a Complaint on April 10, 2006. The Complaint was served on April 11, 2006, and, no response having been filed by May 25, 2006, Plaintiff sought and obtained entry of a default judgment. In the instant petition to open that judgment, Defendant alleges that she did not live at the address where the Complaint was served at that time, and that she did not have a close relationship with her sister, to whom the Complaint was actually handed by the Sheriff.¹ She alleges that she was unaware that the judgment had been entered until she received notice from the Sheriff’s Office “that they needed to serve.”² Defendant also alleges that she “disputes that she had accumulated a debt with Discover Card as stated in the Judgment.”

¹ Defendant does not actually aver that she did not receive the Complaint, however.

² Although this allegation appears to be missing something, at argument it was made clear that the allegation was intended to convey that Defendant received notice of the judgment when the Sheriff served her with notice of a writ of revival on May 7, 2015.

As the Complaint was properly served,³ to support her petition, Defendant must show that her petition was promptly filed, that she had a valid excuse for her failure to respond to the Complaint, and that she has a meritorious defense. Schultz v. Erie Insurance Exchange, 477 A.2d 471 (Pa. 1984). Further, under the Rules of Civil Procedure, Defendant must attach to her petition a verified copy of the Answer which she seeks to file. Pa.R.C.P. 237.3(a).

Initially, the court notes that Defendant has not attached to her petition a copy of the Answer she seeks to file, nor does she set forth any defense in her petition. For this reason alone the petition could be denied since the rule states that “[a] petition for relief from a judgment of non pros or of default entered pursuant to Rule 237.1 *shall* have attached thereto a verified copy of the complaint or answer which the petitioner seeks leave to file.” *Id.*

In any event, the petition was filed more than sixty days after Defendant learned of the judgment, and thus the court cannot find that the petition was timely. *See Pappas v. Stefan*, 304 A.2d 143 (Pa. 1973)(55 days not prompt); Quotrochi v. Gaiters, 380 A.2d 404 (Pa. Super. 1977)(63 days not prompt, citing Pappas v. Stefan and cases where it was held that delays of 22 days, 47 days, 54 days, and 71 days required reversal of the trial court’s grant of a petition to open). Counsel’s explanation that research was required is not sufficient to excuse the delay. Therefore, even were the court to accept the excuse that Petitioner did not know about the filing of the Complaint, she is not entitled to open the judgment nine years after entry of judgment thereon.

³ Pa.R.C.P. 402(a)(2)(i) allows for service by “handing a copy at the residence of the defendant to an adult member of the family with whom he resides”. Although Defendant now asserts that she did not live with her sister at the time the Complaint was served, she does not assert that she did not ever live there, and apparently she gave Discover Card that address and never informed them otherwise. Further, Defendant’s sister did not tell the Sheriff that she could not accept service for Defendant.

ORDER

AND NOW, this day of August 2015, for the foregoing reasons, the Petition to Open Judgment is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Tiffani Kase, Esq.
Jennifer Ayers, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson