

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Reading Area Water Authority :
 :
 v. :
 :
 Keldia Cabrera, : No. 2097 C.D. 2012
 Appellant : Submitted: April 26, 2013

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE ROBERT SIMPSON, Judge
 HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McGINLEY

FILED: May 20, 2013

Keldia Cabrera (Cabrera) challenges the order of the Court of Common Pleas of Berks County (trial court) that denied Cabrera's motion to open judgment.

Cabrera owned real property located at 1154 Spring Street in Reading, Berks County, Pennsylvania (Property) during the period from 2006 until the commencement of this action. Cabrera contracted with the Reading Area Water Authority (RAWA) for RAWA to provide water and sewer related services to the Property.

On October 12, 2011, RAWA commenced an action in the trial court and alleged that Cabrera breached her contract with RAWA because she refused to pay for services rendered. RAWA also alleged that Cabrera was unjustly enriched because she retained the benefit of receipt of the goods and services without paying fair and reasonable compensation for them. RAWA also made a quantum meruit

claim for the goods and services it provided to Cabrera. RAWA demanded a judgment of \$15,740.15 plus interest at the rate of 6% and costs.

Cabrera did not answer the complaint. On January 30, 2012, RAWA filed a praecipe for entry of default judgment because Cabrera failed to file an answer to the complaint within twenty days of service and within ten days from the Notice of Intent to Enter Default Judgment. Judgment was entered against Cabrera on January 30, 2012.

On March 21, 2012, Cabrera petitioned to open judgment. Cabrera alleged:

5. On Thursday, March 15, 2012, Petitioner's [Cabrera] husband, Victor Cabrera, contacted Attorney Morris and informed Attorney Morris that a default judgment was filed against his wife in the amount of \$15,740.15 plus costs with Attorney Morris.

6. On Thursday, March 15, 2012, Petitioner's [Cabrera] husband, Victor Cabrera, personally conferred with Morris and informed Morris of the default judgment and gave Morris the Notice that the Reading Area Water authority entered a judgment by default against his wife Keldia on January 30, 2012 in the Court of Common Pleas, Berks County.

.....

8. On Friday, Morris was scheduled and did appear for trial in the Court of Common Pleas, Philadelphia and was unable to meet with Mr. Cabrera to obtain review and prepare the necessary documents to prepare and file the within Petition to Open Judgment.

.....

10. In the year 2006, Victor Cabrera paid the Reading Area Water Department the sum of approximately \$15,000 for connecting a new pipe for water and sewer use to service the laundromat to be constructed.

11. From the year 2006 to the present time, the laundromat was never completed or used as a laundromat.

12. From the year 2006 to the present time, there was no use of water and sewer because the laundromat was never completed and used for this purpose. . . .

13. Petitioner [Cabrera] believes and avers that the service and usage charges by the Reading Area Water Department [sic] are excessive for the water and sewer usage at 1154 Springhouse Street because the laundromat was never completed and used for that purpose.

Petition to Open Judgment against Defendant Keldia Cabrera, March 21, 2012, Paragraph Nos. 5-6, 8, and 10-13 at 1-3; Reproduced Record (R.R.) at R19-R20.

RAWA denied the allegations in the petition.

After hearing and argument on June 29, 2012, the trial court denied the petition to open judgment by order dated July 2, 2012. The trial court determined:

The first prong of the test to open a default judgment is that the petition must have been filed timely. In the case sub judice, this court found that the petition to open had not been filed timely. The default judgment was entered on January 30, 2012, but the petition to open was not filed until March 21, 2012, fifty-one (51) days later. After defendant [Cabrera] received the default judgment, defendant [Cabrera] did not consult an attorney until March 16, 2012, forty-six (46) days after her receipt of the notice. There is nothing in the pleadings to show why she waited this long to consult with an attorney. Attorney Morris promptly filed a petition to open, but defendant [Cabrera] has no excuse for not taking any legal action sooner. Ignorance of the consequences is not a legitimate reason to open a default judgment.

Moreover, defendant [Cabrera] has not produced a meritorious defense. Defendant [Cabrera] believes that her bills were too high, so she simply ignored them and allowed penalties for non-payment to be imposed. Defendant [Cabrera] admits that she did not pay the bills. She never contacted plaintiff [RAWA] to inquire about her bills. Defendant [Cabrera] knew that she owes the money and still did nothing even after the complaint was filed against her.

Defendant [Cabrera] does not have a reasonable excuse for the default. This court found that defendant [Cabrera] was served with notice of the intent to take a default judgment, but she did nothing for forty-six (46) days. Defendant's [Cabrera] long history of inaction resulted in the default judgment being entered against her. The ignoring of legal documents is not a reasonable excuse for opening a default judgment.

Trial Court Opinion, September 25, 2012, at 3; R.R. at R72.

Cabrera contends that the trial court erred when it denied the petition to open default judgment, that the petition was timely filed, that Cabrera provided a reasonable excuse to explain the delay, and that the trial court failed to apply equitable principles in its order to deny the petition based on the facts.¹

“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.” Schultz, 505 Pa. at 93, 477 A.2d at 472. (Emphasis in original).

¹ The decision to grant or deny a petition to open a default judgment is within the sound discretion of the trial court and will not be reversed absent a manifest abuse of discretion or error of law. Schultz v. Erie Insurance Exchange, 505 Pa. 90, 477 A.2d 471 (1984).

The starting point for this Court's analysis is whether Cabrera promptly filed her petition. Cabrera concedes that in cases where a court has found a prompt filing of the petition, the period of delay was generally one month. See Alba v. Urology Associates of Kingston, 598 A.2d 57 (Pa. Super. 1991) (petition to open was filed fourteen days after entry of judgment). Similarly, RAWA persuasively asserts there are no cases where a petition to open which was filed over fifty days following the entry of a default judgment was found to be promptly filed.

In Castings Condominium Association, Inc. v. Klein, 663 A.2d 220, 223 (Pa. Super. 1995), our Pennsylvania Superior Court held:

The timeliness of a petition to open judgment is measured from the date that notice of the entry of the default judgment is received. . . . The law does not establish a specific time period within which a petition to open a judgment must be filed to qualify as timely. Instead, the court must consider the length of time between discovery of the entry of the default judgment and the reason for delay. (Citation omitted).

Here, the default judgment was entered on January 30, 2012. Cabrera's petition to open the default judgment was not filed until March 21, 2012, a period of fifty-one days. The trial court found that the petition was not promptly filed based on this delay. Cabrera offered no reason for her failure to bring the notice of default judgment to the attention of her attorney until March 16, 2012, forty-six days after the entry of the default judgment. This Court determines that

the trial court did not abuse its discretion or commit an error of law when it determined that the petition to open was not promptly filed.²

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

² Because Cabrera's petition was not promptly filed, this Court need not address Cabrera's remaining arguments.

