

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSETTA STEWART : CIVIL ACTION  
 :  
 v. :  
 :  
 LOUIS P. VITTI & ASSOCIATES, P.C. : No. 99-4495

**ORDER-MEMORANDUM**

AND NOW, this 10th day of December, 1999, the default judgment entered November 1, 1999 in favor of plaintiff, Rosetta Stewart, and against defendant Louis P. Vitti & Associates, P.C. for failure to appear or respond to the complaint is hereby opened to permit defendant to assert a defense. Fed. R. Civ. P. 60(b)(1).

This action is for violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 et seq. Jurisdiction is federal question. 28 U.S.C. § 1331.

Defendant's motion is uncontested<sup>1</sup> and therefore constitutes the fact record for this ruling. Defendant is a Pittsburgh law firm. On September 27, 1999 a file clerk in defendant's office was served with the complaint. Not realizing the significance, she put it in a file containing mortgage foreclosure papers in an action against plaintiff. Upon receipt of plaintiff's motion for default judgment, a

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<sup>1</sup> Plaintiff's counsel, when contacted, advised that no response would be filed.

lawyer in the firm became aware of the existence of the complaint. Defendant immediately moved to set aside the default and the judgment thereupon entered.

The requirements for opening a judgment to permit a defense appear to be satisfied. See Emcasco Insurance Co. v. Sambrick, 834 F.2d 71, 73 (3d Cir. 1987); Burkey v. Burkey, Civ. A. No. 97-1362, 1998 WL 254005, \*1 (E.D. Pa. May 14, 1998), aff'd, 191 F.3d 444 (3d Cir. 1999). There was no delay in moving for relief, so plaintiff has not been materially prejudiced. The explanation for the default may be paltry, but plaintiff has chosen not to attempt to rebut it. See American Alliance Insurance Co., Ltd. v. Eagle Insurance Co., 92 F.3d 57, 61 (2d Cir. 1996) (similar clerical filing mistake). The defense proffered is that defendant as the mortgage company's counsel was simply giving notice of default and intent to foreclose. The notice may be somewhat confusing, and, contrary to defendant's contention, attorneys who function as "debt collectors" are subject to consumer protection laws. However, it can not be said, as a matter of law, that the notice necessarily violates the statutes in question. See United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984) ("a meritorious defense is [shown] when allegations . . . , if established at trial, would constitute a complete defense."), quoted in Burkey v. Burkey, 1998 WL 254005, \*1.

As is often observed, "[a] standard of 'liberality' rather than 'strictness'" should be applied to opening a default judgment, and doubts should be resolved in permitting cases to be decided on the merits. E.I. du Pont de Nemours and Co., Inc. v. The New Press, Inc., Civ. A. No. 97-6267, 1998 WL

159050, \*2 (E.D. Pa. Mar. 19, 1998)(citing cases). There are sound, equitable reasons to follow that principle in this case.

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Edmund V. Ludwig, J.