NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6403-06T1

COLUMBIA RECOVERY CORPORATION,

Plaintiff-Respondent,

v.

NANCY MENCHACA,

Defendant-Appellant.

Argued March 12, 2008 – Decided April 10, 2008

Before Judges Wefing, Parker and Lyons.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-607-07.

Kenneth Psota argued the cause for appellant (Koulikourdis and Associates, attorneys; Mr. Psota, on the brief).

Lawrence J. McDermott, Jr., argued the cause for respondent (Pressler and Pressler, attorneys; Mr. McDermott, on the brief).

PER CURIAM

Defendant Nancy Menchaca appeals from an order entered on August 1, 2007 denying her motion for reconsideration of an order entered on June 12, 2007 denying her motion to vacate a default judgment.

This complaint arises out of a claim for an unpaid credit card debt by Core States Bank of Delaware against defendant. Plaintiff, Columbia Recovery Group (Columbia), is a collection agency for credit card debt and the assignee of defendant's alleged debt. Defendant contends that the debt is not hers and that it was erroneously charged to her.

Plaintiff maintains that she was not served with a copy of the complaint until March 2007. While she was searching for an attorney to represent her, the time to file an answer lapsed and a default judgment was ultimately entered. After the trial court denied defendant's motion to vacate the default judgment and her motion for reconsideration, she appealed, arguing that the trial court erred in denying her motion to vacate the default because she demonstrated excusable neglect and she has a meritorious defense.

The chronology in this case is significant in our consideration of the issues presented on appeal. The complaint was filed on January 24, 2007 and a default judgment was entered on April 18, 2007 in the amount of $21,594.39, plus $265.90 in costs. Plaintiff moved to vacate the judgment on May 18, 2007, thirty days after it was entered. The motion to vacate was denied on June 12, 2007. A motion for reconsideration was filed

on June 29, 2007 and denied on August 1. This appeal was filed on August 13, 2007.

Apparently, the motions were decided on the papers and no statement of reasons was provided by the trial court. Plaintiff's affidavit of service indicates that the complaint was personally served on February 15, 2007. The affidavit of service does not, however, indicate a description of the person served. Defendant disputes that date and attests that she was not served until March 2007. The date of service here is not as significant as the timeliness of the motion to vacate the default, along with the statement of excusable neglect. Defendant attests that she was ill at the time, has a meritorious defense, has no knowledge of the debt and does not even recall having the credit card on which the debt was allegedly incurred.

Moreover, plaintiff has not produced any proofs whatsoever as to when the debt was purportedly incurred, the signature of the person who opened the account or who incurred the debt. Nor has plaintiff demonstrated that defendant was ever given notice of the past due debt. In other words, plaintiff has presented no proofs that defendant is the actual debtor beyond its bare allegations in the complaint.

Rule 4:50-1 sets forth the grounds for a motion for relief from a final judgment or order.

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

Rule 4:50-2 provides that "[t]he motion shall be made within a reasonable time, and for reasons (a), (b), and (c) of R. 4:50-1 not more than one year after the judgment . . . was entered." Here, the motion was made within one month after the judgment was entered.

A motion to vacate a default judgment shall be "viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached." Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div.), aff'd, 43 N.J. 508 (1964). To obtain relief from a default judgment,

defendant must demonstrate that the failure to answer was excusable under the circumstances and that she has a meritorious defense. Id. at 318; see also Pressler, Current N.J. Court Rules, comment on R. 4:50-1[4.1].

Moreover, a default judgment should be set aside where plaintiff failed to prove a right to relief. Pressler, supra, Comment on R. 4:50-1[4.2]. In Morales v. Santiago, 217 N.J. Super. 496 (App. Div. 1987), we vacated a default judgment when the plaintiff failed to produce sufficient proof of liability. Here, plaintiff has made bare allegations in the complaint but has not presented any proof of liability. Plaintiff bears the burden of proving liability by a preponderance of the evidence even where defendant has defaulted. Ibid.

We have carefully considered the scant record before us and we are convinced that the default judgment must be reversed and the matter remanded for further proceedings. See, Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994) (quoted in First Morris Bank & Trust v. Roland, 357 N.J. Super. 68, 71 (App. Div. 2003)); Mancini v. E.D.S., 132 N.J. Super. 330, 334 (1993).

Reversed and remanded.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION