

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

KENISHA MATHIS	:	
	:	CIVIL DIVISION
Plaintiff,	:	
	:	March Term, 2018
	:	
vs.	:	No. 180301562
	:	
ABC CAPITAL	:	
INVESTMENTS LLC, et al.	:	
	:	
Defendants.	:	

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT ABC CAPITAL
INVESTMENT LLC'S PETITION TO OPEN DEFAULT JUDGMENT**

Three months after having a default judgment entered against it, and nearly five months since the start of this litigation, ABC Capital Investments LLC now submits a meritless petition to open that default judgment. ABC Capital's petition ignores Pennsylvania law, and should therefore be denied.

I. MATTER BEFORE THE COURT

Defendant ABC Capital's petition to open default judgment.

II. STATEMENT OF THE QUESTION INVOLVED

Should the Court deny ABC Capital's untimely and meritless petition when Defendant has failed to satisfy any of the three requirements established under Pennsylvania law for opening default judgments?

Suggested answer: Yes.

III. FACTS AND PROCEDURAL HISTORY

Plaintiff Kenisha Mathis lived in a property managed by ABC Capital for two years. During that time, Ms. Mathis requested basic repairs which were never made, leading to the

collapse of a ceiling in her kitchen, unresolved hazardous electrical defects, deteriorated windows, and a “front door [that] was not weather tight [so] you could see outside around [the] frame and doorknob.” Compl. at ¶ 46. ABC Capital also failed to comply with Philadelphia’s lead ordinance for the entirety of Ms. Mathis’s tenancy. Compl. at ¶¶ 19-30, 62-67.

Ms. Mathis filed this suit in March of 2018 against ABC Capital and the owner of the property, asserting counts of breach of contract, violations of Pennsylvania’s consumer protection law, violation of Philadelphia’s lead ordinance, and unjust enrichment. She effectuated service by personally serving ABC Capital’s Office Manager at the company’s regular place of business, 1218 N. Marshall Street, Philadelphia, PA. *See* Aff. of Serv. at Ex. B. Soon thereafter, in April of 2018, an ABC Capital representative contacted Ms. Mathis about the lawsuit, attempting to engage in settlement discussions.

Ms. Mathis then notified ABC Capital of her intent to take default judgment against it with a ten-day notice letter on April 18, 2018. *See* Letter at Ex. C. The Court entered judgment against ABC Capital on May 1, 2018. Even after entry of the judgment, ABC Capital continued to be served with other papers in the matter, including Ms. Mathis’ motions for extraordinary relief. *See* Ex. C.

On August 1, 2018, over four months after it was properly served with the complaint and three months since this Court entered judgment against it, ABC Capital filed a bare-bones, legally insufficient, and meritless petition to open the default judgment against it.

IV. ARGUMENT

Courts may grant a petition to open a default judgment only when (1) the petition has been promptly filed; (2) the failure to appear was excused; and (3) the petitioner has a meritorious defense. *See Balk v. Ford Motor Co.*, 285 A.2d 128, 130-31 (Pa. 1971). The court

must consider whether a petitioner has satisfied each part of the three-factor test and make its determination “in the light of all the circumstances and equities of the case.” *Provident Credit Corp. v. Young*, 446 A.2d 257, 264 (Pa. Super. Ct. 1982). Failure to satisfy *just one* prong necessitates the denial of a petition to open. ABC Capital, however, fails all three.

A. The petition was not promptly filed

ABC Capital failed to promptly file this petition to open, waiting more than four months after it was properly served and three months after this Court entered judgment against it.

Pennsylvania appellate courts have found petitions were not promptly filed after delays of sixty-three days, fifty-five days, forty-seven days, and even eighteen days. *See Castings Condo. Ass’n v. Klein*, 444 Pa. Super. 68, 73-74, 663 A.2d 220, 223 (Pa. Super. Ct. 1995) (collecting cases).

The ninety-day delay here meets no definition of prompt under Pennsylvania law.

Without explanation for the delay, ABC Capital argues that it was not properly served. In doing so, it does not dispute that process was served on its office manager¹ at 1218 N. Marshall Street, its regular place of business.² Instead, it argues that Ms. Mathis was required to serve it “at its registered corporate headquarters’ office.” Def.’s Mem. 1. The Rules say otherwise. A corporate entity may be served by “handing a copy [of original process] to...the manager, clerk or other person for the time being in charge of any regular place of business or activity of the corporation or similar entity.” Pa. R. Civ. P. 424(2); *see also* Pa. R. Civ. P. 423(3). Here, ABC Capital was properly served through its office manager at its regular place of business, as the Rules require. ABC Capital’s position is meritless, and its petition is untimely.

¹ Defendant does not dispute Peter Brooks is the Office Manager of ABC Capital. Nor could they, given their own website notes this very thing, as do various lease documents. *See* Ex. D.

² As demonstrated by ABC Capital’s “About Us” and “Contact” pages on its website, its letterhead, its Yelp page, and its listing in the Yellow Pages, 1218 N. Marshall Street is a regular place of business for ABC Capital. *See* Ex. A.

B. ABC Capital's failure to appear is inexcusable

While ABC Capital's failure to promptly file alone defeats its petition, ABC Capital's failure to appear is inexcusable and fatal to its petition. Courts examining whether an excuse is legitimate in the context of petitions to open default judgment must consider the specific circumstances of the case. *See, e.g., Castings Condominium Ass'n*, 663 A.2d at 223-24. Other than its incorrect argument regarding service, ABC Capital provides no excuse at all.³

C. The petition sets forth no meritorious defense

Finally, ABC Capital failed to state a meritorious defense, providing a third fatal flaw to its petition to open. To succeed on a petition to open a default judgment, "a defense must be pleaded that if proved at trial would justify relief." *Provident Credit Corp.*, 446 A.2d at 262. General assertions of a viable defense, conclusions of law, and challenges to the plaintiff's proof are insufficient to set forth a meritorious defense. *See Smith v. Morrell Beer Distributors, Inc.*, 29 A.3d 23, 28 (Pa. Super. Ct. 2011) (finding defendant failed to "set forth a meritorious defense supported by verified allegations of fact" when petition contained only "conclusions of law and challenges to [plaintiff's] proof").

ABC Capital's petition does not even attempt to assert a meritorious defense. Instead, the entirety of its "defense" is that "[u]pon information and belief, and based on preliminary investigation, without wasting time to get this Motion filed expeditiously upon discovery of these issues, per the Rules of Civil Procedure and Pennsylvania case law, the discovery will prove that Plaintiff Kenisha Mathis is not entitled to judgment in this matter." Pet. to Open at ¶ 7. Such

³ Not only was ABC Capital properly served with original process, as described above, but it was served with a ten-day notice prior to the default judgment, a copy of the plaintiff's praecipe to enter default, and two motions for extraordinary relief. *See Ex. C.* Moreover, the court sent ABC Capital notices of a scheduled case management conference and the case management order.

explanation is inadequate under both the Pennsylvania Rules of Civil Procedure and Pennsylvania case law. *See Smith*, 29 A.3d at 28 (rejecting petition to open when “Appellants failed to attach a copy of the proposed answer to their petition...[and] the petition did not set forth allegations of a defense that, if proven at trial, would entitle Appellants to relief.”) (citing Pa. R. Civ. P. 237.3). ABC Capital’s failure to assert a meritorious defense dooms its petition, even had it satisfied the first two requirements for opening default judgments.

V. CONCLUSION AND RELIEF REQUESTED

ABC Capital needed to satisfy all three of the aforementioned requirements in order for its petition to succeed. Instead, it failed to satisfy any. The Court should deny ABC Capital’s petition to open default judgment as a matter of law.

Dated: August 7, 2018

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