Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

SUSAN SPENCER,	)	**S. Ct. Civ. No. 2007-69**
	)	Re: Super. Ct. S.C. No. 32/2007
Appellant/Defendant,	)	
	)	
v.	)	
	)	
CARMEN NAVARRO,	)	
	)	
Appellee/Plaintiff.	)	
	)	

On Appeal from the Superior Court of the Virgin Islands
Filed: April 8, 2009

BEFORE: **Rhys S. Hodge,** Chief Justice; **Maria M. Cabret,** Associate Justice; and **Ive Arlington Swan,** Associate Justice.

APPEARANCES:

Susan Spencer
St. Croix, USVI
Pro Se

Carmen Navarro
St. Croix, USVI
Pro Se

OPINION OF THE COURT

PER CURIAM.

This appeal is back before the Court after we remanded the case to the trial court to enter findings of fact in accordance with Rule 52(a) of the Federal Rules of Civil Procedure. *See Spencer v. Navarro*, S.Ct. Civ. No. 2007/69, slip op. (V.I. June 27, 2008) (hereinafter "*Spencer I*"). In the underlying action, Carmen Navarro ("Navarro") sued Susan Spencer ("Spencer") in the Small Claims Division of the Superior Court for damages to her vehicle allegedly resulting

from a hit-and-run traffic accident that occurred on December 31, 2006. When Spencer failed to appear at the scheduled bench trial, the trial court entered a default judgment in Navarro's favor. Spencer moved for reconsideration and for a new trial. After an evidentiary hearing on the motion, the trial court denied the motion and subsequently denied Spencer's Motion for Relief from Judgment or for New Trial. Spencer appealed to this Court, asserting, among other arguments, that in denying her motions, the trial court overlooked evidence. Because the trial court had not entered findings of fact, we were unable to ascertain the basis for its decision and were, therefore, unable to review Spencer's assertion. Accordingly, in *Spencer I*, we remanded the matter to trial court to enter findings of fact.

The trial court has now entered findings of fact and conclusions of law. The court found that Spencer admitted to "having been served, but [she] stated that she had inadvertently mis-calendared the hearing date." *Navarro v. Spencer*, No. SX-07-SM-32, at 1 (V.I. Super. Ct. July 9, 2008) (Findings of Fact and Conclusions of Law). The court further recounted the evidence presented at the hearing concerning Spencer's defense to Navarro's claims:

> Defendant testified that her defense to the allegations of the Complaint was that she was not the driver of the vehicle who struck the Plaintiff's car, and in fact was elsewhere at the time of the accident. She further testified that the license plate that was identified as having been on the vehicle that struck Plaintiff's car belonged to a vehicle that she had previously owned, but that had been junked.
>
> Plaintiff testified that the driver of the vehicle that hit hers emerged at the time of the accident, and that Plaintiff saw the driver. Plaintiff testified that the driver was the Defendant. Plaintiff's testimony was corroborated by the testimony of her daughter . . . .

Id. at 1-2. In its conclusions of the law, the court ruled that a trial court considering whether to vacate a default judgment "must consider three factors: (1) whether the plaintiff will be

prejudiced if the default is lifted; (2) whether the defendant has a meritorious defense; and (3) whether the default was the result of defendant's culpable conduct." *Id*. at 2. Notwithstanding the trial court's recognition that it should consider these three factors, the trial court considered only one of the factors – whether Spencer had a meritorious defense. Specifically, the court concluded as follows:

> The Court, having heard the testimony and observed the demeanor of the witnesses, credits the testimony of Plaintiff and [her daughter] that Defendant was the driver of the vehicle. Therefore the Court finds that Defendant does not have a meritorious defense and denies the Motion for Relief from Judgment or For New Trial.

Id. Presumably, the trial court limited its consideration to whether Spencer had a meritorious defense because, without a meritorious defense, Spencer could not win at trial.

We review a trial court's decision denying relief from the default judgment for an abuse of discretion. *Harad v. Aetna Cas. and Sur. Co.*, 839 F.2d 979, 981 (3d Cir. 1988); *United States v. $55,518.05 in U.S. Currency*, 728 F.2d 192, 194-95 (3d Cir. 1984); *Ryans Rest., Inc. v. Lewis*, 949 F.Supp. 380, 382 (D.V.I.App.Div. 1996). In assessing a trial court's decision, we are cognizant that default judgments are not the favored means of resolving civil actions, that doubtful cases should be decided on their merits, and that the goal of the Small Claims Division is to achieve substantial justice. *See Harad* at 194-95; *Lewis*, 949 F.Supp. at 383.

In this case, the trial court correctly identified the three factors that courts generally consider in determining whether to set aside a default judgment: "[(1)] whether vacating the default judgment will visit prejudice on the plaintiff, [(2)] whether the defendant has a meritorious defense, and [(3)] whether the default was the result of the defendant's culpable conduct." *Harad*, 839 F.2d at 982 (citing *$55,518.05 in U.S. Currency*, 728 F.2d at 195). As

noted by the Appellate Division in *Lewis*, however, because a judge ruling on a motion to vacate in a small claims matter is not bound by the rules of procedure, the judge "should apply this tripartite test more as a guideline under Rule 64 [of the Rules of the Superior Court], rather than a strict rule of law." *Lewis*, 949 F.Supp. at 383 n.5.

In the instant case, Spencer filed an answer to Navarro's complaint alleging detailed facts supporting her defense.[1] As found by the trial court, Spencer alleged that she was at home during the time that the collision occurred. Spencer further alleged that although the license plate on the car involved in the collision was registered to her, she had "junked" that car several months before the collision, and it remained in the junk yard where she had it towed. It is clear that these facts, if proven at trial, would constitute a defense to Navarro's claim that Spencer was liable as the driver of the hit-and-run vehicle.

At the hearing on her motion for relief from the default judgment, Spencer testified on her own behalf to the specific facts supporting her defense, but she did not bring any other witnesses to the hearing. Spencer explained to the judge that she did not know she was supposed to bring witnesses, but that she had brought affidavits supporting her defense. When Spencer informed the court that she could produce witnesses to corroborate her testimony, the following colloquy occurred between Spencer and the trial judge:

> THE COURT: Mrs. Spencer, I apreciate [sic] you might be able to do that but this is the second hearing we are having on this case and you could have subpoenaed those people to be here today. . . . And affidavits aren't something I can accept in an actual trial.

[1] Defendant filed her answer prior to the scheduled trial date, even though a defendant is not required to file an answer under the rules governing procedure in the Small Claims Division of the Superior Court. *See* Super. Ct. R. 62(b).

> THE DEFENDANT: Okay. Well, if we could get a continuance I would be happy to produce my witnesses.
>
> THE COURT: All right. Have a seat, unless you have anything further.
>
> THE DEFENDANT: No, sir.

(Appendix at 47.) Following this discussion, the trial judge announced: "Without explicitly granting the motion we have already, in essence, had a new trial, the second one that was held in this case and I cannot find from the evidence that there is any reason to disturb the judgment." (Appendix at 48.)

On this record, we find that the trial court abused its discretion. Although the trial court obviously found Spencer's defense testimony less credible than Navarro's evidence supporting her claim, Spencer nevertheless alleged specific facts that "'if established on trial, would constitute a complete defense to the action.'" *$55,518.05 in U.S. Currency*, 728 F.2d at 195 (quoting *Tozer v. Charles A. Krause Milling Co.*, 189 F.2d 242, 244 (3d Cir. 1951). If Spencer was not the driver of the vehicle that struck Navarro's car, but was instead at home at the time of the collision, Spencer would prevail at trial. Thus, the facts alleged by Spencer constituted a meritorious defense.

The true crux of the problem with the trial court's ruling in this case is that the court ruled on the merits of Spencer's defense as if the hearing on whether to vacate the default judgment was a trial on the merits, and it was not. It is clear that while the trial court was ostensibly conducting a hearing on whether to grant Spencer relief from the default judgment, it administered the hearing and ruled on the credibility of the evidence in a manner that was more consistent with a trial on the merits. Spencer was obviously not prepared to go forward at the hearing as though it were a trial; she appeared armed with supporting affidavits, but brought no

witnesses. The trial court, however, refused to consider Spencer's affidavits because it found that affidavits are not admissible in a trial. This was not a trial, and the trial court should have considered Spencer's affidavits in determining whether to vacate the default judgment. *See, e.g.*, *Ryans Rest., Inc. v. Lewis*, 949 F.Supp. 380, 383 (D.V.I.App.Div. 1996) (recognizing that the appellant produced a sworn affidavit supporting his motion to vacate a default judgment).

Although we conclude that the trial court abused its discretion in ruling that Spencer has not presented a meritorious defense, substantial justice contemplates more than the interests of the defendant in asserting her defense at a trial on the merits. While it is preferred that cases be decided on the merits and any doubts should be resolved in favor of this preference, *Zawadski de Bueno v. Bueno Castro*, 822 F.2d 416, 419-20 (3d Cir. 1987), substantial justice also contemplates the plaintiff's interests. Thus, where the defendant's failure to appear at trial is the result of ill will or bad faith, or where vacating the default judgment would cause significant prejudice to the plaintiff, substantial justice may counsel against granting relief from a default judgment.[2] *See Hritz v. Woma Corp.*, 732 F.2d 1178, 1182-83 (3d Cir. 1984). Because the trial court has not considered these questions, we reverse the court's judgment and again remand this matter to the trial court for further consideration of Spencer's motion for relief and urge the court to remain mindful that the preference is to decide cases on their merits, that any doubts should be resolved in favor of this preference, and that the goal of the Small Claims Division is to deliver substantial justice. *See Zawadski de Bueno*, 822 F.2d at 419-20; *Ryans Rest.*, 949 F.Supp. at 383.

[2] We question whether a plaintiff's right to substantial justice is served when a court disregards these issues entirely and vacates a default judgment after narrowly focusing on the defendant's excuse for not attending the trial. *See, e.g., Irizarry v. Carpenter*, 274 F.Supp.2d 729 (D.V.I.App.Div. 2003).

Dated this 8th day of April, 2009.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court