

DOCKETED

FEB 17 2016

R. POSTELL
COMMERCE PROGRAM

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

NOVA SIGN GROUP

Plaintiff

v.

BUNTING GRAPHICS, INC.

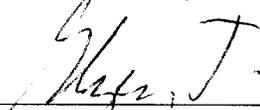
Defendant

:
:
: October Term, 2015
: Case No. 02052
:
:
:
: Commerce Program
:
: Control No. 16012421

ORDER

AND NOW, this 17th day of February, 2016, upon consideration of the petition to open default judgment filed by defendant Bunting Graphics, Inc., the response in opposition of plaintiff Nova Sign Group, and the respective *memoranda* of law, it is **ORDERED** that the petition is **GRANTED** and the default judgment is **OPENED**.

BY THE COURT,



GLAZER, J.

Nova Sign Group Vs Bunt-ORDMM



15100205200026

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL**

NOVA SIGN GROUP

Plaintiff

v.

BUNTING GRAPHICS, INC.

Defendant

:
:
: October Term, 2015
: Case No. 02052
:
:
:
:
: Commerce Program
:
: Control No. 16012421

MEMORANDUM OPINION

On October 20, 2015, plaintiff filed a complaint against defendant. Through the complaint, plaintiff seeks to recover certain amounts allegedly owed by defendant under the terms of a sub-contract. On December 15, 2015, plaintiff entered judgment by default against defendant for failure to timely file an answer to the complaint. On January 20, 2016, defendant filed its petition to open judgment by default. According to the petition, an answer to plaintiff's complaint was not timely filed because defendant's executive was under the mistaken belief that the answer would be filed by the same defense counsel which had been retained in connection with arbitration proceedings arising out the instant dispute. In the petition, defendant also asserts that the amounts claimed by plaintiff are not owed due to lack of required consideration. Finally, defendant asserts that the person who allegedly bound defendant to pay the alleged sums was not an authorized agent thereof.

In Pennsylvania,

a default judgment may be opened when three elements are established: the moving party must (1) promptly file a petition to open the default judgment, (2) show a

meritorious defense, and (3) provide a reasonable excuse or explanation for its failure to file a responsive pleading.¹

In addition,

[m]erely asserting in a petition to open default judgment that one has a meritorious defense is insufficient.... The moving party must set forth its meritorious defense.... If any one of the alleged defenses would provide relief from liability, the moving party will have pled a meritorious defense and will have satisfied the third requirement to open the default judgment.²

In this case, defendant has explained that “it believed its arbitration counsel was handling the matter, but [the] arbitration counsel believed that [defendant] intended to retain [new] counsel to handle the [complaint].”³ Defendant has also explained that its executive became aware of the existence of a praecipe to enter default judgment against defendant nearly two weeks after the filing thereof.⁴ In addition, defendant has asserted at least two meritorious defenses: first, the amounts claimed by plaintiff under certain “change-orders” were not supported by new consideration; and second, the person who allegedly bound defendant to pay the claimed amounts was not an authorized agent of defendant.⁵

In the response in opposition, plaintiff attacks the petition on grounds that defendant has not provided a reasonable excuse for its failure to timely answer the complaint. Plaintiff specifically asserts that defendant’s failure to timely file an answer to the complaint was “careless.” Plaintiff relies on a non-precedential decision in support of its argument, Pierce v. CPR Restoration & Cleaning Servs., LLC, 214 WL

¹ Penn-Delco Sch. Dist. v. Bell Atl.-Pa, Inc., 745 A.2d 14, 17 (1999).

² Seeger v. First Union Nat. Bank, 836 A.2d 163, 166 (2003).

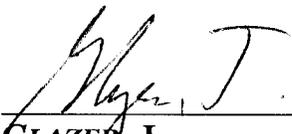
³ Petition to Open Judgment by Default, ¶ 14.

⁴ Id., ¶ 18

⁵ Id., ¶¶ 35, 5.

10558202 (Pa. Super. 2014). However, “[a]n unpublished memorandum decision shall not be relied upon or cited by a Court or a party in any other action or proceeding...”⁶ In this case, and notwithstanding plaintiff’s reliance on an unpublished opinion, the court finds that defendant has met the three elements necessary for a default judgment to be opened, even though defendant failed to timely file an answer to plaintiff’s complaint.⁷ For this reason, the petition is granted.

BY THE COURT,



GLAZER, J.

⁶ Schaaf v. Kaufman, 850 A.2d 655, 658 (Pa. Super. 2004) (citing 210 Pa. Code, § 65.37).

⁷ “The [Pennsylvania] Rules [of Civil Procedure] shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceedings....” Pa. R.C.P. 126.