

BOENNING-FIALCOWITZ TEAM WINS APPEAL

By John Fialcowitz

On November 4, 2010, the Superior Court of New Jersey, Appellate Division, reversed a trial court order denying the motion of Central Jersey Waste & Recycling, Inc. (“Central Jersey”) to vacate a four year old default judgment in the case of Mangiapane v. Central Jersey Waste & Recycling, Inc., Docket No. A-2309-09T3 (App. Div. Nov. 4, 2010). Franklin W. Boenning, Esq. and John Fialcowitz, Esq. handled the appeal on behalf of Central Jersey.

The Facts of the Case

On or about January 7, 2005, Plaintiff Gusto Mangiapane (“Plaintiff”) allegedly was injured when the garbage truck he was operating was involved in a traffic accident. At the time of the accident, non-party East Coast Express Trucking, Inc. (“East Coast”) employed Plaintiff and operated the garbage truck; Central Jersey neither

employed Plaintiff nor did it operate or maintain the garbage truck involved in the accident. Nevertheless, on or about April 15, 2005, Plaintiff filed a lawsuit against Central Jersey in the Superior Court of New Jersey and alleged that Central Jersey negligently maintained the garbage truck involved in the accident.

Approximately three months later, on July 11, 2005, Plaintiff, through the Mercer County Sheriff (the “Sheriff”), apparently served a Central Jersey receptionist with a copy of the Summons and Complaint at Central Jersey’s address at 432 Stokes Avenue, Ewing, New Jersey (the “Ewing Address”). In his return of service, the Sheriff advised Plaintiff that Central Jersey no longer maintained a place of business at 235 Gibbs Avenue, Trenton, New Jersey (the “Trenton Address”), by circling the legend “Moved, no longer

can be found at address given.” Furthermore, the Sheriff advised Plaintiff of the Ewing Address by circling the legend “Other” and writing the Ewing Address on the return of service. Thus, as of July 2005, Plaintiff was advised that the Ewing Address served as Central Jersey’s current address and business office.

Meanwhile, the receptionist -- who was not authorized to accept service of process on behalf of Central Jersey -- failed to notify Central Jersey’s President about the Summons and Complaint and to give him the documents for appropriate handling. As a result, Central Jersey failed to either answer or otherwise appear in response to the Complaint.

Several months later, on or about December 12, 2005, Plaintiff mailed a copy of his request to enter default to the Trenton Address despite being previously told by the Sheriff that

this address was no longer a valid address for Central Jersey. Shortly thereafter, on January 4, 2006 and January 20, 2006, Plaintiff transmitted the required Notices of Proof Hearing to the defunct Trenton Address. Unaware that Plaintiff was seeking a default judgment, Central Jersey did not oppose Plaintiff's application, and on February 15, 2006, the trial court granted Plaintiff a default judgment against Central Jersey for \$106,470.00, plus costs.

Plaintiff did not serve Central Jersey with the default judgment, and years passed without Plaintiff taking any further action. Then, on or about December 12, 2008 -- nearly three years after obtaining the Default Judgment -- Plaintiff changed course and served Central Jersey at the Ewing Address with an Information Subpoena to collect on the default judgment.

Upon finally receiving proper notice of the default judgment proceedings, Central Jersey moved to vacate the default judgment. Finding that the Sheriff had properly served Central Jersey with the Summons and Complaint, the trial court denied Central Jersey's motion to vacate the default judgment. Central Jersey then filed a timely appeal from the trial court's order

and argued that it was entitled to relief from the judgment either because of excusable neglect, *Rule 4:50-1(a)*, or because the circumstances surrounding the entry of the default judgment were exceptional, *Rule 4:50-1(f)*.

The Decision

On appeal, the Appellate Division found that the trial court erred in denying Central Jersey's motion to vacate because it failed to consider Central Jersey's evidence of exceptional circumstances. In particular, the Court found that not only did the trial judge improperly deny Central Jersey's motion based solely on the fact that Central Jersey was served with a copy of the summons and complaint, but the trial court had failed to consider "the absence of bad faith by defendant or the fact that [Central Jersey's President] appears to have been unaware of plaintiff's complaint at the time the default judgment was entered." The Court also found that Central Jersey had presented evidence of a meritorious defense because East Coast, rather than Central Jersey, was liable for maintaining and servicing the truck involved in the accident.

Consequently, although it declined to vacate the judgment on grounds of excusable neglect, the Appellate Division reversed the order and remanded the case back to the trial court for a hearing on whether exceptional circumstances were present. The Court instructed the trial court that if it is satisfied that Central Jersey "had a policy in place and that [the receptionist] violated that policy by not immediately forwarding the summons and complaint to [the President], then the [trial] court shall enter an order vacating the default judgment."

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