

FEB 15 2001

COMMON PLEAS COURT

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IN THE COURT OF COMMON PLEAS OF MEIGS WM, WL#1 9: 49

Sharon Trout,

Plaintiff,

vs.

AIG Life Insurance Co., et al.,

Defendants.

FILED

pp' & Mr. Lu

Case No. 99CV-123

CLERK OF COURTS  
MEIGS COUNTY, OHIO

**AMENDED JUDGMENT ENTRY**  
**FINAL APPEALABLE ORDER**

This matter came on for hearing on September 25, 2000, before the Hon. Fred W. Crow III, upon Defendant's Fifth Third Bank of Columbus' Motion for Relief from Judgment and Defendant's Motion for Leave to file a Cross-Claim against Defendant AIG Life Insurance Company. Present at said hearing were Sharon Trout, represented by her attorney, Timothy J. Foran; Fifth Third Bank of Columbus, represented by its attorney, Jennifer Sheets; Doug Marine Motors, Inc., represented by its attorney, John H. Wead; and the Court notes that AIG Life Insurance Company, after, proper notice, did not appear at said hearing.

The Court finds that Defendant Fifth Third Bank of Columbus' Motion for Relief from Judgment was based upon the requirements set forth in Ohio Civil Rule 60(B) and GTE Automatic Electric v. ARC Industries, (1976) 47 Ohio St 2d 146. The three prongs of the GTE case indicate that Defendant needed to prove that it had meritorious defense to present, that the motion was made in a timely manner, and that its failure to answer the Complaint was based on mistake, inadvertence, or excusable neglect.

Upon the evidence presented at said hearing, the Court finds that the Complaint in this case was filed on NOV 17, 1999, and was served upon Fifth Third Bank of Columbus on NOV 19, 1999. The Court further finds, that Defendant, Doug Marine Motors, Inc., mailed its Answer to the Complaint to Fifth Third Bank of Columbus on DEC 15, 1999. The Court finds that Defendant, AIG

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Life Insurance Co. mailed its Answer to the Defendant, Fifth Third Bank of Columbus, on DEC 17, 1999. The Court further finds that the Motion for Default Judgment against the Defendant, Fifth third Bank of Columbus, was mailed by the Plaintiff to the Defendant, Fifth Third Bank of Columbus, on FEB 2, 2000. The Court further finds that the default judgment entry and notice of damage hearing was mailed to the Defendant, Fifth Third Bank of Columbus, on MAR 27,2000. The Court further finds that the Notice of Deposition in this case for the other Defendants was mailed to Fifth Third Bank of Columbus, on APR 2,2000. The Court finds that on APR 10,2000, the hearing on damages took place and the Judgment Entry on the damage hearing was mailed to the Defendant, Fifth Third Bank of Columbus, on APR 20, 2000. Finally, on AUG 22, 2000, Fifth Third Bank of Columbus entered its appearance in this case and served its Motion for Relief from Judgment.

Turning to the evidence in this case, Fifth Third Bank of Columbus, first supported its Motion for Relief from Judgment with an Affidavit of John Cronin, on AUG 22,2000. In that Affidavit, John Cronin indicated that he was the Fifth Third Bank of Columbus' employee in charge of receiving and reviewing all legal documents, which was forwarded to Fifth Third Bank of Columbus, and then forwarding said documents to corporate counsel, whether it be in-house or outside counsel. In that Affidavit, John Cronin further stated that he did not receive a copy of the Complaint filed by the Plaintiff, Sharon Trout, and indicated that the markings on the U.S. Postal certified green card signature line was not made by any employee of Fifth Third Bank of Columbus. Also, John Cronin stated 'If infact the certified mail envelope was received by Fifth Third Bank of Columbus, it was not forwarded to my attention as all legal documents would be". The Court notes that the Affidavit of John Cronin fails to mention what happened to the mail service of the two Answers, Motion for Default Judgment, Default Judgment Entry, Notice of Deposition and Entry of Default Hearing on Damages, that were all mailed to Fifth Third Bank of Columbus.

The Court finds that at the hearing on SEPT 25; 2000, the counsel for Fifth Third Bank of Columbus and witness, John Cronin, both admitted, acknowledged, and stipulated that Fifth Third

Bank of Columbus was in fact served as of NOV 19, 1999. However, they did not discover this fact, allegedly, until Friday, SEPT 22,2000, after hours. The first time they disclosed this revelation to the Court and opposing counsel was when the hearing was in process on SEPT 25,2000. Both, John Cronin and counsel for Fifth Third Bank of Columbus, acknowledged in open court that the previous self-serving Affidavit filed by John Cronin and Fifth Third Bank of Columbus, was false.

Furthermore, John Cronin's testimony and the stipulations of counsel for the Defendant, Fifth Third Bank of Columbus, indicated that Fifth Third Bank of Columbus was, in fact, served, because an agent or a temporary non-employee, who was authorized to receive such mail, signed for the certified mail for Fifth Third Bank of Columbus. John Cronin indicated that the temporary non-employee, who was Jim Rothwell, was authorized to do those acts, was because he was out of country in Ireland at the time for a week or so, during the time the Complaint was received for Fifth Third Bank of Columbus. John Cronin indicated that the six other pleadings, entries, and notices that were mailed to Fifth Third Bank of Columbus, had been placed in the dead-mail section. Although, John Cronin had returned from Ireland, he still blamed the temporary non-employee, Jim Rothwell, for placing all other mail items in the dead-mail section. At no time did Defendant, Fifth Third Bank of Columbus, indicate why John Cronin did not review what had taken place during his absence, or why he didn't follow-up on the mail being received on a regular basis from December 1999 through April 2000, without reference to any on-going litigation. In fact, John Cronin did not indicate that he knew exactly where Jim Rothwell could be located and they did not bring Jim Rothwell to the hearing before this Court on SEPT 25,2000. John Cronin ended his testimony before the Court by reaching the reasonable conclusion that the entire handling of the Complaint and other six items of pleadings and entries and notices in this case, would be considered not excusable by the Board of Directors of Fifth Third Bank of Columbus.

In deciding this case, the Court turns to the third prong of the GTE Supreme Court case, that is based on whether or not Defendant, Fifth Third Bank of Columbus, had an excusable

mistake, inadvertence or neglect in this case as to allow them relief from this judgment. To answer that question, the Supreme Court ruled that in Davis v. Immediate Med. Serv., Inc., (1997), 80 Ohio St. 3d 10, that in determining whether neglect is excusable or inexcusable, all the surrounding facts and circumstances must be taken into consideration. Neglect under Civil Rule 60(B)(2), which would apply in this case, had been described as conduct that falls substantially below what is reasonable under the circumstances. The Supreme Court, in the Davis case, ruled that even after a jury verdict in favor of the defendant that had a default judgment against it or had been exonerated on the merits, the Court upheld the default judgment, because the defendant failed to comply with the Civil Rules in the timely filing of an Answer to the Complaint. The Court notes that to rule otherwise meant that the sanctions for non-compliance would lose their deterrent effect. The Court recognized that it is preferable to hear a case on its merits, but the rules of procedure must be applied consistently, and the defendant's non-compliance cannot be overlooked. The Court concluded that however hurried a Court may be in its efforts to reach the merits of a controversy, the integrity of procedural rules is dependent upon consistent enforcement, because the only fair and reasonable alternative thereto is complete abandonment. Furthermore, this Court realizes that final judgment of the litigation in bringing an end to the case is also a policy consideration in this matter.

Therefore, based upon the evidence and the law set forth, the Court does hereby order, adjudge and decree that the Motion for Relief from Judgment of Defendant, Fifth Third Bank of Columbus, is hereby overruled. The Court specifically finds that Fifth Third Bank of Columbus made a mistake, but it was not excusable. The Defendant, Fifth Third Bank of Columbus, did show inadvertence, but it was not excusable. The Court further finds that Fifth Third Bank of Columbus definitely showed a great deal of neglect, but it was not excusable. The Court finds that Fifth Third Bank of Columbus, through its mishandling of the service of the Complaint and following pleadings and entries, showed an utter disregard of the legal process. Therefore, this Court upholds the

integrity of the procedural rules that apply to this case and overrules the Defendant's Motion for Relief from Judgment.

The Court further finds there is pending the Motion by Defendant, Fifth Third Bank for leave to file a cross-claim against Defendant AIG Life Insurance Company. The Court hereby overrules said Motion and the same be and hereby is dismissed based upon the Courts reasoning heretofore set forth.

Costs to the Defendant Fifth Third Bank.

This is a judgment or final order which may be appealed. The Clerk pursuant to Civil Rule 58(B) shall serve notice of the same upon all parties who are not in default of entry of appearance within three days after journalization of the Entry. The Clerk is required to serve notice of the Judgment pursuant to Civil Rule 5(B).

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Hon. Fred W. Crow III

Prepared and submitted by:



\_\_\_\_\_  
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Attorney for Plaintiff

APPROVED:

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Attorney for Defendant AIG Life Insurance Company 

LLJLzd *-not approved*

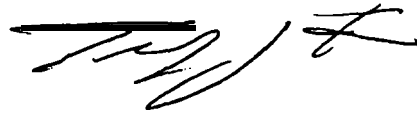
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