

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROBERT M. SIDES, INC. :
 :
vs. : **No. 00-00,380**
 :
JEFFREY J. HARDING and :
 :
CINDY B. HARDING, his wife :

DATE: July 16, 2001

ORDER

The Petition to open Civil Action No. 00-00,380 filed by the Defendants, pro se, in the above-captioned matter on July 12, 2001 is **DENIED**.

By way of explanation, the Court notes that certain relevant facts are set forth in the pro se petition. The petition is apparently filed under Pa. R.C.P. 237.3. It seems to open a judgment in the amount of \$466.00 entered by default on August 23, 2000. Since it was not filed within ten (10) days thereafter, the court must ascertain whether it raises a meritorious defense, and whether it was filed timely, that is that there is a reasonable explanation or legitimate excuse for the delay or inactivity.

In this regard, Defendants assert they expected the case to go to arbitration, and that they had received an arbitration strike list in October 2000. This Court notes that that list was sent to the Defendants in error in as much as the default judgment had been entered in August. On June 14, 2001 the Defendants received a notice of execution and paid the amount owed in full by sending a certified check to Plaintiff's counsel on June 15, 2001. Plaintiff's counsel marked this case settled and discontinued on June 25, 2001. By a letter dated June 19, 2001 sent to the Prothonotary, the Defendants sought to open the action, but the Prothonotary rejected the filing on June 22, 2001 because a \$60.00 filing fee had not been paid. Thereafter the present petition was filed.

The petition that is filed does not have a verified copy of an answer attached to it. It does have attached to it a letter dated August 8, 2000 to the Plaintiff through Plaintiff's counsel from Defendants asserting that they do intend to defend the claims. There is also another document attached with a caption stating that it is in response to the complaint of April 3, 2000, and complains about the manner of

calculation of the amount due, and may raise a meritorious defense. The petition itself asserts that there should be no liability for attorney's fees. The judgment entered did include \$300.00 for attorney's fees, an amount which was not a sum certain, nor calculable by computation, and a figure that should normally have been assessed after trial per Pa. R.C.P. 1037. This also may be a meritorious defense.

Nevertheless, the Defendants' filing of this petition is not timely, and they state no reason or excuse from the delay that the court can recognize. Under Pa. R.C.P. 206.5, they must state prima facie ground for relief, and they have failed to do so. Accordingly the petition was denied.

BY THE COURT

William S. Kieser, Judge

cc: R. Read, Esq.
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WSK:pjs