IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION -- LAW

JPMORGAN CHASE BANK, N.A., Plaintiff	:	
v.	:	NO. 25-CV-0942
THOMAS W. MCEVILLY, Defendant	:	

Lewis P. Trauffer, Esquire	Counsel for Plaintiff
Ronald L. Clever, Esquire	Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – January 6, 2026

Defendant herein appeals directly from a default judgment entered by the Carbon County Prothonotary upon *praecipe* filed by Plaintiff pursuant to Pa.R.C.P. 1037(b) without any intervening decision by the court on Defendant's Petition to Open and to Strike Judgment filed the same date as Defendant's appeal. As a preliminary matter, we believe the appealability of a default judgment entered by the Prothonotary for Defendant's failure to file within the required time a pleading to Plaintiff's complaint is in issue.

PROCEDURAL AND FACTUAL BACKGROUND

On May 5, 2025, Plaintiff, JPMorgan Chase Bank, N.A., filed a complaint for breach of contract against Defendant, Thomas W. McEvilly. The complaint containing a notice to defend was served on Defendant on May 15, 2025. Claimed was $19,698.68 owed on

a credit account Defendant opened with Plaintiff or its predecessor on September 26, 2015.

Attorney Ronald L. Clever entered his appearance on behalf of Defendant on July 14, 2025. No answer was filed to the complaint, and on October 3, 2025, Plaintiff, through counsel, filed a *praecipe* for default judgment which was entered by the Prothonotary on the same date.

The *praecipe* for default judgment contained, *inter alia*, the following statement beneath which appeared Plaintiff's counsel's signature: "Pursuant to Pa.R.C.P. 237.1, I certify that a copy of this Praecipe has been mailed to each other party who has appeared in the action or his/her Attorney of Record." Attached to the *praecipe* was a copy of a Notice of Intention to Take Default Judgment dated July 18, 2025, substantially in the form prescribed by Pa.R.C.P. 237.5, indicating the Notice had been sent to Defendant. Also filed with the *praecipe* was a document captioned "Notice of the Entry of Judgment" to be signed by the Prothonotary, which contained at the bottom a certification by Plaintiff's counsel that the proper person to receive the Notice of Entry of Judgment under Pa.R.C.P. 236 was Defendant's counsel, Ronald L. Clever, Esquire, as attorney for Defendant, together with his address.

On November 3, 2025, at 8:38 a.m., Defendant filed a Petition to Open and to Strike Default Judgment, and at 8:44 a.m., a Notice of Appeal from the judgment dated October 3, 2025. By order dated November 3, 2025, we directed Defendant to file a concise statement of the matters complained of on appeal within twenty-one (21) days.

Defendant timely filed his Concise Statement on November 21, 2025. In this Statement, Defendant contends Plaintiff violated Pa.R.C.P. 237.1(a)(2)(ii) by failing to certify in its *praecipe* for default judgment that prior written notice of its intention to file the *praecipe* was given to both the Defendant and his attorney of record. In his Concise Statement, Defendant further represents that no notice of intent to take a default judgment was sent to Defendant's counsel.

DISCUSSION

Pa.R.C.P. 237.1(a)(2) states, in pertinent part:

> Rule 237.1 Notice of *Praecipe* for Entry of Judgment of *Non Pros* for Failure to File Complaint or by Default for Failure to Plead
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> (2) No judgment of *non pros* for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the *praecipe* for entry includes a certification that a written notice of intention to file the *praecipe* was mailed or delivered:
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> (ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the *praecipe* to the party against whom judgment is to be entered and to the party's attorney of record, if any.

Pa.R.C.P. 237.1(a)(2). As to this requirement, Plaintiff's *praecipe* for default judgment certifies that "a copy of this Praecipe has been mailed to each other party who has appeared in the action or his/her Attorney of Record." It does not certify, as required by the Rule, that "a written notice of intention to file the *praecipe* was mailed or delivered" to Defendant *and* his attorney of record. Compounding the determination of whether Plaintiff complied with the Rule is that the written Notice of Intention to Take Default Judgment

attached to the *praecipe* as required by Pa.R.C.P. 237.1(a)(3) is only addressed to Defendant.

In this case, Defendant has chosen to appeal directly to the Superior Court the Prothonotary's entry of a default judgment, rather than challenging the validity of the judgment first at the common pleas level by filing and waiting for a decision on his Petition to Open and to Strike Default Judgment. Defendant's decision to pursue this course was implicitly, if not explicitly, acknowledged by Defendant's counsel at a conference call the court held with counsel on November 5, 2025, where the court expressed its belief that as a result of the appeal, the court was without jurisdiction to proceed on Defendant's Petition to Open and to Strike Default Judgment. See Order dated November 10, 2025, memorializing this conference call with counsel and Pa.R.A.P. 1701(a) (Effect of Appeal Generally). At the time, the court was of the belief that the judgment entered by the Prothonotary was a final judgment which would support an appeal. Since then, the court's understanding has changed.

"In this Commonwealth, an appeal may only be taken from: 1) a final order or one certified by the trial court as final; 2) an interlocutory order as of right; 3) an interlocutory order by permission; or 4) a collateral order." Estate of Considine v. Wachovia Bank, 966 A.2d 1148, 1151 (Pa.Super. 2009) (citing and quoting Mother's Rest., Inc. v. Krystkiewicz, 861 A.2d 327, 331 (Pa.Super. 2004)). Here, no order was entered by the court upon which Defendant's appeal is based. Instead, Defendant appeals directly to the Superior Court from the judgment entered by the Prothonotary in response to Plaintiff's *praecipe*

for a default judgment for Defendant's want of a responsive pleading to Plaintiff's complaint which contained a notice to defend. *See* Pa.R.C.P. 1037(b). This is not a final judgment.

In Estate of Considine, the Superior Court addressed the legal significance of a default judgment stating:

> When a default, judgment is entered by the prothonotary, the judgment is not instantaneously final, and the party against whom the judgment was entered cannot immediately appeal to this Court. Rather, the proper procedure for a party who wishes to contest a default judgment is to file with the trial court a petition either to strike or open the default judgment. *See* Pa.R.C.P. 237.3: Mother's Rest., *supra*, at 336 ("To obtain relief from the entry of a default judgment, the law provides two distinct remedies. An aggrieved party may file a petition to strike the default judgment and/or a petition to open the default judgment.") (citations omitted). If a petition to open is filed within ten days of entry of the judgment and is accompanied by a proposed answer offering a meritorious defense, the court "shall" open the judgment. Pa.R.C.P. 237.3(b). In order to satisfy the meritorious defense requirement, the defendant need only plead a defense which, if proved at trial, would justify relief. ABG Promotions v. Parkway Pub., Inc., 834 A.2d 613, 618 (Pa.Super. 2003) (citing Penn-Delco School Dist. v. Bell Atlantic-Pa, Inc., 745 A.2d 14, 19 (Pa.Super. 1999), appeal denied, 568 Pa. 665, 795 A.2d 978 (2000)). Only after a default judgment becomes final do "all the general rules in regard to conclusiveness of judgments apply." Morgan Guar. Trust Co. v. Staats, 428 Pa.Super. 479, 631 A.2d 631, 638 (1993), appeal dismissed, 536 Pa. 628, 637 A.2d 288 (1994).

966 A.2d at 1152.

In Estate of Considine, the Court held it did not have jurisdiction to address the merits of plaintiff's appeal from a motion for summary judgment granted in favor of one of two defendants by the trial court, where there was then pending a petition to open a default judgment entered in favor of plaintiff which had been filed by the second of the two defendants. 966 A.2d at 1153 (finding that Pa.R.A.P. 341(b)(1) did not provide the

Court with jurisdiction to hear the appeal).[1] As in Estate of Considine, the other bases to support an appeal under Pa.R.A.P. 341(b)(3), Pa.R.A.P. 311 (Interlocutory Appeals as of Right), Pa.R.A.P. 312 (Interlocutory Appeals by Permission), and Pa.R.A.P. 313 (Collateral Orders) are equally inapplicable here. *See* Estate of Considine, 966 A.2d at 1151-1153. Concluding it did not have jurisdiction to hear the appeal, the Court in Estate of Considine quashed the appeal. 966 A.2d at 1153.

CONCLUSION

Given the foregoing and our belief that the appeal here will likewise be quashed, at which time a decision on Defendant's pending Petition to Open and to Strike Default Judgment will need to be made – other than stating the standard for striking a default judgment – we believe it would be inappropriate for us to comment further on the merits of the Petition until such time as Defendant has had an opportunity to respond to the Petition and we have received briefs and heard arguments from the parties.[2]

BY THE COURT:

P.J.

[1] Under Pa.R.A.P. 341, parties have the right to file an appeal from a final order, defined as any order that: "(1) disposes of all claims and of all parties; (2) (rescinded); or (3) is entered as a final order pursuant to subdivision (c) of this rule." Pa.R.A.P. 341(a), (b)(1) – (3).

[2] We are aware that Pa.R.A.P. 1701(b)(6) permits the court "to [p]roceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal ...," but believe it best to wait until the Superior Court's decision on Defendant's appeal before proceeding further. As to the standard for striking a default judgment, in Roy by and through Roy v. Rue, the Superior Court stated:

> A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record. A petition to strike a judgment may be granted only for a fatal defect or

> irregularity appearing on the face of the record. [A] petition to strike is not a chance to review the merits of the allegations of a complaint. Rather, a petition to strike is aimed at defects that affect the validity of the judgment and that entitle the petitioner, as a matter of law, to relief. A fatal defect on the face of the record denies the prothonotary the authority to enter judgment. When a prothonotary enters judgment without authority, that judgment is void *ab initio*. When deciding if there are fatal defects on the face of the record for the purposes of a petition to strike a [default] judgment, a court may only look at what was in the record when the judgment was entered.
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> The standard for 'defects' asks whether the procedures mandated by law for the taking of default judgments have been followed.
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> A record that reflects a failure to comply with Rule 237.1 is facially defective and cannot support a default judgment.

273 A.3d 1174, 1181-82, 1184 (Pa.Super. 2022) (citations and quotation marks omitted), appeal denied, 289 A.2d 43 (Pa. 2022).