

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION**

CYNTHIA L. PASQUARIELLO	:	No. C-48-CV-2020-00607
AND ANTHONY PASQUARIELLO,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
JAY A. MANWILLER AND THE	:	
PHOENIX FORGE GROUP, LLC,	:	
	:	
Defendants.	:	

ORDER OF COURT

AND NOW, this 11th day of January, 2021, upon consideration of Defendants’ preliminary objections to Plaintiffs’ complaint, Defendants’ brief in support thereof, and Plaintiffs’ answer and brief in support thereof, it is hereby **ORDERED** that Defendants’ preliminary objections to Plaintiffs’ complaint are **DENIED** in part and **GRANTED** in part, as follows:

1. Defendants’ preliminary objection pursuant to Pa.R.C.P. 1028(a)(1), requesting dismissal for lack of personal jurisdiction due to untimely service of the complaint is **DENIED**;
2. Defendants’ preliminary objection pursuant to Pa.R.C.P. 1028(a)(2) for failure of the complaint to conform to law or rule of court because the complaint lacked verification is **DENIED**; and

3. Defendants' preliminary objection pursuant to Pa.R.C.P. 1028(a)(3) in the form of a motion to strike paragraph 11(j) in the complaint for impermissible vagueness is **GRANTED**.

Pursuant to Pa.R.C.P. 401(b)(5), Plaintiffs are granted leave to file a praecipe to reinstate the complaint.¹ Plaintiffs will have thirty (30) days from the date of reinstatement to serve Defendants with original process. The reinstated complaint shall omit the vague language contained in paragraph 11(j) of the complaint.

OPINION

I. STATEMENT OF FACTS

On January 23, 2020, through filing a writ of summons, Cynthia L. Pasquariello and Anthony Pasquariello ("Plaintiffs") commenced this action against Jay A. Manwiller and The Phoenix Forge Group, LLC ("Defendants") arising from injuries sustained in a motor vehicle accident. On April 21, 2020, Plaintiffs reissued and sent the writ of summons to the sheriff for service. Plaintiffs served Defendant Phoenix Forge Group, LLC with the writ of summons on June 18, 2020. Plaintiffs also attempted to serve Defendant Jay A. Manwiller that same day but were unsuccessful. Plaintiffs then filed their

¹ Pa.R.C.P. 401(b)(5) "If an action is commenced by writ of summons and a complaint is thereafter filed, the plaintiff, instead of reissuing the writ, may treat the complaint as alternative original process and as the equivalent for all purposes of a reissued writ, reissued as of the date of the filing of the complaint. Thereafter the writ may be reissued, or the complaint may be reinstated as the equivalent of a reissuance of the writ, and the plaintiff may use either the reissued writ or the reinstated complaint as alternative original process."

complaint on July 14, 2020. Plaintiffs ultimately served Defendant Manwiller on August 24, 2020.

In response to the complaint, Defendants filed three preliminary objections on August 27, 2020. First, Defendants object under Pa.R.C.P. 1028(a)(1) for lack of personal jurisdiction due to untimely service. Second, Defendants object under Pa.R.C.P. 1028(a)(2) for failure of the complaint to conform to law or rule of court because it lacks verification. Third, Defendants motioned to strike on the basis of Pa.R.C.P. 1028(a)(3), alleging that the complaint contains impermissibly vague averments.

II. LEGAL STANDARD

A court may properly grant preliminary objections for one or more of several reasons enumerated in Rule 1028 of the Pennsylvania Rules of Civil Procedure, three of which are asserted by Defendants here. Rule 1028(a)(1) permits a party to file preliminary objections contesting the court's personal jurisdiction over a defendant as well as improper service of a writ of summons or a complaint. Rule 1028 (a)(2) allows for a preliminary objection where a pleading fails to conform to law or rule of court. Rule 1028(a)(3) permits a preliminary objection in the form of a motion to strike the pleading for insufficient specificity. In evaluating the pleadings, "the court must accept as true all well-pleaded, material, and relevant facts alleged in the complaint and

every inference that is fairly deducible from those facts.” Commonwealth by Shapiro v. UPMC, 208 A.3d 898, 908 (Pa. 2019).

III. DISCUSSION

a. Although Plaintiffs did not stall the legal machinery, Plaintiffs must reinstate the complaint because they served Defendants after the statutory period.

The first issue Defendants raise in their preliminary objections is whether the court should dismiss the action because the court lacks personal jurisdiction over Defendants due to untimely service of process. Specifically, Defendants argue that Plaintiffs have stalled the legal machinery that they have set in motion. The Supreme Court of Pennsylvania has stated that the court “would dismiss only those claims where plaintiffs have demonstrated an attempt to stall the judicial machinery or where plaintiffs’ failure to comply with the Rules of Civil Procedure has prejudiced the defendant.” McCreesh v. City of Philadelphia, 88 A.2d 664, 674 (Pa. 2005) (citing Leidich v. Franklin, 575 A.2d 914 (Pa. Super. 1990)).

Defendants analogize the instant matter to Lamp v. Heyman. In Lamp, the plaintiff’s attorney filed a praecipe for a writ of summons against the defendants for injuries sustained in an automobile accident four days before the statute of limitations had expired. Lamp v. Heyman, 366 A.2d 882, 884 (1976). The plaintiff instructed the prothonotary to hold on to the writ instead of delivering it to the sheriff for service. Id. at 885. The plaintiff then, without

any stated reason, reissued the writ thirty-one months after the date of the accident and failed to complete service yet again. Id. The court in Lamp stated that a writ of summons will remain effective only if the plaintiff does not engage in “conduct which serves to stall in its tracks the legal machinery [the plaintiff] has just set in motion.” Id. at 889.

Here, unlike the plaintiff in Lamp, Plaintiffs did not stall the legal machinery. Nothing in the record suggests that Plaintiffs requested the prothonotary to hold the writ, as the plaintiff did in Lamp. In fact, Plaintiffs continually made a good faith effort to serve Defendants.² Plaintiffs, upon filing the writ of summons, sent the writ to the claims adjuster to inquire whether she would accept service of the writ. See Plaintiffs’ Answer to Preliminary Objections at ¶ 1. Plaintiffs allegedly attempted such service to mitigate unnecessary expenses to Defendants. Id. On March 16, 2020, Defendants sent Plaintiffs a letter stating that it did not want to mitigate costs, thereby requiring Plaintiffs to serve the Defendants. Id. At that time, the COVID-19 pandemic shut down the normal operation of sheriff departments throughout the Commonwealth of Pennsylvania. Id. Plaintiffs reissued the writ on April 21, 2020, when the Berks County Sheriff’s Department reopened. See Preliminary Objections to Plaintiffs’ Complaint at ¶ 2. Plaintiffs then delivered the reinstated writ of summons to the Northampton County Sheriff’s

² A determination of whether the plaintiff made a *bona fide* effort at service “is a factual matter within [the trial court’s] sound discretion.” Englert v. Fazio Mechanical Services, Inc., 932 A.2d 122 (Pa. Super. 2007).

Department so it could deputize the Sheriff of Berks County and effectuate service. Plaintiffs served Defendant Phoenix Forge Group, LLC on June 18, 2020 and Defendant Manwiller on August 24, 2020. See Plaintiffs' Answer at ¶ 12. It is reasonable to conclude that any delay in Plaintiffs' attempts to effectuate service seemingly occurred due to complications arising from the global pandemic. Therefore, Plaintiffs did not stall the legal machinery.

Although Plaintiffs did not stall the legal machinery and made a good faith effort to serve Defendants, Plaintiffs served Defendants after thirty days from the reissuance of the writ and the filing of the complaint. A defendant may file preliminary objections on the basis of improper service of a writ of summons. See Pa.R.C.P. 1028(a)(1). The plaintiff must serve the defendant within "thirty days after the issuance of the writ" Pa.R.C.P. 401(a). If service is not made within the thirty-day period, the writ must be reissued to continue its validity. Pa.R.C.P. 401(b)(1). Where a plaintiff initiates an action via writ of summons and subsequently files a complaint, "the plaintiff . . . may treat the complaint as alternative original process and as the equivalent for all purposes of a reissued writ, reissued as of the date of the filing of the complaint." Pa.R.C.P. 401(b)(5). As mentioned above, Plaintiffs reissued the writ on April 21, 2020. See Defendants' Preliminary Objections at ¶ 2. As such, Plaintiffs needed to serve Defendants on or before May 21, 2020. However, Plaintiffs did not serve Defendant Phoenix Forge Group until June 18, 2020. Id. at 4. Plaintiffs then filed the complaint on July 14, 2020. Id.

at 6. By substituting the complaint for the reissued writ as alternative original process under Rule 401(b)(5), Plaintiffs had until August 13, 2020 to serve Defendants. However, Plaintiffs did not serve Defendant Manwiller until August 24, 2020. See Plaintiffs' Answer at ¶ 6. Because Plaintiffs did not serve Defendants within the statutory time period, they must file a praecipe to reinstate the complaint and serve Defendants within thirty (30) days from the date of reinstatement.³

Furthermore, this court will not entertain Defendants' argument that the statute of limitations has run on Plaintiffs' claim. Defendants assert that the statute of limitations for Plaintiffs' claims expired on January 29, 2020. See Defendants' Preliminary Objections at ¶ 31. Thus, Defendants suggest that all of Plaintiffs' claims are barred by the statute of limitations. Id. at 32. However, as stated in Pa.R.C.P. 1030, an affirmative defense, such as the statute of limitations, "shall be pleaded in a responsive pleading under the heading 'New Matter.'" Defendants raised the statute of limitations defense in their preliminary objection and not a New Matter. Therefore, this court will not consider Defendants' statute of limitations defense at this time.

³ Defendants request dismissal due to Plaintiffs' failure to serve Defendants within the time period set forth in Pa.R.C.P. 401. However, the proper remedy for such a procedural error is to allow Plaintiffs to reinstate the complaint and serve Defendants within the 30-day time period. A suit is not "dead" merely because the complaint has not been served within thirty days of its filing." Lauterbach v. Lauterbach, 195 A.2d 159 (Pa. Super. 1963). "A writ may be reissued or a complaint reinstated at any time and any number of times." Pa.R.C.P. 401(b)(2).

b. Defendants' objection regarding verification is moot because Plaintiffs have properly verified their complaint.

Plaintiffs have properly verified their complaint. Every pleading of fact shall be verified with a statement that the averments contained therein are true upon the signer's personal knowledge or information and belief. Pa.R.C.P. 1024(a). Here, Defendants contend that Plaintiffs have filed their complaint without a signed verification. However, Plaintiffs' counsel filed a praecipe to substitute the verification of Plaintiff Cynthia Pasquariello for the verification of William P. Marshall, Esquire on October 14, 2020. Therefore, the complaint has been verified, and Defendants' preliminary objection is moot.

c. Plaintiffs shall strike paragraph 11(j) from their complaint because the averment is impermissibly vague.

Plaintiffs' complaint contains impermissibly vague averments that must be stricken from the complaint. Material facts upon which a claim is based shall be stated in concise form. Pa.R.C.P. 1019(a). A defendant may preliminarily object to insufficient specificity in the complaint. Pa.R.C.P. 1028(a)(3). A complaint shall contain material facts that support the claim against the defendant, giving the defendant sufficient information to prepare a defense. See McShea v. The City of Philadelphia, 995 A.2d 334, 339 (2010), (citing, Landau v. Western Pennsylvania National Bank, 282 A.2d 335, 339 (1971)). Boilerplate allegations are impermissibly vague and should be stricken from the complaint upon preliminary objection. Connor v. Alleghany General Hospital, 461 A.2d 600, 603 (1983). Here, paragraph 11(j) of the

complaint avers that “[t]he carelessness and negligence of the Defendant, Jay A. Manwiller consisted of but is not limited to . . . [o]ther acts of negligence that may be discovered during the litigation and at trial.” The court finds that this clause is boilerplate and impermissibly vague, leaving Defendants unable to prepare a proper defense.

Therefore, Plaintiffs are granted leave to file a praecipe to reinstate the complaint. Plaintiffs will have thirty (30) days from the date of reinstatement to serve Defendants with original process. The reinstated complaint shall omit the vague language contained in paragraph 11(j) of the complaint.

BY THE COURT:

SAMUEL P. MURRAY, J.