

THE PARK HOME, INC.,
t/d/b/a THE MEADOWS

Plaintiff

vs.

J.B. GIBBONS CONSTRUCTION, INC.,
WALLACE, ROBERTS & TODD, LLC

Defendants

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 04-00,919

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: PRELIMINARY OBJECTIONS/
: MOTION TO AMEND

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Date: July 22, 2005

MEMORANDUM OPINION and ORDER

Before the court for determination are the Preliminary Objections to Plaintiff's Amended Complaint of Defendant Wallace, Roberts & Todd, LLC (hereafter 'Wallace') filed April 4, 2005 and the Motion to Correct Name of Plaintiff of Plaintiff The Park Home, Incorporated (hereafter "Park Home") filed June 8, 2005. In the preliminary objections Wallace asserts that Park Home violated Pa.R.C.P. 1033 by adding a new party to the litigation without consent of the other parties or court approval, raises demurrers to the breach of contract, the professional negligence, and breach of warranties claims, and asserts that the amended complaint lacks the requisite specificity. In the motion to correct, Park Home seeks to correct the name of the plaintiff in this lawsuit. The court will grant the preliminary objections on the limited ground of Park Home's violation of Pa.R.C.P. 1033 and grant the motion to correct.

“A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading.” Pa.R.C.P. 1033. The captions of the original and amended complaints identify the plaintiff in such a way as to lead to the conclusion that a different party had become the plaintiff. The writ of summons filed June 8, 2004 identifies as the plaintiff “THE MEADOWS, a subsidiary of THE PARK HOME.” In the captions of the original and amended complaints, the plaintiff is identified as “THE PARK HOME, INC. on behalf of its subsidiary, THE MEADOWS.” A parent corporation and its subsidiary are two separate and distinct entities. Thus, there were two different plaintiffs in this lawsuit – the subsidiary according to the writ of summons and the parent corporation according to the complaints. Park Home violated Rule 1033 by adding a new party without permission or approval when it changed the plaintiff in the lawsuit to the parent corporation in the complaints.

However, the violation of Rule 1033 only occurs if The Park Home, Incorporated and The Meadows are in fact parent corporation and subsidiary. The motion to correct indicates that they are not. In the motion to correct, Park Home contends that the plaintiff in this matter is and always has been The Park Home, Incorporated. Park Home alleges that “The Meadows” is a registered fictitious name under which the Park Home, Incorporated operates its residential assisted living community. Park Home asserts that the correct identification of the plaintiff should be “The Park Home, Inc., t/d/b/a The Meadows.”

It is appropriate to permit Park Home to correct the caption to reflect that Park Homes, Inc., t/d/b/a The Meadows is the plaintiff in this matter. The correction does not add a new party to this litigation, but only states the full and correct business name of the plaintiff. The

Park Home, Incorporated has always been a party to this litigation as it and The Meadows are one in the same.

Accordingly, Park Home shall file a second amended complaint identifying the correct name of the plaintiff in this matter and include a reference to the authority that permits it to use that name. The court believes it appropriate to permit Park Home an opportunity to plead its case with the correct plaintiff identified so that there is no confusion as to the factual allegations and claims asserted against the Defendants. This way any preliminary objections that Wallace may have may be fairly decided.

ORDER

It is hereby ordered that the Preliminary Objections to Plaintiff's Amended Complaint of Defendant Wallace, Roberts & Todd, LLC filed April 4, 2005 are GRANTED on limited grounds of a violation of Pa.R.C.P. 1033.

It is hereby ordered that the Motion to Correct Name of Plaintiff filed by Plaintiff The Park Home, Incorporated filed June 8, 2005 is GRANTED. The caption shall be corrected and the plaintiff identified as "The Park Home, Inc., t/d/b/a The Meadows."

Plaintiff The Park Home, Inc. shall file a Second Amended Complaint within twenty (20) days of notice of this order. The Second Amended Complaint shall accurately state the identity of the plaintiff and include a reference to the authority that permits it to use that name.

BY THE COURT:

William S. Kieser, Judge

cc: Cynthia Ranck Person, Esquire
Gina Zumpella, Esquire
Walsh, Collis & Blackmer, LLC, The Gulf Tower, Suite 1400, 707 Grant Street,
Pittsburg, PA 15219
Christopher S. Koller, Esquire
Powell, Trachtman, Logan, Carrie & Lombardo, 475 Allendale Road, Suite 200,
King of Prussia, PA 19406
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)