

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

<b>R.H. LEFEVER,</b>	:	
<b>Plaintiff</b>	:	
	:	
v.	:	<b>No. 05-01,896</b>
	:	<b>CIVIL ACTION</b>
<b>JASON McCLOSKEY and MANDIE</b>	:	
<b>McCLOSKEY,</b>	:	
<b>Defendants</b>	:	

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<b>JASON McCLOSKEY and MANDIE</b>	:	
<b>McCLOSKEY,</b>	:	
<b>Plaintiffs</b>	:	
	:	
v.	:	<b>No. 06-01,604</b>
	:	<b>CIVIL ACTION</b>
<b>R.H. LEFEVER,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before this Honorable Court is Jason and Mandie McCloskey’s (Defendants) January 18, 2008 Motion for Reconsideration of this Court’s January 4, 2008 Opinion and Order. On February 8, 2008, Defendants filed a notice of appeal, while their Motion for Reconsideration was still pending before this Court. This Court denied Defendants’ Motion on February 26, 2008, based on the Court’s belief that it was divested of jurisdiction. On April 1, 2008, the Superior Court quashed Defendants’ appeal without prejudice in order for this Court to dispose of post-trial motions. Defendants raise four issues which will be addressed *seriatim*.

Plaintiff, RH LeFever argues that this Court may not consider the Defendants’ claims as Defendants failed to follow the proper procedural requirements under Pa.R.Civ. P. 227.1. Rule 227.1 (c) requires Post-Trial motions to “be filed within ten days after (2) . . . the filing of the decision in the case of a trial without jury.” The Court finds that while Defendants refer to their

Motion as one for Reconsideration, the spirit of the Motion is that of a Post-Trial Motion.

Therefore, as the instant Motion was filed within ten days of the filing of the Court's Opinion and Order in this case, the Court will consider the Defendants' motion on the merits.

***The Court's Opinion and Order are consistent***

Defendants first argued that the Court's Opinion and Order, which deducted \$26,000 from Defendants' Unjust Enrichment claim as rent owed to Plaintiff is inconsistent because November 2, 2006, this Court granted Defendants' request for a directed verdict on Plaintiff Lefever's claim for rent. In opposition, Plaintiff argued that while he gave up legal claim to rent, the Court's finding in favor of the Defendants on their equitable claim of Unjust Enrichment entitles them to only the fair market value of the equitable claim, which includes a deduction for rent. Further, Plaintiff argues that "he who seeks equity must do equity."

Upon consideration, the Court finds the Defendants' argument that its Opinion and Order are inconsistent without merit. While Plaintiff's claim for rent in arrears was disposed of by directed verdict, the Court's finding in favor of Defendants on their unjust enrichment claim, entitles them to only the fair market value of their claim, requiring a deduction for rent owed. Defendants' first claim shall be dismissed.

***No evidence was presented to substantiate Plaintiff's breach of rental contract to maintain the property***

Defendants' second argument is that the Court's Opinion and Order failed to address Plaintiff's second claim that Defendants breached a rental contract to maintain the property. As

Plaintiff presented no testimony or evidence to substantiate the second claim, the Court affirms its judgment in favor of the Defendants and against the Plaintiff in regards to said claim.

***The Court's Opinion and Order addressed Defendants' arguments that Plaintiff admitted an oral contract existed between the Parties***

The Court's rationale for the aforementioned challenged findings can be found in its January 4, 2007 Opinion and Order and the Court will therefore rely on that Opinion for purposes of this argument.

***Granting of Plaintiff's Motion to Amend was proper***

Defendants' final argument asks the Court to reconsider its decision, which allowed Plaintiff to amend his complaint at the close of trial. Plaintiff argues that it was necessary to amend the complaint to conform to the evidence under Pa.R.C.P. 1033 otherwise the case would have required remand to the Magisterial District Court, which would be inefficient. The Court agrees with Plaintiff. Pennsylvania Rule of Civil Procedure No. 1033 states in relevant part that "[a]n amendment may be made to conform the pleading to the evidence offered or admitted." The Court agrees that it was necessary to amend the complaint to conform to the evidence and to provide Judicial efficiency. Therefore, under the Pennsylvania Rules of Civil Procedure, the Court's granting of Plaintiff's Motion to Amend was proper.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of April 2008, the Court hereby **DISMISSES** the Defendants' January 18, 2008 Motion for Reconsideration of this Court's Opinion and Order of January 4, 2008.

By the Court,

Nancy L. Butts, Judge

xc: Joseph F. Orso, III, Esq.  
Jennifer B. Ayers, Esq.  
Hon. Nancy L. Butts, Esq.  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber, Esq. (LLA)