

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

AMY SMITH,	:	
	:	
Plaintiff	:	DOCKET NO. 11-02,084
	:	CIVIL ACTION – LAW
vs.	:	
	:	
DR. MUSA HINDI, M.D.,	:	
	:	
Defendant	:	

**ORDER**

AND NOW, this 8<sup>th</sup> day of August, 2012, following oral argument on Defendant’s Preliminary Objections to Plaintiff’s Complaint and Plaintiff’s Preliminary Objections to the Preliminary Objections of Defendant, it is hereby ORDERED and DIRECTED as follows:

1. Plaintiff’s preliminary objections are SUSTAINED in part and OVERRULED in part. In particular, Plaintiff’s objection as to Defendant’s preliminary objection as to Count II (statute of limitations) is SUSTAINED; Defendant’s preliminary objection as to Count II is STRICKEN. However, Plaintiff’s objection as to Defendant’s preliminary objection as to Count I (failure to exhaust administrative remedies) is OVERRULED; Defendant’s preliminary objection as to Count I is also OVERRULED without prejudice. The Court will address each of these issues in turn.
  - a. Regarding Plaintiff’s objection to Defendant’s objection raising the affirmative defense of the statute of limitations, Plaintiff’s objection is SUSTAINED. Defendant’s preliminary objection regarding the statute of limitations is STRICKEN. Pa. R.C.P. 1030 provides that “all affirmative defenses including... statute of limitations... shall be pleaded in a responsive pleading under the heading ‘New Matter.’” Our Commonwealth Court has held that if defendants raise the statute of limitations as a preliminary objection, plaintiffs may file

preliminary objections to defendants' objections raising that defense; if plaintiffs follow this procedure, trial courts should grant plaintiffs' preliminary objections, strike defendants' objection raising the statute of limitations, and instruct defendants to raise the affirmative defense in their new matter. *See Scavo v. Old Forge Borough*, 978 A.2d 1076, 1078 (Pa. Cmwlth. Ct. 2009). *See also Malia v. Monchak*, 543 A.2d 184 (Pa. Cmwlth. Ct. 1988) (as applied to the defense of immunity). Therefore, in this instance, the Court will grant Plaintiff's preliminary objection as to Defendant's objection raising the statute of limitations as a defense. If appropriate, Defendant shall raise this affirmative defense in his new matter, pursuant to Pa. R.C.P. 1030.

- b. Regarding Plaintiff's objection to Defendant's objection that Plaintiff failed to exhaust her administrative remedies, Plaintiff's objection is OVERRULED. This defense may be brought by the parties or by the Court at any time during the proceeding because it pertains to the Court's jurisdiction over the matter. *See Maryland Casualty Co. v. Odyssey Contracting Corp.*, 984 A.2d 750, 754 (Pa. Super. Ct. 2006). *See also Stoloff v. Nieman Marcus Group, Inc.*, 24 A.3d 366, 371 (Pa. Super. Ct. 2011). However, in regard to this matter, the Court does not believe that it has adequate facts before it to determine whether an administrative remedy exists for Ms. Smith. The Court believes that after the pleading is amended as further directed, the Court will have adequate facts before it to determine the validity of Defendant's objection. Therefore, the Court OVERRULES Defendant's objection, without prejudice.

2. Defendant’s preliminary objection as to Count III, regarding punitive damages, is OVERRULED without prejudice. Based upon the facts alleged in the Complaint, the Court believes that a claim for punitive damages may be appropriate in regards to Dr. Hindi’s alleged intentional outrageous conduct. *See generally Hutchinson v. Luddy*, 870 A.2d 766 (Pa. 2005) (explaining the standard governing punitive damages within the Commonwealth).
3. Defendant’s objection as to Count IV, regarding lack of specificity in Plaintiff’s claims for damages, is SUSTAINED. Pa. R.C.P. 1019 governs the pleading of damages. Pa. R.C.P. 1019(f) provides that “[a]verments of time, place and items of special damage shall be specifically stated.” In *Commonwealth v. Shipley Humble Oil Co.*, 370 A.2d 438 (Pa. Cmwlth. Ct. 1977), our Commonwealth Court held that the specificity requirements of Pa. R.C.P. 1019(a) may be applied to damages claims, even if the damages plead are not special damages, as provided for in Section (f) of the rule.<sup>1</sup> *Id.* at 441. In this instance, the Court believes that Plaintiff will not be unduly burdened by amending her damages claim. In her amended complaint, Plaintiff shall plead her damages with more specificity. Plaintiff shall file this amended complaint within twenty (20) days.

BY THE COURT,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard A. Gray, J.

cc: Laura Siegle, Esquire – 414 Hulmeville Avenue, Penndel, PA 19047  
David F. Wilk, Esquire  
Gary L. Weber, Esquire

<sup>1</sup> Pa. R.C.P. 1019(a) provides that “[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form.