



a period of time due to a pending Orphan's Court matter. *See* In Re: Estate of Bruce L. Vandine, Sr., Deceased, Lycoming County Docket No. 41-06-0405. However, following a December 2011 status conference, the Court ordered Defendants to file their answers and preliminary objections to the complaint by December 23, 2011; the Court scheduled oral arguments on these anticipated preliminary objections for February 8, 2012. During the holidays, the parties requested various continuances of these dates, which were granted by the Court. On February 9, 2012, upon agreement of the parties and in lieu of oral argument on the parties' preliminary objections, the Court issued an Order granting Plaintiffs leave to file an amended complaint within sixty (60) days.<sup>1</sup> Based upon that order, Plaintiffs should have filed an amended complaint by April 9, 2012. However, Plaintiffs did not file their amended complaint until May 9, 2012. At no time did Plaintiffs request leave of court for additional time to file their amended complaint.

On May 9, 2012, oral argument was scheduled on Defendant Bruce Vandine, Jr.'s Petition for Rule to Show Cause as to why he should not be dismissed from the action, as well as his preliminary objections regarding the doctrine of *lis pendens*.<sup>2</sup> At the time scheduled for this oral argument, counsel for Defendant Bruce Vandine, Jr., and the Court were personally served with Plaintiffs' amended complaint. After being served with the amended complaint, counsel for Defendant Bruce Vandine, Jr., orally notified the Court that he was going to file a motion to dismiss Plaintiffs' untimely complaint. On May 23, 2012, Defendant Bruce Vandine, Jr., filed Preliminary Objections to Plaintiffs' Amended Complaint filed on May 9, 2012. On May 30, 2012, the M&T Defendants filed Defendants' Motion to Strike Plaintiffs' Untimely Amended

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<sup>1</sup> This Court notes the Order was incorrectly dated January 8, 2012. However, the Order's signed and file-stamped dates indicate that the Order was signed and filed February 9, 2012.

<sup>2</sup> The Court heard oral argument on these motions at that time. In its May 31, 2012 order that disposed of those motions, the Court ordered the parties to follow the rules of civil procedure regarding any preliminary objections and answer to Plaintiffs' amended complaint.

Complaint and Precautionary Preliminary Objections.<sup>3</sup> The Court scheduled oral argument on these objections for July 18, 2012.

At the time scheduled for oral argument, Plaintiffs' counsel failed to appear. After waiting for Plaintiffs' counsel to appear, Defense counsel presented their arguments for the Court. At the close of oral argument, the Court granted leave for Defendants to file letter briefs regarding the dismissal of the action.

Additionally, at the time of oral argument, the Court was notified that the only defendant who was properly served with Plaintiffs' amended complaint was Defendant Bruce Vandine, Jr. After a review of the file, the Court notes that Plaintiffs did not file their Certificate of Service for their amended complaint until June 21, 2012. In that certificate of service, Plaintiffs' counsel certified that he mailed the amended complaint to counsel for those Defendants other than Bruce Vandine, Jr., on June 21, 2012.

On July 26, 2012, Plaintiffs' counsel acknowledged that he failed to appear for the July 18 argument date by facsimile to this Court. Plaintiffs agree with defense counsel that Defendants' motions to dismiss may be granted in the Court's discretion. Therefore, this Court GRANTS Defendants' motions to strike the amended complaint filed on May 9, 2012.

## **II. Discussion**

The Court may accept preliminary objections when a pleading fails to conform to a rule of law or rule of court. Pa. R.C.P. 1028(a)(2). The Court finds that Defendants' objections may be SUSTAINED and Plaintiffs' amended complaint STRICKEN on the basis of Plaintiffs'

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<sup>3</sup> This Court notes that the M&T Defendants were never properly served with the amended complaint prior to the oral argument date. *See* Defendants' Motion to Strike, pg. 5. Plaintiffs admitted to this allegation in their Response to Defendant's Motion to Strike Amended Complaint and Precautionary Preliminary Objections. Response, 4. Counsel for the M&T Defendants was notified by Defendant Bruce Vandine, Jr.'s counsel as to the filing of the amended complaint.

failure to comply with both rules of law and rule of court. The Court will address each of these issues in turn.

**a. Failure to Comply with Rule of Court**

In *Peters Creek Sanitary Auth. v. Welch*, 681 A.2d 167 (Pa. 1996), our Supreme Court addressed the conditions under which a trial court may grant a motion to strike an untimely pleading without abusing its discretion.<sup>4</sup> *Id.* at 170. In that case, the Supreme Court adopted our Superior Court’s standard as set forth in *Francisco v. Ford Motor Co.*, 580 A.2d 374 (Pa. Super. Ct. 1990). In particular, our Supreme Court held that “the trial court does not abuse its discretion in striking a pleading as untimely where it finds that a party’s blatant disregard for the time limits established by the Rules of Civil Procedure, without just cause for the delay, constitutes an abject indifference to the Rules.” *Peters Creek Sanitary Auth.*, 861 A.2d at 171.

The Court believes that this reasoning can be applied to time limits as established by orders of court as well as the Rules of Civil Procedure, and it finds that the holding applies to the instant matter. On February 9, 2012, the Court granted Plaintiffs leave to file an amended complaint within sixty (60) days. Plaintiffs failed to comply with the Court’s order. Instead, Plaintiffs filed an amended complaint ninety (90) days after the Court granted leave to re-file. At no time did Plaintiffs request this Court for additional time to file their amended complaint. At no time did Plaintiffs show just cause for their delay. In fact, Plaintiffs’ counsel failed to appear at oral argument the objections and motions currently before the Court. This Court finds that Plaintiffs failed to comply with an Order of this Court and that Plaintiffs did not provide this Court with just cause for their delay. Therefore, Plaintiffs’ amended complaint is DISMISSED for failure to comply with the Court’s February 9, 2012 Order.

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<sup>4</sup> The Supreme Court granted consideration of that case because the appellate courts had conflicting rulings in regard to this issue. *Peters Creek Sanitary Auth.*, 681 A.2d at 170.

**b. Failure to Comply with Law**

In addition to failing to comply with this Court's order, Plaintiffs have failed to comply with the Pennsylvania Rules of Civil Procedure, specifically Pa. R.C.P. 1019, relating to the contents of pleadings. Pa. R.C.P. 1019 provides that "[t]he material on which a cause of action... is based shall be stated in a concise or summary form." In the instant matter, Plaintiffs filed an amended complaint consisting of three hundred and twenty-eight (328) pages and one thousand one hundred and ninety-two (1192) paragraphs. The Court finds that Plaintiffs failed to comply with the rules of concise and summary pleading.

In *Hohensee v. Luger*, 412 A.2d 1111 (Pa. Cmwlth. Ct. 1980), our Commonwealth Court affirmed a trial court's dismissal of an amended complaint under similar circumstances. *Id.* at 1112. In that case, two taxpayers filed a complaint that named twenty-five (25) defendants and consisted of eight-eight (88) paragraphs. *Id.* at 1111. A month after filing the initial complaint, the taxpayers filed an amended complaint that named a total of eighty-six (86) defendants; the taxpayers filed this amended complaint without permission from the court or consent of opposing counsel. *Id.* Opposing counsel then filed preliminary objections on the basis of improper service and failure to comply with the Rules of Civil Procedure. *Id.* The trial court sustained the defendants' preliminary objections and dismissed the amended complaint. *Id.*

On appeal, the Commonwealth Court affirmed. *Id.* at 1112. Initially, the Commonwealth Court affirmed the dismissal of the claims against those defendants who were not properly served. *Id.* Then, the Commonwealth Court affirmed the dismissal of the claims against those served defendants based upon Pa. R.C.P. 1019. *Id.* The Commonwealth Court held that the taxpayers failed to meet the pleading requirements of Rule 1019. 412 A.2d at 1112. The Court noted that:

[t]he averments present such a confusing array of fragmented claims that no court could adjudicate them without undertaking to research and rewrite them in their entirety. The judicial role must be to adjudicate coherent claims, not to assume the burdens of the advocate or the litigant. Moreover, a pleading must be sufficiently specific to allow defendants to prepare their defense.

*Id.* Therefore, the Court affirmed the dismissal of the complaint against all defendants, due in part to the fact that plaintiffs already amended their complaint once in the lower court. *Id.* This language clearly characterizes the matter before this Court.

In the above-captioned matter, the Court has previously allowed Plaintiffs to amend. Plaintiffs' initial complaint consisted of two hundred and eighty-seven (287) pages and one thousand one hundred and ninety-two (1192) paragraphs. In their amended complaint, Plaintiffs still present a pleading that neither the Court nor opposing counsel can digest. In order to adjudicate Plaintiffs' complaints, the Court would be forced to research and rewrite the complaint in most of its entirety. Additionally, defense counsel argues that in no way can Defendants prepare a defense to the pleading; this Court agrees. Therefore, the Court dismisses the amended complaint filed on May 9, 2012.<sup>5</sup>

## **ORDER**

AND NOW, this 9<sup>th</sup> day of August, 2012, for the reasons stated above, it is hereby ORDERED and DIRECTED that Defendants' objections are SUSTAINED and motions are GRANTED. Plaintiffs' amended complaint is hereby STRICKEN and DISMISSED with prejudice, for failure to comply with the Court's February 9, 2012 Order, and the Pennsylvania Rules of Civil Procedure.

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<sup>5</sup> In addition to these defects, the Court notes that Plaintiffs failed to properly serve a number of the Defendants with their amended complaint. Also, Plaintiffs brought suit against a deceased individual, James A. Parks.

The proceeds of the annuity at issue (Preferred Performance Annuity number GA 19258377) shall not be disbursed until there is a final judgment or an appropriate order issued in the related Orphan's Court matter (In Re: Estate of Bruce L. Vandine, Sr., Deceased, Lycoming County Docket No. 41-06-0405).

BY THE COURT,

\_\_\_\_\_  
Date

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Richard A. Gray, J.

RAG/abn

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