

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HEATH A. DURRWACHTER,	:	CV-2011-01540
Plaintiff,	:	
vs.	:	CIVIL ACTION
	:	
THE EPISCOPAL CHURCH – DIOCESE OF	:	
CENTRAL PENNSYLVANIA; MARY ANN SMIDA;	:	
BARBARA R. MCLEMORE; JOSEPH SEVILLE;	:	
CENTURY 21 COLONIAL REAL ESTATE;	:	
PAUL A. FRANCIS III; JOHN STINE; and	:	
UNKNOWN CONTRACTORS OF JOHN STINE,	:	
Defendants.	:	
* * * * * * * * *	:	
JOHN D. STINE d/b/a STINE CONSTRUCTION,	:	CV-2012-03048
Plaintiff,	:	
vs.	:	CIVIL ACTION
	:	
EPISCOPAL DIOCESE OF	:	
CENTRAL PENNSYLVANIA,	:	
Defendant.	:	

OPINION AND ORDER

The above-captioned matters pertain to the repair of a roof over a property owned by Plaintiff Durrwachter (Durrwachter). This property consists of a refurbished church, formerly owned by Defendant Episcopal Diocese of Central Pennsylvania (Episcopal). Durrwachter alleges that in his agreement for sale with Episcopal regarding the church, Episcopal agreed to repair the property’s roof. Durrwachter provides that Episcopal employed Plaintiff/Defendant John Stine d/b/a Stine Construction (Stine) to complete this work. In his complaint, Durrwachter alleges that Stine did not complete the repairs to the roof in a workmanlike manner.

In Stine’s sister complaint, Stine alleges that Episcopal owes him the sum of \$10,950.00, for the repair work that he performed on the roof. In its answer to Stine’s complaint, Episcopal alleges that it has paid this sum to a settlement agent, Attorney Patricia Bowman. As a result of Durrwachter’s claim against Episcopal and Stine, the Court ordered the agent to retain the funds until the resolution of Durrwachter’s negligence action.

Presently at issue before the Court are three (3) sets of preliminary objections, a joint motion to release escrow, and a motion to consolidate. Following oral argument, the Court SUSTAINS Defendants' objections to Durrwachter's reinstated complaint and DISMISSES Durrwachter's reinstated complaint. Further, the Court GRANTS the joint motion to release escrow and DENIES the motion to consolidate.

I. Factual and Procedural Background

A brief factual and procedural history is as follows. On August 29, 2011, Durrwachter initiated this action by filing a complaint (the "initial complaint"). In his initial complaint, Durrwachter brought claims against Defendants sounding in breach of contract, quasi contract/unjust enrichment, negligence, fraudulent misrepresentation, and intentional interference with contractual relations. On November 9, 2011, the Court received preliminary objections from Stine, alleging that service was not effectuated pursuant to Pa. R.C.P. 400-402. On November 16, 2011, after reviewing the file and concluding that service was not properly effectuated under the Rules of Civil Procedure, the Court sustained Stine's objections and struck Durrwachter's August 29, 2011 complaint. The Court ordered Durrwachter to reinstate his complaint and effectuate service within twenty (20) days.

This matter was next brought before the Court, over a year later, on December 4, 2012. On that date, the Court held a conference on Attorney Bowman's Petition to Deposit Escrow Funds with Prothonotary Pending Resolution of Litigation. At the time of the conference, neither Durrwachter nor his counsel appeared. During the conference, counsel discussed Attorney Bowman's holding of the sum of \$10,950.00, in her escrow account pending a roof inspection of Durrwachter's property; this sum is the exact amount in controversy at the docket numbered CV-2012-03048 (pertaining to the payment due to Stine from the Episcopal for the roof repair). Following that conference, the Court issued an order, dated December 5, 2012, that

denied Attorney Bowman's request. Within that order, the Court provided: "Mr. Durrwachter is ADVISED that failure to reinstate his complaint [in] his proceeding may result in the disbursement of the escrowed funds in Mr. Stine's proceeding [CV-2012-03048]."

On June 11, 2013, Durrwachter reinstated his complaint.¹

On June 17, 2013, Stine and the Episcopal filed a Joint Motion to Release Escrow. In this motion, the parties requested that the Court release the escrowed amount to Stine.

Defendants Episcopal, Smida, McLemore, and Seville (collectively, "Defendants Episcopal") filed the initial set of preliminary objections to the reinstated complaint on July 5, 2013. On July 22, 2013, Stine filed preliminary objections. On August 5, 2013, Defendants Century 21 Colonial Real Estate & Paul A. Francis, III, (collectively, "Defendants Century") filed the third and final set of preliminary objections to the reinstated complaint. Each set of these objections raised a motion to strike the reinstated complaint for failure to conform with a Rule of Court pursuant to Pa. R.C.P. 1028(a)(2).

On July 26, 2013, Durrwachter filed a motion to consolidate the actions at CV-2011-01540 and CV-2012-03048, pursuant to Pa. R.C.P. 213(a).

On August 9, 2013, the Court held oral argument on Defendants' three (3) sets of preliminary objections, the joint motion to release escrow, and Durrwachter's motion to consolidate.

II. Discussion

In *Peters Creek Sanitary Auth. v. Welch*, 681 A.2d 167 (Pa. 1996), our Supreme Court outlined the applicable standard when considering a motion to strike; in that case, our Supreme Court provided:

¹ Durrwachter served Defendants Century 21 Colonial Real Estate and Paul Francis III, on June 21, 2013, and Defendant Stine, on July 9, 2013.

[w]hen a party moves to strike a pleading, the party who files the untimely pleading must demonstrate just cause for the delay. It is only after a showing of just cause has been made that the moving party needs to demonstrate that it has been prejudiced by the late pleading.

Id. at 170. *See also Gale v. Mercy Catholic Med. Ctr. Eastwick, Inc.*, 698 A.2d 647, 649-650 (Pa. Super. Ct. 1997). Prejudice includes a substantial diminution of the moving party's ability to present information if the case proceeded to trial. *Gale*, 698 A.2d at 650. With this standard in mind, the Court turns to the case at bar.

Instantly, Durrwachter has failed to provide the Court with just cause for his delay in filing his reinstated complaint. This Court struck Durrwachter's initial complaint on November 16, 2011, and ordered Durrwachter to reinstate his complaint and effectuate service within twenty (20) days. Again, on December 5, 2012, this Court advised Durrwachter that failure to reinstate his complaint would result in his case being dismissed and the escrowed funds being distributed to Stine. Nineteen (19) months after the Court's initial order, Durrwachter attempted to reinstate his complaint and effectuate service. The Court acknowledges that within these nineteen (19) months, Durrwachter experienced a change in trial counsel and, for a time, represented himself *pro se*. However, the fact that Durrwachter acted *pro se* for a few months of this time frame does not amount to just cause for filing an untimely reinstated complaint. *See Peters*, 681 A.2d at 171 n.5. Also, this Court is cognizant the right to amend pleadings should be construed liberally. *Halliday v. Beitz*, 514 A.2d 906, 909 (Pa. Super. Ct. 1986). However, this right is not absolute. *See id.* *See also Gorshin v. West*, 30 Pa. D. & C.4th 525 (Allegheny,

Mar. 12, 1996). Therefore, as a result of Durrwachter's failure to provide just cause for the nineteen (19) month delay in reinstating his complaint, the Court must sustain Defendants' motions to strike for failure to comply with the Court's November 16, 2013 Order.²

The Court enters the following Order.

ORDER

AND NOW, this 22nd day of August, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED as follows:

1. Defendants' preliminary objections to Plaintiff Durrwachter's reinstated complaint, filed June 11, 2013, are SUSTAINED.
2. Plaintiff Durrwachter's reinstated complaint, filed June 11, 2013, is DISMISSED with prejudice.
3. Plaintiff Durrwachter's Motion to Consolidate Actions Pursuant to Pa. R.C.P. 213(a) is DENIED.
4. Plaintiff Stine and Defendant Episcopal's Joint Motion to Release Escrow is GRANTED. Attorney Patricia Bowman is hereby ORDERED and DIRECTED to release the escrowed sum of \$10,950.00, to John D. Stine, d/b/a Stine Construction.
5. Within thirty (30) days of this date, Plaintiff Stine and Defendant Episcopal shall mark the docket at CV-2012-03048 as settled and discontinued as to all pending claims therein.

BY THE COURT,

Date

Richard A. Gray, J.

² Although Defendants were not required to demonstrate prejudice, Defendants Episcopal argued that they would be prejudiced in the event of a trial because, at this date, they cannot file a cross-claim of negligence against co-Defendant Stine due to the running of the statute of limitations on the negligence cause of action.

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