

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROSE'S AUTO BODY INC., Plaintiff,	:	No. CV-19-1177
	:	
vs.	:	CIVIL ACTION
	:	
CASEY MONGHAN, Defendant.	:	
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CASEY MONAGHAN, Plaintiff,	:	No. CV-19-1178
	:	
vs.	:	CIVIL ACTION
	:	
ROSE'S AUTO BODY, INC., Defendant.	:	<i>Preliminary Objections</i>
	:	<i>Motion to Stay, Seal, and</i>
	:	<i>Withdraw from Jury Trial</i>

OPINION & ORDER

AND NOW, following argument held October 28, 2019, on Casey Monaghan's ("Plaintiff") Motion to Stay the Proceedings, Motions to Seal Confidential Document, and Motion to Withdraw Motion for Jury Trial, and Rose's Auto Body's ("Defendant") Preliminary Objections to Plaintiff's Amended Complaint, the Court hereby issues the following Order.^{1,2}

Background

On April 10, 2019, Plaintiff was involved in an automobile accident in Hughesville, Pennsylvania. His vehicle underwent extensive damage. At the request of State police, Defendant towed the vehicle to its lot in Hughesville. Plaintiff subsequently made multiple attempts to contact Defendant in order to retrieve personal possessions stored within the vehicle. Defendant refused

¹ This Opinion and Order concerns two related cases in which the parties alternate procedural position. To avoid confusion, Casey Monaghan will be referred to as "Plaintiff" throughout, and Rose's Auto Body will be referred to as "Defendant".

² Casey Monaghan is unrepresented by counsel. He failed to appear at the October 28th hearing. The Court is satisfied that it has sufficient information to rule despite his absence.

access to the vehicle on the basis that Plaintiff had not paid Defendant the \$275 towing fee or daily storage costs. On May 13, 2019, Plaintiff filed a complaint in the Magisterial District Court, seeking recovery of the property within the vehicle.³ Defendant subsequently filed a cross-complaint for recovery of the towing fee and storage costs.⁴ On June 25, 2019, the Magisterial District Judge issued judgments in favor of Rose's Auto Body in both matters, and awarding damages of \$4,156.45 to Defendant.

The instant matter arrives before us with a rather convoluted procedural history. On July 24, 2019, Plaintiff initiated this action by filing Notices of Appeal from the judgments of the Magisterial District Judge. The appeals were filed under separate dockets: CV-19-1177 (captioned *Rose's Auto Body v. Monaghan*) and CV-19-1178 (captioned *Monaghan v. Rose's Auto Body*). The parties have subsequently submitted filings under one or both dockets. The Court will summarize these filings below. The majority of filings were submitted under docket CV-19-1178 or both dockets. The Court will indicate, when relevant, filings that were submitted solely under docket CV-19-1177.

After filing the Notices of Appeal, on August 9, 2019, Mr. Monaghan filed a Complaint ("Plaintiff's Complaint"). On August 14, 2019, under Docket CV-19-1177, Rose's Auto Body filed its own Complaint ("Defendant's Complaint"), which included a request for a jury trial. Mr. Monaghan then filed his own Motion for a Twelve-Juror Jury Trial on August 22, 2019. The Court issued an Order of Non-Compliance in response to this Motion due to Mr. Monaghan's failure to include contact information for both parties on his cover sheet. On September 23, 2019, rather than refile his Motion for a Jury Trial, Mr. Monaghan instead filed a Motion to Withdraw his Motion for a Jury Trial.

On September 17, 2019, Mr. Monaghan filed an Answer to Defendant's Complaint. He then filed a Motion to Stay the Proceeding on September 20, 2019, requesting that the Court stay its proceedings regarding Defendant's

³ Docket No: MJ-29303-CV-0000187-2019.

Complaint under CV-19-1177 (*Rose's Auto Body v. Monaghan*) pending disposition of Plaintiff's action under CV-19-1178 (*Monaghan v. Rose's Auto Body*).

On August 30, 2019, Rose's Auto Body filed Preliminary Objections to Plaintiff's Complaint. In response to the Preliminary Objections, on September 18, 2019, Mr. Monaghan filed an Amended Complaint. On October 10, 2019, Rose's Auto Body filed Preliminary Objections to Plaintiff's Amended Complaint.

Mr. Monaghan then filed two Motions to Seal Confidential Documents (respectively "Motions to Seal I and II") on October 14, 2019. Motion to Seal I demanded that the Court seal medical records included as Exhibit D to Plaintiff's Amended Complaint. Motion to Seal II demanded that the Court seal the same medical records attached to Defendant's Preliminary Objections to Plaintiff's Amended Complaint, and threatened sanctions. On October 28, 2019, Mr. Monaghan filed a Motion to Dismiss Defendant's Preliminary Objections to Plaintiff's Amended Complaint on the basis that, due to a typographical error, the Preliminary Objections were not mailed to Mr. Monaghan's address of record.⁵

I. *Preliminary Objections to Plaintiff's Amended Complaint*

Defendant's Preliminary Objections identify a multitude of deficiencies in Plaintiff's Amended Complaint.

A. Punitive Damages for Defamation

Defendant first objects that the Amended Complaint's demand for punitive damages is excessive, having risen over the course of several months from \$12,000 in total at the magistrate level to: \$15,000 for "egregious denial of

⁴ Docket No: MJ-29303-CV-0000193-2019.

⁵ The Court finds that, as Plaintiff's Motion to Seal II, filed prior to the Motion to Dismiss, directly addresses the content of the Preliminary Objections, it is clear that Plaintiff had actual notice of the Preliminary Objections and consequently did not suffer prejudice due to the typographical error. Therefore, Plaintiff's Motion to Dismiss the Preliminary Objections is DENIED.

property,” \$15,000 for “reckless illegal possession,” and \$1.8 million for “malicious slander and defamation of character, per se.”⁶

As discussed *infra*, the Court finds that Plaintiff has not presented a legally sufficient claim for recovery for defamation. Therefore, the Court finds that the issue of whether Plaintiff’s claim of \$1.8 million in punitive damages for defamation is legally excessive has been rendered MOOT.

B. Lack of Adherence to Proper Form

Defendant objects pursuant to the *Pennsylvania Rules of Civil Procedure* (Pa.R.C.P.) Rule 1028(a)(1), which allows preliminary objections to a lack of proper form, that Plaintiff’s Amended Complaint fails to adhere to the requirements of Pa.R.C.P. No. 1020(a) by failing to state a cause of action and failure to claim special damages in a separate count demanding relief.⁷

Defendant further objects that the Amended Complaint fails to comply with Pa.R.C.P. No. 1019(a) by failing to plead facts in a “concise and summary form.”⁸

The Court finds that Plaintiff has sufficiently established his claim for special damages in paragraphs 83 and 84 of his Amended Complaint, in which he itemizes the monetary value of his possessions within the towed vehicle. However, the Court concurs that Plaintiff’s 226 paragraph Amended Complaint is disorganized, obtuse, and rambling. The Amended Complaint provides in incredible detail both unnecessary and irrelevant background information.⁹

Despite the Amended Complaint’s extensive length, Plaintiff’s demands for relief remain imprecise. In particular, it is unclear from the manner in which the Amended Complaint is drafted whether “reckless illegal possession”¹⁰ and

⁶ Preliminary Objections to Plaintiff’s Amended Complaint ¶¶ 9-12 (Oct. 16, 2019) (“POs”).

⁷ POs ¶14.

⁸ POs ¶16.

⁹ This includes averments that are commonsensical (e.g. the factual averment of paragraph 185 that: “Milk is edible”) or which provide wholly irrelevant and redundant information (e.g. the statements in paragraphs 116-120 establishing that James P. Moran was elected to the United States House of Representatives).

¹⁰ Plaintiff’s Amended Complaint ¶ 131 (Sept. 18, 2019) (“Amended Complaint”).

“egregious denial of property”¹¹ are intended to represent separate or identical legal claims. Additionally, as discussed *infra*, the Amended Complaint fails to establish a cause of action upon which relief may be granted. The Court therefore SUSTAINS Defendants’ objection that the Amended Complaint as drafted fails to adhere to the proper form of a complaint.

C. Inclusion of Scandalous or Impertinent Matter

Defendant objects under Pa.R.C.P. 1028(a)(2), asserting that the Amended Complaint includes “scandalous or impertinent matter.”¹² Specifically, Defendant identifies Plaintiff’s discussion of the towing regulations in Reading, Pennsylvania,¹³ Plaintiff’s discussion of a survey conducted by the Property Casualty Insurers Association of America,¹⁴ Plaintiff’s discussion of the United States House of Representatives,¹⁵ Plaintiff’s citation to case law from various other jurisdictions,¹⁶ and Plaintiff’s discussion of common law liens¹⁷ as irrelevant to the case at hand.

The Court concurs that the Amended Complaint’s lengthy discussion of the laws and regulations of other jurisdictions constitutes legally extraneous information that merely serves to confuse the primary issue, which is whether the Plaintiff has a legal basis for his claim that Defendant committed a legal violation by towing Plaintiff’s damaged vehicle and thereafter preventing Plaintiff from recovering the contents within the vehicle. The Court also finds the Plaintiff’s discussion of Pennsylvania law relevant to liens is impertinent to the extent that the Amended Complaint does not in fact ask for relief from the \$4,156.45 in damages awarded to Defendant by the Magisterial District Judge for Defendant’s

¹¹ Amended Complaint ¶¶ 91.

¹² POs ¶19.

¹³ Amended Complaint ¶¶ 95-99, 102.

¹⁴ Amended Complaint ¶¶ 105-110.

¹⁵ Amended Complaint ¶¶ 111-124.

¹⁶ Amended Complaint ¶¶ 126, 129, 155.

¹⁷ Amended Complaint ¶¶ 141-157.

towing and storage costs.¹⁸ The Court therefore SUSTAINS Defendant's objection that the Amended Complaint as drafted contains extensive impertinent material.

D. Malicious Slander and Defamation of Character, Per Se

Defendant objects that Plaintiff's claim for defamation is legally insufficient pursuant to Pa.R.C.P. No. 1028(a)(4).¹⁹ Defendant points to the seven statutory factors that the Plaintiff has the burden of proving in order to succeed on a defamation claim.²⁰ Defendant objects that Plaintiff has failed to establish that he suffered special harm as a result of Defendant's allegedly defamatory statements. Defendant asserts that mere embarrassment or annoyance is insufficient; "a communication is considered defamatory if it tends to harm the reputation of another so as to lower him in the estimation of the community or to deter a third person from associating or dealing with him."²¹ Additionally, the Defendant cites the Pennsylvania Supreme Court's opinion in *Schanne v. Addis* for the proposition that a statement made to law enforcement officials in the course of an investigation enjoy an absolute judicial privilege and cannot form the basis of a defamation action.²² Defendant also argues that the only publication of

¹⁸ Plaintiff's September 17th Answer to Defendant's Complaint under docket CV-19-1177 (*Rose's Auto Body v. Monaghan*) is somewhat more specific on this issue, asserting in paragraphs 35 and 37 that the Defendant's claims for storage and tow fees are "invalid". However, none of Plaintiff's pleadings specifically reference the Magisterial District Judge's award of \$4,156.45 in damages to Defendant.

¹⁹ POs ¶ 36.

²⁰ 42 Pa.C.S.A. § 8343(a) ("In an action for defamation, the plaintiff has the burden of proving, when the issue is properly raised: (1) The defamatory character of the communication. (2) Its publication by the defendant. (3) Its application to the plaintiff. (4) The understanding by the recipient of its defamatory meaning. (5) The understanding by the recipient of it as intended to be applied to the plaintiff. (6) Special harm resulting to the plaintiff from its publication. (7) Abuse of a conditionally privileged occasion.").

²¹ POs ¶ 38.

²² POs ¶ 41. See *Schanne v. Addis*, 121 A.3d 942, 947 (Pa. 2015) (finding that a judicial privilege provides immunity to communications that "is absolute, meaning that, where it attaches, the declarant's intent is immaterial even if the statement is false and made with malice.").

the allegedly defamatory statement comes from Plaintiff's attachment of Officer Williams' Incident Report to the Amended Complaint.²³

While, the Court finds that Defendant's statement to Officer Williams would constitute "publication" under the slander framework of defamation,²⁴ the Court also finds that Defendant's statement to Officer Williams would be subject to judicial privilege. Defendant's statements to officer Williams were made in the course of Plaintiff's investigation into retrieving his possessions from the towed vehicle.²⁵ Alternately, Defendant's statements to officer Williams precipitated his own claim against Plaintiff for non-payment of towing and storage fees.²⁶

The Court declines to rule on whether the Amended Complaint sufficiently establishes a special harm to the Plaintiff. Instead, the Court SUSTAINS Defendant's objection on the basis that Defendant's statement to officer Williams in reference to Plaintiff's alleged narcotics use would be privileged under Pennsylvania law.

E. Punitive Damages for "Egregious Denial of Property" and "Reckless Illegal Possession"

Finally, Defendant objects under Pa.R.C.P. No. 1028(a)(4) that the Amended Complaint is deficient as a matter of law in establishing that he is entitled to punitive damages for his claims of "egregious denial of property" and "reckless illegal possession."²⁷ Defendant asserts that the Amended Complaint has failed to plead facts demonstrating that Defendant's conduct was malicious,

²³ POs ¶¶ 43-44.

²⁴ See *Elia v. Erie Ins. Exchange*, 430 Pa. Super. 384, 391 (Pa. Super. 1993), appeal denied 644 A.2d 1200 (Pa. 1994) ("[I]n order for publication to occur in the form of either libel or slander, the defamatory statement must be published or communicated to a third party.").

²⁵ See *Pawlowski v. Smorto*, 588 A.2d 36, 41 (Pa. Super. 1991) (holding that privilege extends to "statements made to law enforcement officials for the purposes of persuading those officials to initiate criminal proceedings.").

²⁶ See *Marino v. Fava*, 915 A.2d 121 (Pa. Super. 2006) (holding that Mario Fava's allegedly false statements to police when applying to have his nephew, Vincent Marino, involuntarily committed to a psychiatric institution were subject to judicial privilege).

²⁷ POs ¶ 60.

wanton, reckless, willful, or oppressive, as required in a claim for punitive damages.²⁸

The basis for Plaintiff's causes of action are imprecisely alleged. Following review of the Amended Complaint, it appears that Plaintiff seeks punitive damages on the basis that Defendant's illegal seizure of his property violated his Fourteenth Amendment Due Process rights. To establish a Fourteenth Amendment Due Process claim Plaintiff would need to demonstrate that Defendant's denial of access to the possessions within the vehicle constituted a "state action."²⁹ Plaintiff appears to allege that Defendant's removal and storage of his vehicle constituted state action because Defendant towed Plaintiff's damaged vehicle at the request of state police pursuant to 75 Pa.C.S.A. § 3745.1(c),³⁰ and because Defendant sought compensation for towing and storage costs pursuant to 75 Pa.C.S.A. § 3757(a).^{31, 32}

This does not appear to be an issue directly addressed by the Pennsylvania state courts. Certain federal courts have ruled that the towing and impoundment of a vehicle pursuant to state statute constitute a state action.³³

²⁸ POs ¶ 56 (citing *Feld v. Merriam*, 485 A.2d 742, 747-48 (Pa. 1984)).

²⁹ *U.S. v. Price*, 383 U.S. 787, 799 (1966) ("As we have consistently held [t]he Fourteenth Amendment protects the individual against state action, not against wrongs done by individuals.") (citations omitted).

³⁰ 75 Pa.C.S.A. § 3745.1(c) ("A police officer may immediately remove or direct removal of a wrecked vehicle if the owner or operator cannot remove the wrecked vehicle or refuses or fails to have the vehicle removed as required under this section.").

³¹ 75 Pa.C.S.A. § 3757(a) ("Notwithstanding any other law or regulation, any entity incurring the cost of removing a vehicle or cargo at an accident scene if the removal is authorized by a police officer shall have the unqualified right to compensation for the cost of removal and cargo storage and cleanup from the owner of: 1. A vehicle removed. 2. A vehicle, the cargo of which was removed in whole or in part. 3. The cargo removed.").

³² See Amended Complaint ¶¶ 136-151.

³³ See *Remm v. Landrieu*, 418 F. Supp. 542 (E.D. La. 1976) (finding that state ordinances that authorized a police officer or other "duly authorized person" to tow and impound a vehicle and obtain tow fees from the vehicle owner implicated Fourteenth Amendment due process rights); *Clement v. City of Glendale*, No. 05-56692, 2008 WL 638360 (9th Cir. March 11, 2008) (ruling that under the Fourteenth Amendment, police officer was required to give notice to owner of illegally parked car before requesting it towed, but further ruling that officer was immune from liability for performing discretionary functions that did not violate a clearly established constitutional right, and similarly ruling that the towing company was not liable because it was acting under the direction of the police.).

However, a violation of due process involves a deprivation of life, liberty, or property without *prior notice, hearing, or judicial order*.³⁴ Nowhere in his Amended Complaint does Plaintiff allege that he lacked proper notice that his vehicle would be towed, only that he “never assented to the tow.”³⁵ Additionally, Plaintiff had the opportunity to litigate Defendant’s claim for damages before the Magisterial District Court. The Amended Complaint’s failure to properly plead a due process violation for the illegal seizure of property negates any recovery for damages, whether compensatory or punitive. Therefore, the Court SUSTAINS Defendant’s objection.

II. Plaintiff’s Motions to Seal

The Court next addresses Plaintiff’s Motions to Seal I and II. Motion to Seal I demands that the Court seal medical records that Plaintiff initially attached as “Exhibit D” to his Amended Complaint. Motion to Seal II demands that the Court seal these same medical records, which Defendant attached as “Exhibit A” to its Preliminary Objections, and threatens sanctions.³⁶

The *Pennsylvania Administrative Code* identifies medical records as confidential records that shall be filed with a “Confidential Document Form” cover sheet.³⁷ A court has the authority, upon motion or its own initiative, to order medical records filed without a “Confidential Document Form” cover sheet sealed, and to issue sanctions on a party filing medical records without the aforementioned cover sheet.³⁸ However, the choice to seal documents and to issue sanctions remains within the discretion of the court.

³⁴ See *Montgomery County Tax Claim Bureau v. Mermelstein Family Trust*, 836 A.2d 1010, 1014 (Pa. Commw. 2003) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)) (“It is a cornerstone of our legal system that persons will not be deprived of their property without notice and an opportunity to be heard.”).

³⁵ Plaintiff’s Amended Complaint ¶ 137 (Sept. 18, 2019).

³⁶ Exhibit A reprints Plaintiff’s Amended Complaint in its entirety.

³⁷ 204 Pa. Code § 213.81(8)(A)(3).

³⁸ 204 Pa. Code § 213.81(8)(F).

In the instant matter, Plaintiff was responsible for initially filing his own medical records without a “Confidential Document Form” cover sheet. Plaintiff also discusses the content of these medical records in his Amended Complaint.³⁹ As Plaintiff is responsible for making the forgoing records public, the Court finds no basis to order them sealed. For the same reasons, the Court declines to issue sanctions upon Defendant for refileing the records. Therefore, Plaintiff’s Motions to Seal I and II are DENIED.

III. Plaintiff’s Motion for Stay

The Court next addresses Plaintiff’s Motion to Stay the Proceedings under *Rose’s Auto Body, Inc. v. Monaghan* (CV-19-1177) during the pendency of *Monaghan v. Rose’s Auto Body, Inc.* (CV-19-1178). This Court has “the inherent power to stay the proceedings in one case during the pendency of another case which may resolve or moot the case which has been stayed.”⁴⁰

The Court chooses to address the overlap between the two pending actions in another manner. When separate pending actions in a county involve a common question of law or fact, or that arise from the same transaction or occurrence, a court upon its own motion may order the actions consolidated.⁴¹ The Court finds this solution would be most equitable to both parties and would help avoid unnecessary cost or delay.

The Court hereby DENIES Plaintiff’s Motion for Stay. Instead, the Court ORDERS that *Rose’s Auto Body, Inc. v. Monaghan* (CV-19-1177) and *Monaghan v. Rose’s Auto Body, Inc.* (CV-19-1178) be CONSOLIDATED under *Monaghan v. Rose’s Auto Body, Inc.* (CV-19-1178). All subsequent filings shall be submitted under docket CV-19-1178. Should the instant matter proceed to trial, Defendant’s Complaint will be regarded as a counter-claim to Plaintiff’s initial claim.

³⁹ Amended Complaint ¶¶ 195-196.

⁴⁰ *Gwynedd Props., Inc. v. Bd. of Sup’rs of Lower Gwynedd Twp.*, 635 A.2d 714, 718 (Pa. Commw. 1993).

IV. Plaintiff's Motion to Withdraw Motion for Jury Trial

The Court will finally address Plaintiff's Motion to Withdraw his Motion for Jury Trial. The Court notes that Defendant's Complaint included a request for jury trial. Under the *Pennsylvania Rules of Civil Procedure* either party has the right to make a timely demand for a jury trial.⁴² Additionally, a demand for a jury trial may not be withdrawn without the consent of all parties to the action.⁴³ As Defendant has made a timely request for a jury trial in this consolidated action, and because Defendant has not consented to allow Plaintiff to withdraw his request, the Court hereby DENIES Plaintiff's Motion to Withdraw his Motion for Jury Trial.

Conclusion

Based on the foregoing above, the Court DENIES Plaintiff's Motion to Dismiss Preliminary Objections. The Courts deems Defendant's preliminary objection to the Amended Complaint's punitive damages claim for defamation MOOT. The Court SUSTAINS Defendant's preliminary objections to: (1) the Amended Complaint's lack of adherence to proper form; (2) the Amended Complaint's inclusion of impertinent material; (3) the legal insufficiency of the Amended Complaint's defamation claim; and (4) the legal insufficiency of the Amended Complaint's punitive damages claim for the "egregious denial of property" and "reckless illegal possession." The Court DENIES Plaintiff's Motions to Seal I and II. The Court DENIES Plaintiff's Motion for Stay, and instead ORDERS that the two pending proceedings be CONSOLIDATED under *Monaghan v. Rose's Auto Body, Inc.* (CV-19-1178). The Court DENIES Plaintiff's Motion to Withdraw Motion for Jury Trial.

⁴¹ Pa.R.C.P. No. 213(a).

⁴² Pa.R.C.P. No. 1007.1(a).

⁴³ Pa.R.C.P. No. 1007.1(c)(1).

The Court instructs Plaintiff that he shall have thirty (30) days from the issuance of this Order, by December 26, 2019, to file a Second Amended Complaint addressing the deficiencies in the Amended Complaint.

IT IS SO ORDERED this 26th day of November 2019.

BY THE COURT:

Eric R. Linhardt, Judge

ERL/cp

cc: Casey Monaghan

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