

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

CAROL J. BAYSORE,
Plaintiff

vs.

MARIA BENDER,
Defendant

: **NO. CV-19-0308**
:
:
: **CIVIL ACTION - LAW**
:
:
: **Preliminary Objections**

OPINION AND ORDER

AND NOW, this 3rd day of February, 2020, after argument, held on January 16, 2020, on the Defendant’s Preliminary Objections, filed on November 12, 2019, to the Plaintiff’s 4th Amended Complaint, that was filed on November 1, 2019, the Court issues the following Opinion and Order.

The Defendant sets forth three (3) separate but unnumbered preliminary objections to the Plaintiff’s 4th Amended Complaint. The first Preliminary Objection alleges the Plaintiff failed to conform to the Rules of Court pursuant to Pennsylvania Rule of Civil Procedure (Pa.R.C.P.) 1028 (a)(2). The Preliminary objection contains two separate and distinct claims. First, the Defendant claims the Plaintiff violated Pa.R.C.P. 1022 by not properly numbering the paragraphs of the complaint and containing multiple allegations within the same paragraph. To support this claim, the Defendant alleges the Plaintiff’s complaint “contains two (2) numbered paragraphs and several unnumbered paragraphs each containing multiple allegations”. See Defendant’s Preliminary Objections ¶ 19. A quick review of the Plaintiff’s 4th Amended Complaint reveals this allegation is inaccurate. The Plaintiff’s 4th Amended Complaint contains nine (9) numbered paragraphs and no unnumbered paragraphs. Several of the paragraphs within the 4th Amended Complaint do contain more than one allegation. However, the Rules of Court do not require a strict one allegation per paragraph. Instead, the Rules of Court state “Each paragraph shall contain as far as practicable only one material allegation.” Pa.R.C.P. 1022. The paragraphs in the Plaintiff’s 4th Amended Complaint may contain multiple averments of facts but only raise one *material* allegation. Further, the nature of the way the Plaintiff’s 4th Amended Complaint is drafted,

the Plaintiff has provided the Defendant with sufficient notice of the facts being relied upon by the Plaintiff for her claims against the Defendant. In reality, the Plaintiff's 4th Amended Complaint gives greater detail and specificity than is required under the Rules of Court. Therefore, the Defendant's Preliminary Objection for failing to comply with Pa.R.C.P. 1022 is DENIED.¹

The second part of Defendant's first Preliminary Objection is based upon the Plaintiff's failure to attach the verification statement required under Pa.R.C.P. 1024 to the Plaintiff's 4th Amended Complaint. The Defendant's position is accurate on this fact. Therefore, the Defendant's Preliminary Objection on this basis is SUSTAINED and the Plaintiff is required to file the appropriate verification in accordance with Pa.R.C.P. 1024 within thirty (30) days of the date of this Order.

The second Preliminary Objection raised by the Defendant is a claim that the Plaintiff's claims must be dismissed because no cause of action exists against the Defendant (demurrer) due to the fact the Defendant is not in possession of the real property located at 444 South Market Street, South Williamsport, Pennsylvania, which is adjacent to the property the Plaintiff alleges was damaged by work directed by the Defendant. The Defendant's argument is the Defendant could not be legally responsible for damage done to the Plaintiff's property because she was not in possession of the adjacent property. The Defendant's argument fails for several reasons. First, it is an issue of fact to be determined at trial if the Defendant was in possession of the property at 444 South Market Street at the times relevant to the Plaintiff's claims. While the Defendant relies upon an Article of Agreement that the Defendant entered into with her daughter and son-in-law to argue that the real property has been transferred to them, there is no Deed on record evidencing such a transfer. Thus, who has legal or equitable ownership of the real property is an issue of fact for determination at trial. Additionally, even if the ownership of the real property at 444 South Market Street is resolved, that fact does not, in of itself, eliminate potential legal liability on the Plaintiff's claims. The Plaintiff's claims are based upon the Defendant having hired and/or directed a third party to do work on 444 South Market Street property

¹ The court notes that while the Defendant objects to the Plaintiff including more than one allegation with a paragraph, the Defendant has raised two separate preliminary objections within one preliminary objection.

that damaged the Plaintiff's property. The Plaintiff's cause of action does not require ownership of 444 South Market Street property as an element of the claim. While ownership and control of 444 South Market Street property may be factors at trial, they are not undisputed facts that are the proper basis for a Preliminary Objection. Therefore, the Defendant's Second Preliminary Objection (Demurrer) is DENIED.

The Defendant's final Preliminary Objection alleges the Plaintiff has failed to aver her claims with sufficient specificity pursuant to Rule 1019(f). Specifically, the Defendant claims the Plaintiff fails to identify the basis for the amount of the damages in the Complaint. The Plaintiff's claim for damages in the Complaint is generic and does not state the basis for the amount stated. Therefore, the Plaintiff's Complaint fails to provide sufficient specificity of the basis for the damages. However, the Plaintiff did attach to her response to the Preliminary Objections a copy of an invoice for work to be done to correct the damage alleged to have been done to her property. Furthermore, at the argument on the Preliminary Objections, the Plaintiff clarified that the damages were based upon the attached invoice and the Plaintiff's filing fees at the Magisterial District Judge's Office. The Plaintiff's failure to specify the basis for the calculation of the damages has for practical purposes been remedied. In order to correct the record, the Defendant's Preliminary Objection on this grounds will be SUSTAINED but the Plaintiff is granted leave to file an amended complaint with the damages itemized and to attach the documentation previously submitted with the response to the Preliminary Objections within thirty (30) days of the date of this Order.

ORDER

AND NOW, this 3rd day of February, 2020, the Court hereby ORDERS as follows:

1. The Defendant's Preliminary Objection based upon a failure to conform to the Rules of Court related to the numbering of paragraphs within the Complaint is DENIED.
2. The Defendant's Preliminary Objection based upon a failure to conform to the Rules of Court related to the failure to attach a Verification is SUSTAINED. The Plaintiff is directed to file the required Verification within thirty (30) days of the date of this Order.

3. The Defendant's Preliminary Objection for failure to state a cause of action (demurrer) is DENIED.
4. Defendant's Preliminary Objection based upon an insufficient pleading is SUSTAINED. The Plaintiff is granted leave to file an amended complaint with the damages itemized and to attach the documentation previously submitted with the response to the Preliminary Objections within thirty (30) days of the date of this Order.

BY THE COURT,

Ryan M. Tira, Judge

cc: Carol Baysore – 442 S Market St, South Williamsport, PA 17702
Douglas N. Engelman, Esquire
Gary L. Weber, Esquire, Lycoming Reporter