

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

CAVALRY SPV I, LLC, AS ASSIGNEE :	:	
OF CITIBANK, N.A.,	:	
Plaintiff	:	NO. CV-20-0694
	:	
vs.	:	CIVIL ACTION
	:	
TERRY L. SNYDER,	:	Motion for Judgment
Defendant	:	on the Pleadings

OPINION

This matter is before the Court on a Motion for Judgment on the Pleadings filed by Defendant. By way of background, Plaintiff's Complaint was filed on July 10, 2020 and reinstated on October 9, 2020. It was served personally on the Defendant on October 14, 2020, giving Defendant until November 3, 2020 to file a responsive pleading. Attorney Mary Kilgus entered her appearance on behalf of the Defendant on October 29, 2020.¹ Defendant's Motion for Judgment on the Pleadings was filed December 21, 2020. Defendant has not filed any other pleadings responsive to the Complaint. Argument on Defendant's motion was held this date.

Counsel for Defendant states that a Motion for Judgment on the Pleadings was filed instead of Preliminary Objections to Plaintiff's Complaint because she was retained after the twenty (20) day deadline to respond to a Complaint, pursuant to Pa.R.C.P. 1026(a). Counsel for Plaintiff argues simply that a Motion for Judgment on the Pleadings at this stage in the case is simply procedurally incorrect. The Court agrees.

¹ Attorney Kilgus' Entry of Appearance is docketed November 4, 2020, but the Certificate of Service attached to the Entry of Appearance is dated October 29, 2020.

Counsel for Defendant is correct that Pa.R.C.P. 1026 provides for twenty (20) days to file a pleading after the Complaint is served.² This Rule also specifically provides that “[a]dditional time within which to plead may be sought under Rule 248,” which states, “The time prescribed by any rule of civil procedure for the doing of any act may be extended or shortened by written agreement of the parties or by order of court.” Pa.R.C.P. 1026 (*Note*) and Pa.R.C.P. 248. Finally, regarding motions for judgment on the pleadings, Rule 1034 states that “[a]fter the relevant pleadings are closed . . . any party may move for judgment on the pleadings.” Pa.R.C.P. 1034(a).

In the present case, it is clear that the pleadings have not been closed. In fact, there has been no pleading filed in response to the Plaintiff’s Complaint, including an answer with new matter or preliminary objections. The only pleading filed after the Complaint was served was Defendant’s Motion for Judgment on the Pleadings, which is not a responsive pleading, making the timing of the motion procedurally inappropriate. Additionally, Counsel’s argument that she was not retained by the Defendant in time to file a responsive pleading is both irrelevant and, frankly, incorrect. Failure to timely retain counsel is no excuse for failing to timely file a pleading responsive to the Complaint and provides no justification for filing a motion for judgment on the pleadings prior the pleadings closing. In fact, the rules of civil procedure explicitly state that the time to file a pleading may be extended by agreement. Even so, assuming Counsel for Defendant was retained on the same date as her Entry of Appearance was

² “[E]very pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading” Pa.R.C.P. 1026(a).

dated, October 29, 2020, Defendant would have had five (5) days to file a pleading responsive to the Complaint or request an extension from Counsel for Plaintiff and/or the Court. Because the Court finds that the filing of Defendant's Motion for Judgment on the Pleadings is procedurally incorrect, the Court will not address the motion on the merits and will dismiss the motion.

ORDER

AND NOW, this **21st** day of **January, 2021**, upon consideration of Defendant's Motion for Judgment on the Pleadings, for the reasons set forth above, it is hereby **ORDERED** that Defendant's Motion is **DENIED**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: David Apothaker, Esq./Kimberly Scian, Esq.

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