

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

**REBECCA HETHERINGTON,  
Plaintiff**

**vs.**

**CRAIG MASKER and PENNY MASKER,  
Defendants**

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**NO. 21-0011**

**CIVIL ACTION – LAW**

**OPINION**

This matter is before the Court on a Petition to Open/Strike Default Judgment filed by Defendants on July 20, 2021 and a Motion for Sanctions filed by Plaintiff on August 20, 2021. For the reasons set forth below, the Petition to Open/Strike Default Judgment is denied and the Motion for Sanctions is granted.

**I. Factual and Procedural Background**

This landlord tenant action commenced with the filing of a Complaint on January 20, 2021 following an appeal taken by Defendants from the Magisterial District Judge ruling. The Complaint named Rebecca Hetherington as the sole Plaintiff. On February 8, 2021, Defendants filed Preliminary Objections, the first objection stating that Plaintiff lacks standing. On February 19, 2021, Plaintiff filed an Amended Complaint adding Walter Beitz as a Plaintiff, with whom Defendants entered into a lease. The filing of the Amended Complaint rendered the Preliminary Objections moot.<sup>1</sup>

On March 19, 2021, Defendants filed Preliminary Objections to Plaintiff's first Amended Complaint, again objecting on the basis of standing and arguing

that Plaintiff, Walter Beitz, does not have standing because Mr. Beitz no longer had any interest in the property or claims against Defendants. In response, Plaintiff filed a second Amended Complaint on March 26, 2021 removing Mr. Beitz as a Plaintiff, and again rendering the Preliminary Objections moot.

The second Amended Complaint alleges, among other things, that the prior owner of the property at which Defendants resided entered into a verbal agreement with Plaintiff for the sale of the property, which was later conveyed formally to Plaintiff by way of Deed. *See Second Amended Complaint at Paragraphs 12 and 16.* A formal notice to Defendants was sent on September 30, 2020 informing them that their lease would terminate effective October 19, 2020. *See Second Amended Complaint at Paragraphs 13 and 14.* Since August of 2019, Defendants have failed to pay rent on time or at all and continue to reside at the property. *See Second Amended Complaint at Paragraphs 7 and 17-18.*

Upon receiving no Answer to the Complaint or other permitted responsive pleading under the Rules of Civil Procedure, Plaintiff filed a Praecipe to Enter Default Judgment against Defendants on May 3, 2021. Defendants' Petition to Open/Strike Default Judgment was filed July 20, 2021 wherein Defendants argue that the Default Judgment should not have been issued and was obtained fraudulently due to Plaintiff's lack of standing.

In response, Plaintiff filed a Motion for Sanctions on the basis that Defendants' allegations contained in their Petition are "blatantly factually false, and grossly misleading." *See Plaintiff's Motion at Paragraph 6(a).* Plaintiff asks

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<sup>1</sup> The Honorable Eric R. Linhardt also issued an Order on March 2, 2021 noting that the

for a dismissal of Defendants' Petition and sanctions against Defendants and their Counsel, noting that "Defendants' collective errors, omissions, and falsehoods are so apparent and easily discoverable through any reasonable investigation as to appear to be purpose [sic] built to intentionally harass the Plaintiff for exercising her legal rights." See *Plaintiff's Motion at Paragraph 9*.

Argument on both filings was held on November 18, 2021 at which time Charles Campbell, III, Esquire appeared on behalf of the Plaintiff and Mary Kilgus, Esquire appeared on behalf of the Defendants.

## **II. Petition to Open/Strike Default Judgment**

A party seeking to open the default judgment must establish the following three elements, and if a defendant fails to establish each of them, a trial court cannot open the default judgment based on the "equities" of the case:

- (1) the petition to open or strike was promptly filed;
- (2) the default can be reasonably explained or excused; and
- (3) there is a meritorious defense to the underlying claim.

*Castings Condo. Ass'n, Inc. v. Klein*, 663 A.2d 220, 222–23 and 225 (Pa. Super. 1995) (internal citations omitted).

The Court will address each prong below as it relates to this case.

### **a. Prompt Filing**

"The timeliness of a petition to open judgment is measured from the date that notice of the entry of the default judgment is received. The law does not establish a specific time period within which a petition to open a judgment must be filed to qualify as timely. Instead, the court must consider the length of time

between discovery of the entry of the default judgment and the reason for delay.” *Castings*, 663 A.2d at 223 (internal citations omitted). The Superior Court has consistently held that time periods of less than three (3) months between notice of the entry of the default judgment and the filing of the petition were untimely and the Supreme Court has held that a period of two and one-half weeks was not prompt. *Id.* at 223; *McCoy v. Public Acceptance Corporation*, 451 Pa. 495, 305 A.2d 698 (1973). See, *i.e.*, *Pappas v. Stefan*, 304 A.2d 143 (Pa. 1973) (fifty-five days); *Quatrochi v. Gaiters*, 380 A.2d 404 (Pa. Super. 1977) (sixty-three days); *Schutte v. Valley Bargain Center, Inc.*, 375 A.2d 368 (Pa. Super. 1977) (forty-seven days).

Here, Plaintiff filed her Praecipe to Enter Default Judgment on May 3, 2021 and Defendants’ Petition to Open was not filed until July 20, 2021 – 78 days after the Praecipe. Clearly, based on the case law set forth above, the filing of Defendants’ Petition was untimely.

#### **b. Reasonable Explanation**

Since the Court has found that Defendants have failed to meet the first prong of the three prong test, an analysis of the following two prongs is unnecessary. However, in the interest of maintaining a record, the Court will provide a short discussion.

“The appellate courts have usually addressed the question of legitimate excuse in the context of an excuse for failure to respond to the original complaint in a timely fashion.” *US Bank N.A. v. Mallory*, 982 A.2d 986, 995 (Pa. Super. 2009). Courts have found a reasonable explanation on the part of defendants where the defendant is without fault. *Id.* at 996. See, *i.e.*, *Stephens v.*

*Bartholomew*, 220 A.2d 617 (pa. 1966) (defendant delivered complaint to his attorney in a timely fashion, but attorney neglected to read it); *Balk v. Ford Motor Co.*, 285 A.2d 128 (Pa. 1971) (counsel forwarded complaint to defendant's insurance company, but insurance company lost all relevant papers); *Flynn v. America West Airlines*, 742 A.2d 695, 699 (Pa. Super. 1999) (“[W]here the failure to answer was due to an oversight, an unintentional omission to act, or a mistake of the rights and duties of the appellant, the default judgment may be opened.”).

Here, the Court was not provided *any* explanation as to why Defendants failed to answer the second Amended Complaint, as there is no reasoning set forth in the Petition and Defendants did not testify at the time of the hearing on their Petition. The Court notes that Defendants did obtain legal counsel, who filed both sets of Preliminary Objections on their behalf, but was given no explanation as to what occurred between the filing of the second Amended Complaint and the filing of the Petition to Open/Strike Default Judgment, which was filed by a different legal counsel. Therefore, the Defendants have not met the second prong.

### **c. Meritorious Defense**

Finally, in order to succeed on opening a default judgment, a defendant must present a meritorious defense to the underlying claim. Here, Defendants argue that their defense is Plaintiff's lack of standing. However, this issue was specifically raised in Defendants' second set of Preliminary Objections, to which Plaintiff filed a second Amended Complaint. Upon the filing of that Amended Complaint, the Preliminary Objections became moot and Defendants were required to either file an Answer to the Complaint or a third set of Preliminary

Objections. Pa.R.C.P. 1028(c)(1) (“A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.”). The Defendants’ prior objections had been factually addressed and Defendants failed to respond. For these reasons, Defendants have failed to establish the third prong of the test.

### III. Motion for Sanctions

Plaintiff argues that her Motion for Sanctions should be granted because 1) Defendants’ Petition was not verified as required by Rule 206.3<sup>2</sup>; 2) Defendants have failed to raise any grounds for relief; and 3) Defendants cannot meet any of the above three prongs.

When a pleading is signed, the person signing it “certifies that, to the best of that person’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances, it is not being presented for any improper purpose, such as to harass or to **cause unnecessary delay** or needless increase in the cost of litigation . . . .” Pa.R.C.P. 1023.1(c)(1) (emphasis added). If the Court determines that this rule has been violated, it has the discretion to impose an appropriate sanction for the violation. Pa.R.C.P. 1023.1(d).

In regard to Plaintiff’s points two and three, the Court finds that the Defendants have, through two sets of legal counsel, attempted to delay the matter without any claim that they would prevail on the merits. The Court holds that Defendants’ actions were improper and done solely to impede the judicial

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<sup>2</sup> “A petition or an answer containing an allegation of fact which does not appear of record shall be verified.” Pa.R.C.P. 206.3.

process without a reasonable basis. The Court hereby sanctions Defendants with a fine of \$250.00 to be paid within sixty (60) days of the date of this Order and which shall be paid directly to Plaintiff's Counsel.

#### **IV. Conclusion**

In sum, the Court finds that Defendants have not only failed to meet all three of the prongs set forth above but also that they have caused unnecessary delay in these proceedings.

**ORDER**

**AND NOW**, this **6<sup>th</sup>** day of **December, 2021**, upon consideration of Defendants' Petition to Open/Strike Default Judgment, and for the reasons set forth above, the Petition is **DENIED**. Additionally, for the reasons set forth above, Plaintiff's Motion for Sanctions is **GRANTED** to the following extent:

Within sixty (60) days of the date of this Order, Defendants shall pay \$250.00 directly to Plaintiff's Counsel.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

CC: Mary Kilgus, Esq.  
Charles Campbell, III, Esq.  
Gary Weber, Esq.  
Alexandra Sholley – Judge Tira's Office