

COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

PAUL R. STETTS,
Plaintiff

vs.

CHRISTOPHER M. CAMACHO,
Defendant

: NO. 20-0860

:
:

: CIVIL ACTION

:
:

: *Preliminary Objections to*
: *New Matter*

ORDER

AND NOW, following argument held January 27, 2021, on Plaintiff's Preliminary Objections to Defendant's New Matter, the Court hereby issues the following ORDER.

By Civil Complaint filed on October 2, 2020, Plaintiff Paul R. Stetts ("Plaintiff") alleges that on November 8, 2018, at approximately 6:34 p.m., he was driving his 2006 Chevrolet Malibu west on Washington Boulevard in Loyalsock Township, Lycoming County Pennsylvania. He avers that at the same time, Defendant Christopher M. Camacho ("Defendant") was driving his 2007 GMC Envoy north on Shiffler Avenue in Loyalsock Township, Lycoming County, Pennsylvania. The Complaint avers that Defendant failed to yield at a stop sign located at the intersection of Washington Boulevard and Shiffler Avenue and pulled out in front of Plaintiff's vehicle, precipitating an accident. The Complaint alleges one count of Negligence against Defendant for failure to yield to Plaintiff who had the right-of-way, and for speeding.

On November 30, 2020, Defendant filed an Answer and New Matter to Plaintiff's Complaint. On that same date, Plaintiff filed Preliminary Objections to Defendant's New Matter along with a Brief in Support, contending that Defendant's New Matter was objectionable for failing to plead the material facts supportive of his affirmative defenses as required under Pa.R.C.P. 1019.¹ As Plaintiff notes within his Preliminary Objections, in *Barnes v. Williamsport, Petroleum Inc.*, this Court affirmed this County's prior *en banc* ruling in *Allen v. Lipson* that "affirmative defenses pled within new matter unsupported by material facts should. . .be stricken upon objection."²

¹ Pa.R.C.P. 1019(a) ("The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.").

² *Barnes v. Williamsport Petroleum, Inc.*, No. 20-0092, 2020 WL 8372264, at *1 (Lyco. Cty. Oct. 06, 2020).

Within Defendant's Brief in Opposition, filed on January 13, 2021, Defendant avers that New Matter paragraphs 24, 34, 35, and 36 may be properly stricken, as these provisions all contain defenses that cannot be waived for a failure to plead.³ Defendant has also agreed to withdraw paragraphs 26, 30, 38. Defendant provides that while the Court may provisionally dismiss the defenses raised in paragraphs 25, 27, 28, 29, 37, 40, 41, and 42 for want of factual support, he wishes to reserve the right to replead these defenses if during the course of discovery, sufficient facts are revealed that support these defenses. Defendant specifically avers that he has pled paragraph 39, raising the defenses of res judicata and collateral estoppel, so as not to waive those defenses pursuant to Pa.R.C.P. 1030.⁴ Finally, Defendant asserts that paragraphs 34, 35, and 36, which all raised defenses under the Pennsylvania Motor Vehicle Financial Responsibility Law ("PMVFRL"),⁵ are sufficiently specific to put Plaintiff on notice of the defenses raised in these paragraphs.⁶

The Court notes that the power of a party to amend pleadings under Pa.R.C.P. 1033, either with the consent of the adverse party or by leave of court, may apply to

³ See Pa.R.C.P. 1030(b) ("The affirmative defenses of assumption of the risk, comparative negligence and contributory negligence need not be pleaded."); Pa.R.C.P. 1032(a) ("A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except a defense which is not required to be pleaded under Rule 1030(b), the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the objection of failure to state a legal defense to a claim, the defenses of failure to exercise or exhaust a statutory remedy and an adequate remedy at law and any other nonwaivable defense or objection.").

⁴ Pa.R.C.P. 1030(a) ("Except as provided by subdivision (b), all affirmative defenses including but not limited to the defenses of accord and satisfaction, arbitration and award, consent, discharge in bankruptcy, duress, estoppel, failure of consideration, fair comment, fraud, illegality, immunity from suit, impossibility of performance, justification, laches, license, payment, privilege, release, res judicata, statute of frauds, statute of limitations, truth and waiver shall be pleaded in a responsive pleading under the heading "New Matter". A party may set forth as new matter any other material facts which are not merely denials of the averments of the preceding pleading.").

⁵ See Pa.C.S.A §§ 1701.1 *et. seq.*, as amended.

⁶ These paragraphs aver:

31. Pursuant to the applicable provision of the PMVFRL, Plaintiffs is precluded from pleading, introducing into evidence, proving or recovering the amount of benefits paid or payable under said law.

32. Plaintiff has elected the limited tort alternative, and Plaintiff's alleged injuries as not serious as defined by the PMVFRL; consequently, Plaintiff is precluded from recovering for pain and suffering by the applicable provisions of that law.

33. Plaintiff is the owner of a currently registered motor vehicle and does not have financial responsibility as defined by the PMVFRL. Further, Plaintiff's alleged injuries are not serious as defined by that law; consequently, [P]laintiff is precluded from recovering damages for pain and suffering by the applicable provisions of that law.

responsive pleadings.⁷ Further, a defendant may amend new matter to assert a defense otherwise subject to waiver so long as the amendment does not unduly prejudice the plaintiff.⁸

Upon review, the Court determines that Defendant's New Matter raises largely "boilerplate" defenses to the pleadings without supportive facts. The Court therefore SUSTAINS Plaintiff's Preliminary Objections IN PART. The Court STRIKES paragraphs 24 through 30 and paragraphs 34 through 42 of Defendant's New Matter. Defendant shall be without prejudice to seek leave of Court to amend New Matter, when and if appropriate, once further discovery has been conducted. Such requests for amendment will be liberally granted.

The Court further holds that paragraphs 31 through 33 of Defendant's New Matter, which aver violations of various provisions of the PMVFRL, are sufficiently specific as to the material facts relied upon to enable Plaintiff to adequately respond. Therefore, these provisions shall not be stricken. Plaintiff shall file a Reply to paragraphs 31 through 33 of Defendant's New Matter within twenty (20) days of the date of this ORDER.

IT IS SO ORDERED this 24th day of February 2021.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/crp

cc: Thomas Waffenschmidt, Esq.

Thomas P. Clark, Esq. / 5165 Campus Dr., Ste. 200, Plymouth Meeting, PA 19462

Gary Weber, Esq. / Lycoming Reporter

Defendant's Answer and New Matter to Plaintiff's Complaint ¶¶ 31-33 (Nov. 30, 2020).

⁷ See e.g., *E.O.J., Inc. v. Tax Claim Bureau of Schuylkill Cty.*, 780 A.2d 814, 817 (Pa. Commw. 2001) (applying Pa.R.C.P. 1033 and holding that defendant would be granted leave to file an amended answer); see also Pa.R.C.P. 1033(a) ("A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.").

⁸ See *id.* at 818 (allowing defendant to file amended answer raising the affirmative defense of statute of limitations after finding that plaintiff would not be unduly prejudiced by the amendment).