

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WOLVERINE LAND CO.,	:	No. 21-0619
Plaintiff	:	
	:	
vs.	:	Civil Action – Law
	:	
JUSTIN CHEESBORO and	:	<i>Preliminary Objections</i>
ANNA BURKHARDT,	:	
Defendants	:	

**ORDER**

AND NOW, following argument on October 15, 2021 on Defendant Anna Burkhardt’s Preliminary Objections, the Court hereby issues the following ORDER.

**Background**

Defendant Anna Burkhardt (“Defendant”) commenced this action on June 25, 2021 by filing a counseled Notice of Appeal from a judgment in a residential landlord/tenant action issued by Magisterial District Judge Aaron Biichle on June 16, 2021.<sup>1</sup> MDJ Biichle found for Plaintiff Wolverine Land Co. and against Defendant and Justin Cheesboro, awarding Plaintiff possession of the property, \$580 in damages, and costs. Along with the Notice of Appeal, Defendant filed a Praecepto to Enter Rule to File Complaint and Rule to File against Plaintiff.

On July 16, 2021, Plaintiff filed a Complaint, signed by “Scott R. Stieler, Pres. Wolverine Land Co.” The Complaint consisted solely of a caption and two hand-written averments: “Tenant must vacate property” and “Tenant must pay for damage to property and back rent.”

On August 17, 2021, Defendant filed Preliminary Objections to the Complaint. The first preliminary objection is for lack of jurisdiction and failure to conform to law or

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<sup>1</sup> Although the Notice of Appeal filed by Defendant preserves both Defendants from the MDJ Judgment in the caption, Defendant Justin Cheesboro has not separately appealed nor filed any docket entry.

rule of court.<sup>2</sup> The second preliminary objection is for insufficient specificity.<sup>3</sup> The third preliminary objection is in the nature of a demurrer.<sup>4</sup> Defendant's Preliminary Objections included two exhibits: Plaintiff's Complaint, and an online records search demonstrating that "Wolverine Land Company, LLC" is organized as a Pennsylvania limited liability company. By Order of August 20, 2021, this Court ordered Plaintiff to file a response to the preliminary objections within twenty days, and scheduled argument for October 15, 2021. Plaintiff did not file any response, and did not appear at the time scheduled for argument; counsel for Defendant did appear.

### **First Preliminary Objection**

Defendant's first preliminary objection raises two grounds, lack of jurisdiction and failure to conform to law or rule of court, both related to Plaintiff's Complaint being filed by its President, Scott Stieler. Defendant argues that, under Pennsylvania law, an LLC such as Plaintiff may only proceed in a court of common pleas through a licensed attorney, and requests that the Complaint be dismissed with prejudice for lack of jurisdiction and non-conformity with law. As discussed herein, the Court agrees with Defendant's contention that Plaintiff may not file pleadings or otherwise act in the Lycoming County Court of Common Pleas except through licensed counsel, but does not believe that dismissal is warranted.<sup>5</sup>

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<sup>2</sup> Pennsylvania Rule of Civil Procedure 1028(a)(1) allows a preliminary objection for "lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint." Rule 1028(a)(2) allows a preliminary objection for "failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter."

<sup>3</sup> Rule 1028(a)(3) allows a preliminary objection for "insufficient specificity in a pleading."

<sup>4</sup> Rule 1028(a)(4) allows a preliminary objection for "legal insufficiency of a pleading (demurrer)."

<sup>5</sup> "Even where a trial court sustains preliminary objections on their merits, it is generally an abuse of discretion to dismiss a complaint without leave to amend." *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa. Super. 1982). Generally, "[d]ismissal of a complaint on preliminary objections should occur only in cases which are clear and free from doubt." *Highland Sewer and Water Authority v. Forest Hills Mun. Authority*, 797 A.2d 385, 388 (Pa. Cmwlth. 2002). Of course, the Court may not overlook a lack of jurisdiction. However, the Court will strive to avoid the harsh remedy of dismissal whenever possible, especially at the pleading stage.

In 1984, the Superior Court of Pennsylvania brought Pennsylvania into conformity with “[t]he federal courts and the courts of [its] sister states” in holding that, generally, “a corporation may appear in court only through an attorney at law admitted to practice before the court.”<sup>6</sup> Although the Supreme Court of Pennsylvania “has not directly addressed the issue,” Justice Eakin noted in 2007 that the “law is clear” in that regard.<sup>7</sup> The purpose of this rule “is not the protection of stockholders but the protection of the courts and the administration of justice, and that a person who accepts the advantages of incorporation for his... business must also bear the burdens, including the need to hire counsel to sue or defend in court.”<sup>8</sup> This general rule applies even to corporations with a single shareholder.<sup>9</sup>

In 2017, the Superior Court explicitly confirmed that this rule applies to LLCs, because “the advantages which [the LLC] form affords [its members] are similar to the advantages of a corporation.”<sup>10</sup> The Court noted that numerous other jurisdictions have held as much, because “other similar business entities, like corporations, partnerships, and associations, must be represented by counsel in court” and “the LLC corporate form shields LLC members from the LLC’s liabilities... because an LLC is a legal entity distinct from its members.”<sup>11</sup> Like with corporations, this rule applies to single-shareholder LLCs.<sup>12</sup>

Defendant argues that the Superior Court’s decision in *David R. Nicholson, Builder, LLC v. Jablonski* requires dismissal.<sup>13</sup> In *Jablonski*, the plaintiff, an LLC, filed a complaint before a Magisterial District Judge, who ruled in favor of the defendants. The LLC’s sole member, Mr. Nicholson, filed a *pro se* appeal on the LLC’s behalf in the court of common pleas. The defendants filed preliminary objections, averring that “Mr. Nicholson could not appear in the court of common pleas on behalf of [the LLC] because he is not an attorney; and the court did not have jurisdiction over the appeal

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<sup>6</sup> *Walacavage v. Excell 2000, Inc.*, 480 A.2d 281, 284 (Pa. Super. 1984)

<sup>7</sup> *Harkness v. Unemployment Compensation Bd. Of Review*, 920 A.2d 162, 172 (Pa. 2007) (Eakin, J., dissenting).

<sup>8</sup> *Walacavage*, 480 A.2d at 284.

<sup>9</sup> *Id.*

<sup>10</sup> *David R. Nicholson, Builder, LLC v. Jablonski*, 163 A.3d 1048, 1054 (Pa. Super. 2017).

<sup>11</sup> *Id.* at 1052-53.

<sup>12</sup> *Id.*

<sup>13</sup> *David R. Nicholson, Builder, LLC v. Jablonski*, 163 A.3d 1048 (Pa. Super. 2017).

because Mr. Nicholson's *pro se* filings in the court of common pleas were legal nullities."<sup>14</sup>

The Superior Court agreed that Mr. Nicholson was not permitted to represent the LLC. The Court, noting that "[i]n a civil action, the court lacks jurisdiction to consider the claims raised by non-attorneys," held that, in order to perfect its appeal in the court of common pleas, the LLC was required to file a timely complaint.<sup>15</sup> Because the only document the LLC filed was a *pro se* complaint that had no legal effect, the LLC failed to perfect its appeal. The Court explained that, as an "appeal [from a decision of a Magisterial District Judge] is subject to the Pennsylvania Rules of Civil Procedure only after the appellant perfects the appeal," the LLC's complaint "could not be 'amended' under Rule 1028 of the Pennsylvania Rules of Civil Procedure because the benefit of Rule 1028 would not be available to [the LLC] in this case until **after** [it] had properly perfected its appeal with the filing of a **timely** counseled complaint."<sup>16</sup>

The Court believes that the instant case is distinguishable from *Jablonski*. In *Jablonski*, the LLC was the appellant from the MDJ decision, and the LLC's filing of a valid, counseled complaint was an unwaivable prerequisite to the court having jurisdiction to entertain the appeal in any manner. In the instant case, Plaintiff is the appellee from the MDJ decision below. The appeal is properly before the Court; it was perfected by Defendant's filing of the Notice of Appeal and Rule to File Complaint. The Court is thus not constrained by a lack of jurisdiction over the entire proceeding. As this matter is subject to the Pennsylvania Rules of Civil Procedure, the Court may order the filing of an amended complaint pursuant to Rule 1028(e).

For the reasons stated, the Court finds that Plaintiff's Complaint is not in conformance with law, as an LLC may proceed in a court of common pleas only through a licensed attorney. Therefore, the Court SUSTAINS Defendant's First Preliminary Objection. Plaintiff shall have twenty (20) days to file a counseled Amended Complaint.

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<sup>14</sup> *Id.* at 1050.

<sup>15</sup> *Id.* at 1055.

<sup>16</sup> *Id.* at 1055, 1056 (emphasis in original).

### **Second Preliminary Objection**

Defendant's second preliminary objection alleges insufficient specificity. Defendant notes that, in a landlord-tenant action, the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges require a complaint to plead, at a minimum, facts concerning the parties' identities; the location, address, and ownership status of the property at issue; whether notice was provided; the status of the lease; and the amount of rent, if any, outstanding. Defendant also notes that Plaintiff has not attached a copy of a lease or any other document to the Complaint, nor has it otherwise explained the relationship between the parties.

Pennsylvania Rule of Civil Procedure 1019 requires a complaint to state "[t]he material facts on which a cause of action... is based...." The two-line Complaint filed in this case is plainly inadequate to satisfy that standard. Therefore, the Court SUSTAINS Defendant's Second Preliminary Objection. Plaintiff shall have twenty (20) days to file a counseled Amended Complaint that pleads sufficient facts for the Court to determine the relationship between the parties, the location and status of the property at issue in the case, whether there is a written or oral lease agreement between the parties, and any other information necessary to state a cause of action with specificity.

### **Third Preliminary Objection**

Defendant's third preliminary objection is in the nature of a demurrer and is premised on the same grounds as her second preliminary objection.

The Court agrees that, because the Complaint is devoid of factual averments, it fails to state a cause of action. Therefore, the Court SUSTAINS Defendant's Third Preliminary Objection. Plaintiff shall have twenty (20) days to file a counseled Amended Complaint that pleads sufficient facts for the Court to determine the relationship between the parties, the location and status of the property at issue in the case, whether there is a written or oral lease agreement between the parties, and any other information necessary to state a cause of action with specificity.

**Conclusion**

Defendant's Preliminary Objections are SUSTAINED. Plaintiff shall have twenty (20) days from the date of this Order to file a counseled<sup>17</sup> Amended Complaint that pleads sufficient facts to state a cause of action and allow the Court to determine the relationship between the parties, the location and status of the property at issue in the case, whether there is a written or oral lease agreement between the parties, and any other information necessary to state a cause of action with specificity.

IT IS SO ORDERED this 24<sup>th</sup> day of November 2021.

By the Court,

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Eric R. Linhardt, Judge

ERL/jcr

cc: Scott R. Stieler

*PO Box 31, Lewisburg, PA 17837*

Kathleen Raker, Esq.

Gary Weber, Esq. (Lycoming Reporter)

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<sup>17</sup> That is, the Complaint must be filed by an attorney licensed to practice in Pennsylvania.