

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

TD BANK, USA, N.A., Plaintiff	: NO. 21-0599
	:
vs.	: CIVIL ACTION - LAW
	:
TINAMARIE E. MUNSELL, Defendant	:

ORDER

AND NOW, this 7th day of March, 2022, before the Court is Plaintiff's Motion to Reinstate Appeal from Magisterial District Court Pursuant to Rule 1006, filed on November 10, 2021. Argument on the Motion was held on March 4, 2022, at which time Patricia Bowman, Esquire, appeared as local counsel for the Plaintiff and John Person, Esquire, appeared on behalf of the Defendant.

This case commenced on May 14, 2021, with Plaintiff's filing of a Complaint in Magisterial District Court seeking to recover the unpaid balance of a credit card account. Following the filing of a Notice to Defend, a hearing took place on June 9, 2021, which resulted in a ruling in favor of Defendant. On June 18, 2021, Plaintiff filed a Notice of Appeal and on July 2, 2021, filed a Proof of Service as required by Rule 1005. On July 14, 2021, Plaintiff filed a Complaint in the Lycoming County Court of Common Pleas. On August 4, 2021, Defendant filed a Praecipe to Strike Appeal pursuant to Magisterial District Judge Rule 1006, for failure to file a proof of service of the notice of the notice of appeal within 10 days after the filing of the notice. The Order Striking Appeal was docketed on August 5, 2021. The instant Motion was filed by Plaintiff on November 10, 2021,

wherein it acknowledged that it failed to file proof of service within 10 days of appeal as required under Rule 1005; however, it alleged that Defendant suffered no prejudice by the delay.

Plaintiff argues that its proof of service was filed within 3 weeks of the filing of the Notice of Appeal and, while late, the delay was not extraordinary in length or intentional. Plaintiff urges the Court to reinstate the appeal pursuant to Pa.R.Civ.P.M.D.J. 1006, which permits the Court of Common Pleas to reinstate an appeal upon good cause shown. Plaintiff argues that Rule 1006 should be read in *pari material* with Pa.R.Civ.P. 126, which provides “The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.”

This is not a case of the Plaintiff timely serving the Notice of Appeal on Defendant and merely failing to file a proof of service within 10 days. Here, the Notice of Appeal was not served until July 2, 2021, 14 days after its filing. Additionally, while the phrase “good cause shown” has not been precisely defined, [the Superior Court] has interpreted it to require an appealing party to proffer some legally sufficient reason for reinstating the appeal. Anderson v. Centennial Homes, Inc., 594 A.2d 737, 739 (Pa.Super. 1991). Appellant has not satisfied the good cause requirement for reinstatement. In fact, Appellant provided no explanation for its noncompliance and instead, seeks to have its noncompliance disregarded because Plaintiff has “suffered no prejudice.” As recognized by the

Superior Court, “simply stating that the ... noncompliance did not substantially affect the rights of the [adverse party] is not alone sufficient to demonstrate good cause to reinstate the appeal.” Id. at 740.

ORDER

AND NOW, this 7th day of **March, 2022**, Plaintiff’s Motion to Reinstate Appeal from Magisterial District Court Pursuant to Rule 1006 is **DENIED**.

BY THE COURT,

RYAN M. TIRA, JUDGE

Cc: Andrew Condiles, Esquire – 170 South Independence Mall West, Suite 874,
Philadelphia, PA 19106
John Person, Esquire – North Penn Legal Services
Gary Weber, Esquire
Jennifer E. Linn, Esquire