

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LEO M. WILLIAMS, JR. : No. CV-22-0775
 :
 VS :
 :
 EDITH LYNNE DUNLAP :
 :

OPINION

AND NOW, this 1st day of December, 2022, this matter came before the Court for argument on Defendant’s Preliminary Objections to Plaintiff’s Complaint. During argument, counsel for Defendant withdrew the filed demurrer, and argued in favor of Defendant’s Preliminary Objections in the nature of a Motion to Strike paragraphs 11, 23, 25, 33, 34, 35, 36 and 37 as scandalous and impertinent matter.

“Preliminary objections may be filed by any party to any pleading... [for] failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter.” Pa.R.C.P. 1028. Ordinarily, allegations in a pleading will not be stricken merely because they are irrelevant. “To be scandalous and impertinent, a complaint’s allegations must be immaterial and inappropriate to the proof of the cause of action.” *Environmental Resources v. Peggs Run Coal Company*, 55 Pa.Cmwlth. 312, 320, 423 A.2d 765 (1980), citing *Brennan v. Smith*, 6 Pa.Cmwlth. 342, 299 A.2d 683 (1972). “... [A] motion to strike should be overruled unless a party can affirmatively show prejudice. *Goehring v. Harleysville Mut. Cas. Co.*, 73 Pa. D. & C.2d 784, 788 (Pa. Com. Pl. 1976). “[T]he right to strike impertinent matter should be sparingly exercised ... And where the matter is impertinent but not injurious, it need not be stricken.” *Id.* at 789 (citing *Southeastern Pennsylvania Transportation Authority v. Philadelphia Transportation Company*, 38 Pa. D. & C.2d 653, 656 (Pa. Com. Pl. 1965)).

A scandalous allegation “bears cruelly on the moral character of an individual, states anything which is contrary to good manners, or anything which is unbecoming to the dignity of the court to hear, or which charges some person with a crime, not necessary to be shown in the cause.” *Universal Film Exchanges, Inc. v. Budco, Inc.*, 44 Pa. D. & C.2d 695, 713 (Pa. Com. Pl. 1968). Allegations that are material and necessary to a plaintiff’s case are not legally scandalous. *DeMeo v. Bullock*, 55 Pa. D. & C.2d 789, 792 (Pa. Com. Pl. 1972). A motion to strike a scandalous allegation is not a “remedy for the over sensitive but a means by which the unnecessarily cruel or purely irrelevant can be excised from the pleadings.” *Martha R. Sharkus*

& John A. Sharkus & Frances Riloff v. Blue Cross of Greater Philadelphia & Thomas Jefferson Univ. Hosp., No. NO. 5242., 1983 WL 265392 (Pa. Com. Pl. Feb. 23, 1983).

Paragraphs 11, 23, and 25 of the Complaint do not rise to the level of scandalous or impertinent matter. Paragraph 11 alleges “Meanwhile [Defendant] had spent the previous 24 hours planning a vicious attack on [Plaintiff] and laid in wait for him at the bottom of French Settlement Road. Paragraph 23 alleges that “Initially, [Plaintiff] thought [Defendant] had a gun in her right hand and feared for his life.” Paragraph 25 alleges that “[Plaintiff] immediately was unable to see and experienced intense burning of his eyes and face, leaving him to believe the substance was acid.” While Plaintiff need not prove these allegations in order to prevail on the merits, the Court does not regard these allegations as personally injurious to the Defendant, or unbecoming to the dignity of the Court.

Paragraphs 33 through 37, allege the filing of criminal charges against the Defendant arising out of the same incident, Defendant’s plea of *nolo contendere* to at least some of those charges, and an outstanding order for payment of restitution. Not only is proof of those allegations unnecessary to Plaintiff’s claim, the alleged evidence is inadmissible in this proceeding. “A plea of *nolo contendere*, when accepted by the court, is, in its effect upon the case, equivalent to a plea of guilty. It is an implied confession of guilt only, and cannot be used against the defendant as an admission in any civil suit for the same act.” *Commonwealth v. Ferguson*, 44 Pa.Super. 626, 628 (Pa.Super. 1910).

For the reason more fully set forth above, Defendant’s Preliminary Objections are granted in part and denied in part. Paragraphs 33 through 37 of the Complaint are stricken. The balance of Defendant’s Preliminary Objections are denied, and the Defendant is directed to file an Answer to the Complaint within twenty (20) days of the date of filing of this Order.

By The Court,

William P. Carlucci, Judge

cc:
Matthew Chabal, III, Esquire
Matthew Deimer, Esquire
WPC