

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

US BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS
INDIVIDUAL CAPACITY BUT
SOLELY AS OWNER TRUSTEE
FOR VRMTG ASSET TRUST,
Plaintiff,

vs.

BETTY J. MOREHART,
Defendant.

No. CV 23-00,596

CIVIL ACTION

FILED
LYCOMING COUNTY
2025 AUG -7 PM 3:00
THOMAS D. HEAP
PROTHONOTARY/
CLERK OF COURTS

OPINION AND ORDER

AND NOW, this 7th day of August, 2025, upon consideration of the Plaintiff's motion to amend writ of execution (the "Motion"),¹ Plaintiff's brief in support ("Plaintiff's Brief"),² and the arguments of the parties,³ it is hereby ORDERED and DIRECTED that the Motion is GRANTED, as explained below.

I. BACKGROUND.

Plaintiff US Bank National Association commenced this action against Defendant Betty J. Morehart by complaint in mortgage foreclosure (the "Complaint"),⁴ filed on June 5, 2023. The Complaint alleges that Defendant is the owner and mortgagor of certain real property located at 800-802 Wildwood Boulevard, Williamsport, Lycoming County, Pennsylvania (the "Property"); that Defendant made, executed and delivered a mortgage upon the Property to Mortgage

¹ "Plaintiff's Motion to Amend Writ of Execution Nunc Pro Tunc Pursuant to Pa. R.C.P. 1033 and Pa. R.C.P. 3118," filed March 25, 2025.

² "Plaintiff's Memorandum of Law in Support of Its Motion to Amend Writ of Execution Nunc Pro Tunc Pursuant to Pa. R.C.P. 1033 and Pa. R.C.P. 3118," filed March 25, 2025.

³ The Court heard argument on the Motion on May 23, 2025. Scheduling Order dated March 27 and entered March 28, 2025. Attorney Mark L. Taylor, Esq. appeared for the Plaintiff, and Defendant appeared *pro se*.

⁴ Plaintiff's "Complaint in Mortgage Foreclosure," filed June 5, 2023.

Electronic Registrations Systems, Inc., as nominee for Quicken Loans, Inc. on May 21, 2009 (the "Mortgage"); that the mortgage was assigned to Plaintiff by an assignment of mortgage recorded April 10, 2023; that Plaintiff is the current owner and holder of the Mortgage; that the Mortgage is in default by virtue of Defendant's failure to make payments when due; that this is an action *in rem* only; and the Plaintiff sent all required notices prior to commencing it.⁵

On September 5, 2023, a judgment by default was entered against the Defendant in the amount of \$105,007.33.⁶ Plaintiff praeciped for a writ of execution on September 15, 2023, and a writ was issued that same day (the "Writ of Execution").⁷ Plaintiff moved to reassess damages on December 26, 2023,⁸ and on February 7, 2023 the Court entered an Order reassessing Plaintiff's damages to \$117,753.37.⁹

On March 25, 2025, Plaintiff filed the instant Motion to amend its Writ of Execution.¹⁰ Plaintiff's Motion alleges that the collateral Property on the Mortgage is properly identified by address and tax ID numbers listing two separate parcels; that the Complaint properly identifies the property by address; that the Writ of Execution properly identifies the property by address and tax ID numbers listing two separate parcels; that the Property was sold by the Lycoming County Sheriff back to the Plaintiff, at a sale conducted May 3, 2024, for \$55,000.00; that when the Sheriff's Office prepared a draft deed into Plaintiff and upon review by Plaintiff's Counsel,

⁵ *Id.*

⁶ Plaintiff's "Praeipice to Enter Default Judgment," filed September 5, 2023; "Notice" of entry of default judgment, filed September 5, 2023.

⁷ Plaintiff's "Praeipice for Writ of Execution (Mortgage Foreclosure)," filed September 15, 2023; "Writ of Execution (Mortgage Foreclosure)," filed September 15, 2023.

⁸ "Plaintiff's Motion to Reassess Damages," filed December 26, 2023.

⁹ "Order," dated and entered February 7, 2023.

¹⁰ See, *supra*, n.1.

Plaintiff's counsel discovered that the metes and bounds description of the Property was incomplete, encompassing only the parcel at 800 Wildwood Blvd and omitting the parcel at 802 Wildwood Blvd.¹¹ Plaintiff asks the Court, *nunc pro tunc*, for an Order amending the Writ of Execution to include the complete metes and bounds description of the Property so that the Sheriff can issue a deed into the Plaintiff accurately describing the complete Property.¹²

II. LAW AND ANALYSIS.

Plaintiff argues that Rule 1033, Pennsylvania Rules of Civil Procedure, which governs amendments to pleadings, permits a party, either by filed consent of the adverse party or by leave or court, to "change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading" at any time;¹³ that whether to permit an amendment is within the sound discretion of the trial court;¹⁴ that amendments are liberally allowed so that cases will be decided on their merits;¹⁵ that the right to amend a pleading should be liberally granted at any stage in the proceedings unless the amendment is against a positive rule of law or unfairly prejudices the rights of the opposing party;¹⁶ that Rule 3118 vests this Court with the authority to grant the relief Plaintiff seeks;¹⁷ and that the relief sought by Plaintiff is not contrary to a rule and law and will not prejudice any party.¹⁸

¹¹ Motion, ¶¶ 3-11.

¹² *Id.*, ¶ 12.

¹³ *Id.*, ¶ 14 (citing Pa. R. Civ. P. 1033(a)); Plaintiff's Brief, at 3.

¹⁴ Motion, ¶ 15 (citing *Mistick Inc. v. City of Pittsburgh*, 646 A.2d 642, 644 (Pa. Commw. 1994)); Plaintiff's Brief, at 3.

¹⁵ Motion, ¶ 16 (citing *Meyers v. Volvo Cars of North America*, 852 A.2d 1221, 1229 (Pa. Super. 2004); *Carpitella v. Consolidated Rail Corp.*, 533 A.2d 762, 763 (Pa. Super. 1987)); Plaintiff's Brief, at 3.

¹⁶ Motion, ¶ 17 (citing *Frey v. Pennsylvania Electric Co.*, 607 A.2d 796, 797 (Pa. Super. 1992), *alloc. denied*, 614 A.2d 1142 (Pa. 1992)); Plaintiff's Brief, at 3.

¹⁷ Motion, ¶ 18 (citing Pa. R. Civ. P. 3118); Plaintiff's Brief, at 4.

¹⁸ Motion, ¶ 19; Plaintiff's Brief, at 4.

Defendant appeared *pro se* at argument and did not oppose the relief sought by Plaintiff in its Motion. However, Defendant drew the Court's attention to Ordinance 5657 of the City of Williamsport, which was enacted July 6, 1995. Through Ordinance 5657, the City vacated a portion of Louisa Street between Cemetery Street and Wildwood Boulevard in the Tenth Ward of the City. A portion of the street thus vacated abuts the Property. When the City vacated that portion of Louisa Street, the land formerly reserved for the street automatically reverted to the abutting property owners, including Defendant, who assumed her full reversionary interest in the portion of the vacated street abutting her property.¹⁹ Thus, Defendant acquired ownership of a strip of land behind the Property that also was not included in the metes and bounds description on the Writ of Execution.

A. Rule 3118.

Rule 3118, Pennsylvania Rules of Civil Procedure enables a judgment creditor to obtain supplemental relief in aid of execution. Specifically, it enables the court, either before or after issuance of a writ of execution, upon petition of the creditor and after notice and a hearing to enter an order

- (1) enjoining the negotiation, transfer, assignment or other disposition of any security, document of title, pawn ticket, instrument, mortgage, or document representing any property interest of the defendant subject to execution;
- (2) enjoining the transfer, removal, conveyance, assignment or other disposition of property of the defendant subject to execution;
- (3) directing the defendant or any other party or person to take such action as the court may direct to preserve collateral security for property of the defendant levied upon or attached, or any security interest levied upon or attached;
- (4) directing the disclosure to the sheriff of the whereabouts of property of the defendant;

¹⁹ See, e.g., *In re City of Altoona*, 388 A.2d 313, 317 (Pa. 1978).

(5) directing that property of the defendant which has been removed from the county or concealed for the purpose of avoiding execution shall be delivered to the sheriff or made available for execution; and

(6) granting such other relief as may be deemed necessary and appropriate.²⁰

"Rule 3118 authorizes summary proceedings in aid of execution for the purpose of maintaining the status quo of the judgment debtor's property and may be used only for that purpose."²¹ A proceeding under Rule 3118, by virtue of the streamlined nature of the proceeding,²² is strictly limited, and a court proceeding under Rule 3118 will not address any issues other than maintaining the *status quo* of the judgment debtor's property.²³ Accordingly, "any relief Plaintiff requests which goes beyond the maintenance of the status quo with respect to debtors' assets must be preceded by a 'full dress equity proceeding.'"²⁴ Thus, for example, in *Beltrami v. Rossi*,²⁵ the Superior Court overruled the trial court's decision permitting wife to use Rule 3118 as a vehicle to order attachment of husband's pension payments, when that issue was properly decided through issuance of a domestic relations order rather than by means of supplementary relief in aid of execution.²⁶

In order to obtain supplemental relief under Rule 3118, the judgment creditor must establish (1) existence of an underlying judgment, and (2) property of the

²⁰ Pa. R. Civ. P. 3118(a).

²¹ *Greater Valley Terminal Corp. v. Goodman*, 202 A.2d 89, 94 (Pa. 1964).

²² "[T]he right to supplementary relief under Rule 3118 is given 'without the necessity of full dress equity proceedings' and ... the rule 'envision[s] something less than a full hearing prior to the granting of relief.'" *Kaplan v. I. Kaplan, Inc.*, 619 A.2d 322, 325 (Pa. Super. 1993) (quoting *Greater Valley*, *supra*, 202 A.2d at 93).

²³ *Id.*, at 325-26.

²⁴ *Hearst/ABC-Viacom Entertainment Services v. Goodway Marketing, Inc.*, 815 F. Supp. 145, 147 (E.D. Pa. 1992) (quoting *Greater Valley*, *supra*, 202 A.2d at 93).

²⁵ *Beltrami v. Rossi*, 726 A.2d 401 (Pa. Super. 1999).

²⁶ *Id.*

debtor subject to execution.²⁷ The Court finds that Plaintiff has established these prerequisites to relief under Rule 3118. Plaintiff has an *in rem* judgment by default in mortgage foreclosure against the Defendant and the Property, which is subject to execution. Nonetheless, the Court believes that proceeding under Rule 3118 in these circumstances very likely exceeds Rule 3118's limitation to maintenance of the *status quo* with respect to debtors' assets and that a "full dress equity proceeding" may be necessary to grant relief under Rule 3118.

B. Rule 1033.

In contrast, the Court finds that the relief Plaintiff seeks is available under Rule 1033.²⁸ Rule 1033 addresses amendment of pleadings, and is not strictly applicable here, as the Writ of Execution is not a pleading.²⁹ Rule 1033 can be used properly to correct ancillary matters such as judgments, however. In *McNeal v. M & J Auto Repair*,³⁰ the Superior Court held that Rule 1033 was the proper rule governing plaintiff's request to amend her judgment obtained after compulsory arbitration proceedings. Plaintiff filed her complaint against "M & J Auto Repair" and "John Does No. 1 through X" and "XYZ Companies 10." The arbitration panel awarded judgment in the name of "M & J Auto Repair," a fictitious name, and plaintiff sought to amend the judgment a year after it was entered to name the individual owner doing business as M & J Auto Repair. The Superior Court held that the matter was properly decided under the rule permitting a party to amend a pleading to

²⁷ *Marshall Ruby and Sons v. Delta Min. Co.*, 702 A.2d 860, 862 (Pa. Super. 1997) (citing *Kaplan*, *supra*, 619 A.2d at 326).

²⁸ Pa. R. Civ. P. 1033.

²⁹ Pa. R. Civ. P. 1017 ("[T]he pleadings in an action are limited to (1) a complaint and an answer thereto, (2) a reply if the answer contains new matter, a counterclaim or a cross-claim, (3) a counter-reply if the reply to a counterclaim or cross-claim contains new matter, [and] (4) a preliminary objection and a response thereto") (notes omitted).

³⁰ *McNeal v. M & J Auto Repair*, 322 A.3d 236 (Pa. Super. 2024).

correct the name of a party, rather than the rule governing appeals from a compulsory arbitration award.³¹

Upon review of the Complaint and the Writ of Execution here, it appears that the legal description in both documents suffer from the same defect, as the property descriptions and legal descriptions in both documents are the same. Specifically, Exhibit "A" to the Complaint and Exhibit "A" to the Writ of Execution contain property descriptions that describe the property as being a lot of land in the Tenth Ward of the City of Williamsport, with an address of 800-802 Wildwood Boulevard and having tax parcel nos. 70-1-617 and 70-1-618.³²

Plaintiff's Motion asserts, however, that the legal description—i.e., the metes and bounds description—on the Writ of Execution is incorrect, in that it omits one of the parcels, and seeks to amend the Writ to include legal descriptions for both parcels.³³ Given the metes and bounds are the same in the Complaint and the Writ, if the legal description omits one of the parcels in the Writ, it does the same in the Complaint. Plaintiff's Motion to amend includes reference to Rule 1033, pertaining to amendment of pleadings, and seeks relief of amendment of the legal description on the Writ. The Writ of Execution was issued containing the legal description set forth in the Complaint which, in turn, is the basis for the Plaintiff's default judgment; thus, the Writ was properly issued based on the judgment obtained from the Complaint.

The Complaint and the Writ clearly identify both parcels by address and by parcel number, so Defendant was aware from the beginning of this litigation that the mortgage foreclosure action included both parcels, and bidders at the Sheriff's Sale

³¹ *Id.*

³² Complaint, Exh. A; Writ of Execution, Exh. A.

³³ Motion.

would have believed they would be purchasing both parcels if successful. In sum, the Court finds that no party will be prejudiced by amending the legal description to enable the Sheriff to issue a deed containing both parcels. In light of this, and given that the Defendant did not oppose the relief sought in the Motion, the Court will permit amendment of the legal description. In so doing, the Court will treat the Motion as a motion to amend the Writ of Execution, the judgment and the Complaint.

In an analogous situation, the Superior Court, in *Sutton v. Miller*,³⁴ *sua sponte* amended the pleadings on appeal to conform them to the evidence at trial. In so doing, the Superior Court stated

Plaintiffs commenced the instant litigation to prove title in a disputed parcel of land by adverse possession, and, further, to quiet such title as against defendants. The pleadings conclusively established defendants' possession of the disputed parcel. The lower court, however, denied defendants' objection as to possession and proceeded to the merits of the action. This was legal error. Since plaintiffs were out of possession, the court not only exceeded the scope of an action brought under Rule 1061(b)(1), but, in so doing, enlarged plaintiffs' substantive rights defined by statute and exceeded the court's statutory jurisdiction in a proceeding to Quiet Title. The demurrer was improperly denied.

Nonetheless, there was available to plaintiffs an alternate *form of action* upon which similar relief could have been granted—an action in Ejectment—and while the action in Quiet Title should have been dismissed, it should have been dismissed with leave to amend. Unfortunately, the stage of the proceedings where this might have been possible has long since evanesced. We are left, therefore, with the remaining option of *sua sponte* amending the pleadings to include an action in Ejectment. Finding no prejudice to appellants' rights in choosing this route, and in recognition of the well-settled principle that amendment is available at any stage of the proceedings, "as a nod to formalism, the proper amendment will be considered to be made."³⁵

³⁴ *Sutton v. Miller*, 592 A.2d 83 (Pa. Super. 1991).

³⁵ *Id.*, at 88-89 (emphasis in original) (citations and footnotes omitted) (citing and quoting *Taylor v. Kaufhold*, 84 A.2d 347, 351 (Pa. 1951)) (citing Pa. R. Civ. P. 1033; *Girard Trust Co. v. Dixon*, 6 A.2d 813 (Pa. 1939); *Pilotti v. Mobil Oil Corp.*, 565 A.2d 1227 (Pa. Super. 1989); *Harley-Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa. Super. 1982); *Seven Springs Farm, Inc. v. King*, 344 A.2d 641 (Pa. Super. 1975)). *N.b.*, in appropriate circumstances, a pleading may be amended even after judgment is entered. See, e.g., *McNeal*, *supra*, 322 A.3d 236.

Under the circumstances here, the Court finds that the interests of justice will be best served by GRANTING the Plaintiff's Motion to amend the Writ of Execution to include the legal description for both parcels³⁶ and by amending the judgment and the Complaint, as well, in the same manner. The Court further finds that Defendant will not be prejudiced by these amendments.³⁷

C. Ordinance 5657.

Plaintiff's Motion, and the above discussion of it, does not address the portion of Louisa Street vacated by the City of Williamsport and reverting to Defendant as a consequence of that vacation. The pleadings do not include any portion of that parcel of land, and Defendant did not have notice that it was included in the instant litigation.

Defendant believes the new legal description wrongly also includes this portion of Louisa Street vacated by the City. The Court finds that title to the subject parcel of land remains vested in the Defendant by virtue of its not having been mortgaged or mentioned in the Complaint. Therefore, any metes and bounds description of the property conveyed to the Plaintiff shall not include the portion of Louisa Street vacated by the City.

III. CONCLUSIONS AND ORDER.

For the reasons explained above at length, Plaintiff's Motion to Amend the Writ of Execution is GRANTED. The Court amends the Complaint, judgment and Writ of Execution, and the Sheriff may issue a deed to the Plaintiff including the

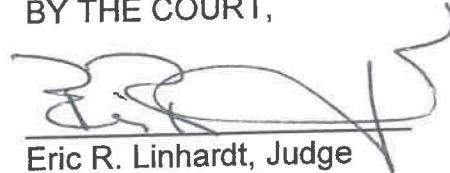
³⁶ These are the parcels in the Tenth Ward of the City of Williamsport with addresses of 800-802 Wildwood Boulevard and having tax parcel nos. 70-1-617 and 70-1-618.

³⁷ As noted above, Plaintiff had adequate notice of the proceedings here, did not enter a defense to the Complaint, and did not oppose the relief sought in Plaintiff's Motion. Moreover, as Defendant is liable for Plaintiffs' attorneys' fees and costs under the mortgage, see Plaintiff's Complaint, requiring Plaintiff to engage in additional legal proceedings to procure the necessary amendments is unlikely to inure to Defendant's benefit in the long run.

metes and bounds descriptions for both parcels of land in the Tenth Ward of the City of Williamsport with addresses of 800-802 Wildwood Boulevard and having tax parcel nos. 70-1-617 and 70-1-618. As further indicated above, however, any such descriptions shall not include the portion of Louisa Street vacated by the City in Ordinance 5657.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

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