

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ESTATE OF JEAN MATESON and
STEPHANIE MATESON BARTON,
Executrix and Beneficiary
Plaintiffs

v.

MATESON CHEMICAL CORPORATION
Defendant

: JULY TERM, 2005

: No. 0139

: (Commerce Program)

:

: Superior Court Docket
No. 2750EDA2005

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OPINION

Albert W. Sheppard, Jr., J. December 27, 2005

This Opinion is submitted relative to the appeal of this court's Orders of September 1, 2005 granting defendant's Mateson Chemical Corporation's Motion to Strike plaintiffs', Estate of Jean Mateson and Stephanie Mateson Barton's, Preliminary Objections to the Preliminary Objections of defendant and sustaining defendant's Preliminary Objections, dismissing plaintiffs' Complaint with prejudice.

For the reasons discussed, this court respectfully submits that its Orders should be affirmed.

BACKGROUND

On July 5, 2005, the Estate of Jean Mateson and Stephanie Mateson Barton, in her capacity as co-executor and beneficiary (“plaintiffs”) filed a Complaint asserting, *inter alia*, that Mateson Chemical Corporation (“defendant”) was occupying and using a property which had been owned by the late Jean Mateson without paying rent for the period December 1992 to the present. Defendant filed Preliminary Objections alleging that plaintiffs’ Complaint failed to state a cause of action upon which plaintiffs are entitled to relief. Plaintiffs then filed Preliminary Objections to defendant’s Preliminary Objections. On August 11, 2005, defendant filed a Motion to Determine Preliminary Objections and a Motion to Strike plaintiffs’ Preliminary Objections to defendant’s Preliminary Objections. On September 1, 2005, this court entered two Orders, one granting defendant’s Motion to Strike, and one sustaining defendant’s Preliminary Objections, dismissing plaintiffs’ Complaint with prejudice.

Plaintiffs filed a Motion for Reconsideration on October 3, 2005 which this court denied as moot because plaintiffs had filed an appeal to the Superior Court. In its Statement of Matters Complained-Of On Appeal, plaintiffs list a host of alleged errors on the part of both the defendant and this court.

Plaintiffs’ complain of defendant’s conduct, thusly: (1) defendant’s alleged improper use of a Motion to Strike Preliminary Objections as, according to plaintiffs, Pennsylvania law dictates that defendant should have filed Preliminary Objections to plaintiffs’ Preliminary Objections, (2) defendant’s failure to serve the plaintiffs with the motion cover sheet with their Motion to Strike, required under Philadelphia Civil Rule *206, (3) defendant’s failure to file objections or a response to plaintiffs’ Preliminary

Objections, (4) defendant filing a Motion to Determine Preliminary Objections to the plaintiffs' Complaint while the plaintiffs' objections were still outstanding, and (5) defendant's failure to serve plaintiffs with the Motion to Determine Preliminary Objections and defendant's failure to serve the motion court cover sheet related to that Motion.

In addition to the procedural errors complained of, plaintiffs assert that defendant attached an incomplete copy of the Family Settlement Agreement, omitting the distribution schedule, wherein the estate collected and distributed rent from the defendant. As a result, plaintiffs argue that this court decided the defendant's Preliminary Objections on the basis of defendant's false and misleading allegations.

This court's alleged errors consist of: (1) this court's deciding defendant's Preliminary Objections prior to the plaintiffs having an opportunity to respond, and (2) this court's granting defendant's Motion to Strike as defendant's motion to strike was allegedly not limited to applications of error of form on the record or on the face of the pleadings.

DISCUSSION

I. This Court Properly Decided Defendant's Preliminary Objections.

Defendant's Preliminary Objections are in the form of a demurrer. Paragraph 1 of defendant's Preliminary Objections states:

Defendant demurs to Plaintiffs' Civil Action Complaint, which fails to state a cause of action upon which either Plaintiff is entitled to relief.

Philadelphia Civil Rule *1928(c) (5) provides that: "an answer need not be filed to preliminary objections raising an alleged legal insufficiency of a pleading (demurrer)." In addition the "Note" following the rule provides: ". . . preliminary objections raising an

issue under subdivision (a) . . . (4) (a demurrer) may be determined from facts of record so that further evidence is not required.” Despite the clarity of this rule, plaintiffs insist that the court erred in deciding defendant’s Preliminary Objections prior to receiving a response from plaintiffs. Under the plain language of the rule, the court did not rule on defendant’s Preliminary Objections prematurely since additional evidence was not required.

II. This Court Properly Sustained Defendant’s Preliminary Objections.

Plaintiffs assert that because defendant did not attach the distribution schedule to its Preliminary Objections, which showed that the estate collected and distributed rent from the defendant for a period of time, “this court decided the defendant’s preliminary objections on the basis of the defendant’s false and misleading allegations.” Plaintiffs’ Statement of Matters Complained-Of On Appeal, § III, ¶ 11. Plaintiffs’ argument ignores the standard by which courts must decide preliminary objections.

Preliminary objections to a complaint in the nature of a demurrer admit as true all well-pleaded material facts set forth in the complaint, as well as all inferences reasonably deducible therefrom, but not the pleader’s conclusion of law. Clevenstein v. Rizzuto, 439 Pa. 397, 400, 266 A.2d 623, 624 (1970) citing Eden Roc Country Club v. Mullhauser, 416 Pa. 61, 204 A.2d 465 (1964).

Plaintiffs, in their Complaint allege:

For the entire period of December 19, 1992 to date, Mateson Chemical Corporation possessed, used, enjoyed and occupied the land and structures at 1025-1029 East Montgomery Avenue, subject to a common law leasehold interest and to the leasehold interest originated in Exhibit 2 and in the course of conduct of the Beneficiaries and Mateson Chemical Corporation. The course of conduct and terms of the leasehold are addressed and documented in the unanimous consent resolution and

audited financial statements of Mateson Chemical Corporation (copies of which are attached as Exhibit 3), among other documents.

Complaint, ¶ 16.

Plaintiffs were not prejudiced by defendant's failure to attach the distribution schedule to its Preliminary Objections in that plaintiffs, in their Complaint, specifically referenced and attached the documents at issue.

The Clevenstein court also set out what the court must consider in determining whether or not a demurrer should be sustained. Courts must decide: (1) whether, upon the facts averred, the law says with certainty that no recovery is permitted, and (2) where a doubt exists as to whether a demurrer should be sustained, this should be resolved in favor of overruling it. Clevenstein, 439 Pa. at 400-401.

Paragraph G of the Family Settlement Agreement Receipt, Release and Discharge (Family Settlement Agreement) provides:

The parties hereto have settled their differences and this Settlement Agreement is entered into to terminate the Estate administration, transfer the property of the Estate to the rightful heirs and to end all litigation and controversy related to the Estate of Jean Mateson . . .

(Emphasis added.)

In addition, paragraph 1 on page 3 of the Family Settlement Agreement provides that:

This Agreement shall extend to all property, whether real or personal or tangible or intangible, owned by decedent or by the estate of Testator.

Paragraph 16 states:

This Agreement constitutes the entire understanding among the parties hereto, and each of them acknowledges that no representations or statements of any kind, written or oral, have been made to them or any of them prior hereto by the Co-Executors or by any other person or party upon their behalf.

Finally, paragraph 17 provides:

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and each of them, their heirs, executors, administrators, successors and assigns.

This document was executed by the individual beneficiaries and by plaintiff Stephanie Mateson Barton, the co-executor of the Estate.

In addition, other litigation involving the Estate of Jean Mateson and Stephanie Mateson Barton resulted in a Decree and Audit Memorandum by Judge Lewis of the Orphans' Court Division, Court of Common Pleas of Philadelphia on March 20, 1997. In part, Judge Lewis found that:

The Family Settlement Agreement is complete and constitutes a binding agreement on the parties thereto, subject to the terms and conditions stated therein.

.....

The Family Settlement Agreement . . . has resolved all issues between the parties, . . .

This court finds that the unambiguous language of the Family Settlement Agreement and the Decree and Audit Memorandum make it clear that litigation related to the Estate of Jean Mateson is at an end and, consequently, plaintiffs have failed to state a cause of action.

This Court agrees with defendant's argument that this action is barred by the applicable statute of limitations. Moreover, this court agrees with defendant's assertion that plaintiff Stephanie Mateson Barton has no standing to pursue this claim, in that the 1997 Decree and Audit Memorandum confirms that the Estate administration was completed and that no further claims or actions on behalf of the Estate can be pursued.

For these reasons, this court respectfully submits that its Order sustaining defendant's Preliminary Objections should not be disturbed.

III. Defendant’s Use of a Motion to Strike Preliminary Objections in Response to Plaintiffs’ Preliminary Objections to Defendant’s Preliminary Objections was Proper and This Court Properly Granted Defendant’s Motion to Strike.

“Objections raised by a motion to strike are limited to errors of form, where the alleged defects appear on the record or on the face of the pleading.” Urban v. Urban, 332 Pa. Super. 373, 380, 481 A.2d 662, 666 (1984).

In its Motion to Strike, defendant raised several errors of form and defects appearing on the record. For instance, defendant states that plaintiffs’ Preliminary Objections include an assertion that defendant’s Preliminary Objections were unverified when, under the rules, no verification to Preliminary Objections other than by counsel is required. Plaintiffs’ Preliminary Objections to the Preliminary Objections of Defendant to Plaintiffs’ Complaint, ¶ 1. Additionally, defendant avers that plaintiffs’ argument that defendant’s Preliminary Objections contains an inaccurate quote or summary of the contents of a writing are not properly a preliminary objection¹, but should be raised as a response to defendant’s Preliminary Objections. Since these assertions made by plaintiffs in their Preliminary Objections are errors of form and defects appearing on the record, defendant’s use of a Motion to Strike in response to plaintiffs’ Preliminary Objections to defendant’s Preliminary Objections was proper.

Moreover, this court properly granted defendant’s Motion to Strike because, in large part, the allegations contained in plaintiffs’ Preliminary Objections to the Preliminary Objections of defendant do not conform with the applicable rule of civil procedure.

¹ Id., ¶ 8.

Pursuant to Pennsylvania Rule of Civil Procedure 1028, preliminary objections are limited to the grounds specified in the rules. They include: (1) an attack on the lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue, or (2) improper form or service of a writ of summons or a complaint, (3) the lack of conformity of a pleading to law or rule of court or the inclusion of scandalous or impertinent matter, (4) insufficient specificity of pleading, (5) the legal insufficiency of a pleading, (6) an attack on the lack of capacity to sue, (7) nonjoinder of a necessary party or misjoinder of a cause of action, and (8) the pendency of a prior action or the existence of an agreement for alternative dispute resolution.

The criticism set out in plaintiffs' Preliminary Objections to defendant's Preliminary Objections point out alleged defects in defendant's Preliminary Objections, which alleged defects are not the proper grounds for preliminary objections. However, the court acknowledges that plaintiffs allege that "Defendant's preliminary objections fail to conform to law and the rules of evidence." While this is a proper preliminary objection, it fails the standard for pleadings set out in Pennsylvania Rule of Civil Procedure 1019(a) which provides "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form." Plaintiffs' general and vague allegation that defendant's Preliminary Objections "fail to conform to law and the rules of evidence" is not enough. In fact, it is nothing more than a nearly verbatim recitation of one proper ground for preliminary objections set out in Rule 1028. Accordingly, this court properly granted defendant's Motion to Strike plaintiffs' Preliminary Objections to defendant's Preliminary Objections to plaintiffs' Complaint.

IV. Defendant's Failure to Serve Plaintiffs with Motion Cover Sheets Did Not Result in Prejudice to the Plaintiffs.

Plaintiffs' complain that defendant's failure to serve defendant's Motion to Strike cover sheet was a violation of the laws of this Commonwealth. While it is true that Local Rule*206(b)(3) requires service of a motion court cover sheet for all motions other than discovery motions, Pennsylvania Rule of Civil Procedure 126 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.

Moreover, according to the Pennsylvania Supreme Court: "[t]he Rules are to be interpreted with common sense to carry out the purpose for which they were adopted." Fisher v. Hill, 368 Pa. 53, 57, 81 A.2d 860, 863 (1951), quoting Usner v. Duersmith, 346 Pa. 494, 31 A.2d 149, 150 (1943).

Plaintiffs admit that they made themselves aware of the response date for the Motion to Strike (information that would be included in the motion court cover sheet) by checking the on-line docket entries. Therefore, this court finds that the rights of plaintiffs were not compromised by defendant's failure to serve the motion court cover sheet.

V. Plaintiffs' Objections to Defendant's Preliminary Objections Were Not Before this Court and Therefore Defendant's Filing a Motion to Determine Preliminary Objections was Not an Error.

Plaintiffs' Preliminary Objections were filed on August 1, 2005. Philadelphia Civil Rule *1028(c)(3) provides in part that:

Within thirty (30) days after filing Preliminary Objections with the Prothonotary, provided an amended pleading has not been filed, the objecting party shall file a Motion to Determine the Preliminary Objections

Although plaintiffs filed Preliminary Objections to defendant's Preliminary Objections, plaintiffs did not file a Motion to Determine plaintiffs' Preliminary Objections to defendant's Preliminary Objections. Therefore, plaintiffs' Preliminary Objections were not before this court and ripe for determination when the court ruled on defendant's Objections. Thus, this court's action in deciding defendant's Preliminary Objections was proper.

VI. The Evidence Showed that Either the Plaintiffs Were Served with the Motion to Determine Preliminary Objection, or in the Alternative, Defendant's Failure to Serve the Motion to Determine Preliminary Objections and Defendant's Failure to Serve the Motion Court Cover Sheet Related to that Motion Did Not Affect Plaintiffs' Rights.

Plaintiffs assert that this court's Order sustaining defendant's Preliminary Objections and granting defendant's Motion to Strike plaintiffs' Preliminary Objections should be overturned because, in part, defendant failed to serve its Motion to Determine Preliminary Objection and the motion court cover sheet that accompanied the Motion to Determine Preliminary Objections. Plaintiffs' position is belied by the fact that at the bottom of the motion court cover sheet that is attached to defendant's Motion to Determine Preliminary Objections, the following language appears:

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response, along with all documents files will be served upon all counsel and unrepresented parties as required of Court (see Pa.R.C.P. 206.6. Note to 208.2(a), and 440). . . .

Moreover, the defendant's Motion to Determine Preliminary Objections includes a Certificate of Service.² Based on these circumstances, this court finds that a reasonable inference can be made that plaintiffs were served with defendant's Motion to Determine Preliminary Objections, including the cover sheet to that Motion.

In the alternative, in defendant's Motion to Strike, filed the same day as defendant's Motion to Determine Preliminary Objections, defendant references its Preliminary Objections and its Memorandum of Law in support of those Preliminary Objections. Defendant's Motion to Strike Plaintiffs' Preliminary Objections to Defendant's Preliminary Objections to Plaintiffs' Complaint, ¶ 2. In fact, defendant attached its Preliminary Objections and the accompanying Memorandum to its Motion to Strike. Therefore, plaintiffs' had notice that the Motion to Determine Preliminary Objections had been filed and when it was filed. Consequently, even if defendant was not served with the Motion to Determine Preliminary Objections, they had actual notice that the Motion had been filed. They were not prejudiced.

VII. Defendant, Under the Rules, Was Not Obligated to Respond to Plaintiffs' Preliminary Objections.

Plaintiffs' allege in their Statement of Matters Complained-Of On Appeal that this court must overturn its Order sustaining defendant's Preliminary Objections because defendant did not respond to plaintiffs' Preliminary Objections to defendant's Preliminary Objections. Under the pertinent rules of Civil Procedure, this argument fails.

² The court acknowledges that the Certificate of Service states that defendant served this Motion on July 8, 2005. This is an obvious typographical error as the Motion is dated August 8, 2005 and the attached Verification is dated August 8, 2005. In addition, defendant's Preliminary Objections were filed with the Prothonotary on July 11, 2005.

Philadelphia Civil Rule *1028(a)(5) provides in pertinent part:

. . . . An answer need not be filed to preliminary objections raising an issue under Pa.R.C.P. 1028(a)(2) (“failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter”), (3) (“insufficient specificity in a pleading”) and (4) (“legal insufficiency of a pleading (demurrer)”).

Defendant’s Preliminary Objections were in the form of a demurrer. As discussed, Paragraph 1 of defendant’s Preliminary Objections states: “Defendant demurs to Plaintiffs’ Civil Action Complaint, which fails to state a cause of action upon which either Plaintiff is entitled to relief.” Defendant goes on to allege that:

Mark Mateson, co-executor of the Estate of Jean Mateson, was not consulted about, did not consent to, has not joined in the filing of the Complaint or any litigation on behalf of the Estate of Jean Mateson pursuant to which rental payments from defendant herein could be sought, as a result of which the Complaint fails to state a cause of action upon which any recovery by or through the Estate of Jean F. Mateson is permitted.

Defendant’s Preliminary Objections to Plaintiffs’ Complaint, ¶ 3.

Since the rule unambiguously provides that a response is not required to preliminary objections in the form of a demurrer, defendant did not err in not responding to plaintiffs’ Preliminary Objections to defendant’s Preliminary Objections.

CONCLUSION

For the reasons discussed, this court respectfully submits that its Orders of September 1, 2005 should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.