

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

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MESNE PROPERTIES, INC., et al.,	:	July Term, 2000
Plaintiffs	:	
	:	No. 1483
v.	:	
	:	Commerce Case Program
PENN MUTUAL LIFE INSURANCE CO.,	:	
Defendant	:	Control No. 070273

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**MEMORANDUM OPINION**

Plaintiffs MESNE Properties, Inc. (“MESNE”) and St. John’s Holdings, Inc. (“St. John”) have filed a motion (“Motion”) for leave to file a third amended complaint (“Amended Complaint”). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order granting the Motion.

**BACKGROUND**

This dispute arises from the Plaintiffs’ alleged requests that Defendant Penn Mutual Life Insurance Co. (“Penn Mutual”) mark a mortgage (“Mortgage”) satisfied and Penn Mutual’s alleged failure to comply with those requests. The Plaintiffs have requested leave to file the Amended Complaint, which would allege the following additional information:

1. The Plaintiffs requested that Penn Mutual mark the Mortgage satisfied on February 2, 1998. Amended Complaint at ¶ 16.<sup>1</sup>

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<sup>1</sup> This “Additional Request” is in the form of a fax sent from the Plaintiffs’ alleged agent, Celeste Dolge, to Penn Mutual’s alleged agent, Thomas Penney, Esq. at Drinker Biddle & Reath LLP and states as follows:

The mortgage satisfaction and judgment release referenced in the attached letter have not been delivered to us for recording. Is the lender filing these documents? Please advise. Thanks!

2. St. John is incorporated under the laws of Delaware. Id. at ¶ 2.<sup>2</sup>
3. Penn Mutual was paid a \$75,000.00 “transaction fee” in connection with the satisfaction of the Mortgage. Id. at ¶ 12.
4. Penn Mutual never returned the promissory note evidencing MESNE’s debt to the Plaintiffs. Id. at ¶ 14.
5. James Gupko, Esq. was among the Plaintiffs’ agents who requested that the Mortgage be marked satisfied. Id. at ¶ 21.
6. As evidenced by a letter attached as Exhibit A, Drinker Biddle & Reath LLP (“Drinker”) served as Penn Mutual’s agent. Id. at Exhibit A.
7. Penn Mutual’s correct address is 600 Dresher Road, Horsham, Pennsylvania 19044. Id. at ¶ 3.<sup>3</sup>

Of these proposed changes, Penn Mutual asserts that only the address correction is proper and that the remaining amendments should be rejected.

## **DISCUSSION**

Under Pennsylvania law, leave to amend pleadings must be granted liberally:

Although the decision of whether to grant leave to amend a pleading is a matter of judicial discretion, such amendments should be allowed at any stage of the proceedings to secure a decision on the merits, unless they violate the law or unfairly prejudice the rights of the other party. Thus, if no prejudice results, pleadings may be amended after pleadings are closed, while a motion for judgment on the pleadings is pending, at trial, after judgment, or after an award has been made and an appeal taken therefrom. The fundamental purpose

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The Plaintiffs assert that they did not discover that the Additional Request had been made until documents were produced by Penn Mutual on May 24, 2001 in the course of discovery.

<sup>2</sup> Puzzlingly, the Amended Complaint states that St. John is a Pennsylvania corporation incorporated under Delaware law.

<sup>3</sup> Although this has been corrected in the body of the Amended Complaint, the Amended Complaint’s caption still has Penn Mutual’s Walnut Grove Corporate Center address.

of this rule is to prevent cases from turning on purely technical defects. Moreover, prejudice, in turn, must be more than a mere detriment to the other party because any amendment requested certainly will be designed to strengthen the legal position of the amending party and correspondingly weaken the position of the adverse party.

MacGregor v. Mediq Inc., 395 Pa. Super. 221, 227, 576 A.2d 1123, 1126 (1990) (citations and quotation marks omitted). For these reasons, a court may disallow leave to amend pleadings only when prejudice to the other party would result or when the amendment itself would violate a positive rule of law. Noll v. Harrisburg Area YMCA, 537 Pa. 274, 280, 643 A.2d 81, 84 (1994); Somerset Community Hosp. v. Allan B. Mitchell & Assocs., Inc., 454 Pa. Super. 188, 1999, 685 A.2d 141, 146 (1996).

Penn Mutual first attacks the Plaintiffs' insertion of the Additional Request in the Amended Complaint by attacking the Plaintiffs' agency allegations. Specifically, Penn Mutual asserts that Drinker and the individual to whom the Additional Request was made were not Penn Mutual agents, that the person making the Additional Request was not the Plaintiffs' agent and that the Additional Request was therefore of no effect. The existence of an agency relationship, however, is a question of fact. B & L Asphalt Indus., Inc. v. Fusco, 753 A.2d 264, 269 (Pa. Super. Ct. 2000). See also Schneider v. Albert Einstein Med. Center, N. Div., 257 Pa. Super. 348, 365-66, 390 A.2d 1271, 1280 (1978) (“[w]here inferences are not entirely clear, questions of agency are for the jury’s determination”). As such, the Court cannot reject the Additional Request based on the absence of an agency relationship at this point.

Penn Mutual also takes issue with the Plaintiffs’ statement that it did not discover the Additional Request, which was allegedly sent by their own agent, until earlier this year. While the

Plaintiff's failure to discover this existence of this document until May 2001 is peculiar, it does not violate a positive rule of law. Moreover, the Additional Request could be interpreted as a request to mark the Mortgage satisfied, depending on the context in which it was sent.

The assertion that the inclusion of the Additional Request violates the two-year statute of limitations<sup>4</sup> is similarly without merit. It is true that "an amendment may not introduce a new cause of action after the statute of limitations has run its course." Kuisis v. Baldwin-Lima-Hamilton Corp., 457 Pa. 321, 325, 319 A.2d 914, 918 (1974). See also Somerset Community Hosp. v. Allan B. Mitchell & Assocs., Inc., 454 Pa. Super. 188, 199, 685 A.2d 141, 147 (1996) (a trial court must deny leave to amend a pleading where the amended pleading "states a new cause of action after the statute of limitations has run"). Although the Additional Request was made on February 2, 1998, this does not mark the date on which the statute of limitations began to run:

[A]ny limitation on the mortgagor's ability to file suit for damages does not become activated until all refusals to fulfill the duty of recording satisfaction have been made, that is, until the satisfaction has actually been entered. Thus we agree with the trial court's finding that this statute places no restrictions on renewal of a demand for entry of the satisfaction, and that, accordingly, the limitations period began to run anew whenever a request for satisfaction is made, whether an initial request or a subsequent one.

Pantuso Motors, Inc. v. CoreStates Bank, N.A., 745 A.2d 614, 619 (Pa. Super. Ct. 1999) (emphasis added). Because Penn Mutual did not mark the Mortgage satisfied until September 13, 2000, the

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<sup>4</sup> Pennsylvania's two-year statute of limitations governs actions "upon a statute for a civil penalty or forfeiture" and actions or proceedings "to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct. . . ." 42 Pa. C.S. § 5524(5), (7).

statute of limitations runs until September 13, 2002 and does not now bar an action based on the Additional Request.<sup>5</sup>

Penn Mutual's contention that it will be prejudiced by the Additional Request because it has already conducted discovery is without merit:

Denial of a petition to amend, based on nothing more than unreasonable delay, is an abuse of discretion. The timeliness of the request to amend is a factor to be considered, but it is to be considered only insofar as it presents a question of prejudice to the opposing party, as by loss of witnesses or eleventh hour surprise.

Capobianco v. Bic Corp., 446 Pa. Super. 130, 135, 666 A.2d 344, 347 (1995) (brackets, quotation marks and citations omitted). Here, discovery is not yet closed, and, while the Court is sympathetic to Penn Mutual's cost concerns, such concerns do not amount to prejudice.

The Court must also reject Penn Mutual's argument that the Plaintiffs' claim for breach of a 1997 settlement agreement among the Parties ("Settlement Agreement") is not legally sufficient because it fails to allege that the Plaintiffs gave the notice required thereunder. According to Paragraph 22 of the Settlement Agreement, all notices to Penn Mutual are to be sent to G.E. Capital Realty Group, Inc. and to Andrew C. Kassner, Esq. at Drinker. While the Amended Complaint does not specify exactly whom the Plaintiffs notified, it asserts that the requests for satisfaction were made to the "Defendant and/or its agents. . . ." Amended Complaint at ¶ 13. This is broad enough to encompass an allegation that the notice requirements of the Settlement Agreement were met. Cf. Britt v. Chestnut Hill College, 429 Pa. Super. 263, 269-70, 632 A.2d 557, 560 (1993) (student sufficiently pled performance of

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<sup>5</sup> The fact that Pantuso Motors has been appealed is of no import. See Sorber v. American Motorists Ins. Co., 451 Pa. Super. 507, 510, 680 A.2d 881, 882 (1996) ("[a]s long as the decision has not been overturned by our Supreme Court, it remains binding precedent").

conditions precedent to breach of contract claim against college where he alleged that he was promised certain credits and, therefore, fulfilled requirements for his master's degree). As a result, none of the proposed amendments would result in prejudice to Penn Mutual or violate a positive rule of law.<sup>6</sup>

### **CONCLUSION**

Because the Amended Complaint neither prejudices Penn Mutual nor violates a positive rule of law, the Motion is granted.

BY THE COURT:

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JOHN W. HERRON, J.

Date: August 13, 2001

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<sup>6</sup> The Court is confused by the internal inconsistencies in the allegations surrounding St. John's state of incorporation, but this does not constitute grounds to deny the Motion.

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**ORDER**

AND NOW, this 13th day of August, 2001, upon consideration of the Motion for Leave to File a Third Amended Complaint of Plaintiffs MESNE Properties, Inc. and St. John's Holdings, Inc. and the response thereto of Defendant Penn Mutual Life Insurance Co., and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Motion is GRANTED.

BY THE COURT:

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JOHN W. HERRON, J.