

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

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| PHILADELPHIA HGI ASSOCIATES, L.P., : | October Term, 2000 |
| Plaintiff : | |
| v. : | No. 2981 |
| COPE LINDER ASSOCIATES, : | Commerce Case Program |
| Defendant : | Control No. 00121116 |

MEMORANDUM OPINION

Defendant Cope Linder Associates (“Cope Linder”) has filed preliminary objections (“Objections”) to the complaint (“Complaint”) of Plaintiff Philadelphia HGI Associates, L.P. (“HGI”). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order sustaining the Objections and directing the Plaintiff to file an amended complaint.

BACKGROUND

On December 1, 1998, HGI and Cope Linder entered into a contract under which Cope Linder was to serve as architect for the Hilton Garden Inn (“Hilton”). Later that month, HGI contracted with L.F. Driscoll Co. (“Driscoll”) for the Hilton’s construction, which began in 1998 and continued through 1999 and into 2000.

Since construction began, HGI and Driscoll have entered into 165 construction change orders directing changes to the Hilton’s design (“Orders”). HGI attributes the need for forty-seven of the Orders, which total \$560,000.00, to Cope Linder’s design errors and disorganization, and to conditions that would have been discovered if Cope Linder had performed an adequate site review. HGI also anticipates that further Orders will be needed to correct additional Cope Linder errors that

will be discovered in the future. On the basis of these allegations, HGI has filed the Complaint, which alleges causes of action for breach of contract, negligence and breach of warranties.

In the Objections, Cope Linder contends that the Complaint is insufficiently specific and that it improperly alleges future damages and events. HGI addresses these arguments and requests further that the Objections be overruled on the grounds that they were not filed with the Motion Court within the appropriate time period.¹

DISCUSSION

Cope Linder has demonstrated just cause for its delay in filing the Objections with the Motion Court, and the Court may consider the Objections. Because the Complaint is insufficiently specific, the Objections are granted, and HGI is directed to file an amended complaint.

I. The Six-Day Delay in Filing the Objections in the Motion Court Is Excusable

As a preliminary matter, the Plaintiffs argue in their response that the Objections were not filed with the Motion Court within the thirty-day period proscribed by Philadelphia Civil Rule *1028(A) and that they therefore must be stricken.² In Mogilyansky v. Sych, June 2000, No. 3709 (C.P. Phila. Jan. 4, 2001) (Herron, J.),³ the Court stated the following with regard to delays in filing preliminary objections with the Motion Court:

¹ The docket in this matter indicates that the Objections were filed with the Prothonotary on November 13, 2000 and with the Motion Court on December 19, 2000.

² The Court observes that the appropriate action when preliminary objections are not moved to the Motion Court in a timely fashion is to file a praecipe and a proposed order with the Motion Court requesting that the objections be overruled. Phila. Civ. R. *1028(B).

³ Available at <http://courts.phila.gov/cptcvcomp.htm>.

There is no case law addressing the standard to be applied in evaluating a praecipe filed under Philadelphia Civil Rule *1028(B) [for failure to file preliminary objections with the Motion Court in a timely fashion]. However, the Pennsylvania Supreme Court has outlined the test to be used when pleadings are untimely:

When a party moves to strike a pleading, the party who files the untimely pleading must demonstrate just cause for the delay. It is only after a showing of just cause has been made that the moving party needs to demonstrate that it has been prejudiced by the late pleading.

Peters Creek Sanitary Auth. v. Welch, 545 Pa. 309, 314-15, 681 A.2d 167, 170 (1996). In the absence of any other compelling authority, the Court believes it appropriate to adopt this test for situations where a party fails to file objections in the Motion Court in a timely manner.

Slip op. at 2 (footnote removed).

Cope Linder sets forth the following reason for the six-day delay in filing the Objections in the

Motion Court:

The defendant's Motion Package was, in fact, timely received by the Prothonotary of this Court. See Letter to Office of the Prothonotary from defendant's counsel, and copy of FedEx USA Airbill, dated December 12, 2000, collectively attached as Exhibit 1; and FedEx Detailed Tracking Results, attached as Exhibit 2 (noting receipt of Motion Package in Philadelphia at 9:08 AM on 12/13/00 by "P. Franklin"). However, the Motion Package was not filed by the Prothonotary but returned to the defendant for lack of an attached copy of the attested preliminary objections. See Affidavit of Tracey R. Barber, dated January 24, 2001, attached as Exhibit 3 (affirming same). Upon receipt of its original Motion Package from the Prothonotary, defense counsel immediately attached a copy of the attested preliminary objections and resubmitted the Motion Package to the Court. Id. The Motion Package was subsequently filed by the Prothonotary on December 19, 2000, six days after the Prothonotary's initial receipt of the defendant's Motion Package. See date-stamped Motion Court Cover Sheet, attached as Exhibit 4.

Cope Linder's Reply Memorandum at 5-6. This is sufficient to establish an explanation and just cause for the relatively short delay in filing the Objections in the Motion Court. Because HGI does not assert

that it suffered prejudice as a result of Cope Linder's untimely filing, the delay is excusable, and the Court may consider the Objections.

II. HGI's Allegations of Possible Future Claims and Damages Are Improper

In five paragraphs of the Complaint, HGI makes vague allegations about claims that may arise and damages that may occur in the future. See Complaint at ¶¶ 12, 15, 24, 30 and 34 (alleging, inter alia, that HGI “may be forced to incur additional change orders in the near future”). Similarly, Paragraphs 11 and 13 of the Complaint state that “at least” forty-seven Orders can be attributed to Cope Linder's actions and that there may be “other change order issues” arising from Cope Linder's alleged misconduct.

Such broad and general assertions do not allow Cope Linder to prepare a defense and therefore do not meet Pennsylvania's specificity requirements. See In re The Barnes Found., 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (1995) (“a pleading should . . . fully summariz[e] the material facts, and as a minimum, a pleader must set forth concisely the facts upon which [a] cause of action is based”); Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991) (allegations must be “sufficiently specific so as to enable [a] defendant to prepare [its] defense”). See also Treco, Inc. v. Wolf Investments Corp., March 2000, No. 1765, slip op. at 3-5 (C.P. Phila. Feb. 15, 2001) (Herron, J.) (citing Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983), to highlight risks to defendants if non-specific allegations are permitted to stand).⁴ To the extent that HGI has specific

⁴ Available at <http://courts.phila.gov/cptcvcomp.htm>.

information about its future claims, it may amend the Complaint to add them.⁵ Allowing HGI to continue the action based on the Complaint in its current form, however, would be improper. Consequently, the Objections asserting insufficient specificity are sustained, and HGI is directed to file an amended complaint within twenty days of this Opinion.⁶

BY THE COURT:

JOHN W. HERRON, J.

Dated: April 6, 2001

⁵ Pennsylvania courts are liberal in allowing the amendment of pleadings that are deemed insufficiently specific. See Pilotti v Mobil Oil Corp., 388 Pa. Super. 514, 519, 565 A.2d 1227, 1229 (1989) (“where there is any uncertainty or doubt, it should not be assumed that a party cannot plead with more specificity”).

⁶ Because the Complaint is insufficiently specific and HGI has been directed to file an amended complaint, there is no need to address Cope Linder’s remaining arguments.

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| | Commerce Case Program |
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ORDER

AND NOW, this 6th day of April, 2000, upon consideration of the Preliminary Objections of Defendant Cope Linder Associates to the Complaint of Plaintiff Philadelphia HGI Associates, L.P., the Plaintiff's response thereto and the Defendant's Reply Memorandum, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Objections asserting insufficient specificity are SUSTAINED. The Plaintiff is directed to file an amended complaint within twenty days of this Order.

BY THE COURT:

JOHN W. HERRON, J.