

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

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ALEXANDER MOGILYANSKY,	:	June Term, 2000
Plaintiff	:	
	:	No. 3709
v.	:	
	:	Commerce Case Program
SVETLANA SYCH, et al.,	:	
Defendants	:	Control No. 101263
	:	Control No. 102538

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**MEMORANDUM OPINION**

Defendants Svetlana Sych (“Svetlana”), Yvegeny Sych (“Yvegeny”) and Russian Market, Inc. (“Market”) have filed preliminary objections (“Objections”) to the amended complaint (“Complaint”) of Plaintiff Alexander Mogilyansky (“Mogilyansky”). In response, Mogilyansky has filed a praecipe to overrule the Objections (“Praecipe”). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order (“Order”) overruling the Objections.

**BACKGROUND**

On August 14, 2000, Mogilyansky filed the Complaint, which includes counts arising from Yvegeny and Svetlana’s alleged mismanagement of Market. The Defendants filed the Objections on September 13, but did not file a corresponding motion to determine the Objections until November 2. In the interim, the Plaintiff filed the Praecipe on October 17.

**DISCUSSION**

Philadelphia Civil Rule \*1028 requires that a party raising preliminary objections file a copy of the objections with the Motion Court within thirty days of filing the objections with the Prothonotary.

Phila. Civ. R. \*1028(A). If a party does not comply with this requirement, the responding party may file a praecipe in the Motion Court asking that the objections be overruled. Phila. Civ. R. \*1028(B).

There is no case law addressing the standard to be applied in evaluating a praecipe filed under Philadelphia Civil Rule \*1028(B).<sup>1</sup> 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.

Here, the Defendants did not file the Objections in the Motion Court until November 2, twenty days after such a filing was required and sixteen days after the Praecipe was filed.<sup>2</sup> In addition, the

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<sup>1</sup> Prior to 2000, this rule directed that a court “shall overrule the preliminary objections and order the objecting party to answer within twenty (20) days of the date of the Court’s Order.” Because this provision has been deleted, it is unclear under what conditions a court should overrule preliminary objections based on a failure to file in the Motion Court.

<sup>2</sup> Moreover, the Objections were not filed with the Prothonotary until after the expiration of the twenty-day pleading period set forth in Pennsylvania Rule of Civil Procedure 1026(a).

Defendants do not claim to have just cause for the delay in filing the Objections in the Motion Court.<sup>3</sup>

As a result, the Court is issuing a contemporaneous order overruling the Objections.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: January 4, 2001

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<sup>3</sup> Indeed, the Defendants ignore the Praecipe and their own delinquency completely in the Objections and the accompanying memorandum.

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**ORDER**

It appearing to the Court that the preliminary objections filed herein were not filed with the Clerk of The Motion Court within the time required by Philadelphia Civil Rule \*1028, in accordance with the Memorandum Opinion being filed contemporaneously with this Order, the said objections are hereby overruled and the objecting party is hereby granted the right to plead over within twenty days after notice of this Order.

BY THE COURT:

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JOHN W. HERRON, J.