

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

SEP 10 AM 9:41

THOMAS C. ROY

*Plaintiff*

v.

PETER CERONE

and

PETERBUILT CONSTRUCTION, LLC.

*Defendants*

: April Term, 2018  
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: Case No. 03406  
:  
: Commerce Program  
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: 2029 EDA 2019  
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Djerassi, J.

September 10, 2019

**OPINION**

Defendants appeal the Order of this Court dated April 17, 2019. For the reasons set forth in the Opinion below, this Court respectfully requests that our order be affirmed to enforce basic rules of civil pleading.

**OPINION**

This action commenced on April 24, 2018, when plaintiff Thomas C. Roy (“Plaintiff”), filed a complaint against defendants Peter Cerone and Peterbuilt Construction, LLC, (“Defendants”). The complaint specifically alleged that the Defendants had agreed to perform renovation work upon an investment property owned by Plaintiff, had received from Plaintiff an advance payment of \$88,252.00 toward a contract amount of 99,000.00, and had reneged on their obligations without completing

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the work or offering an explanation.<sup>1</sup> Plaintiff's complaint asserted against the Defendants two claims: breach-of-contract and unjust enrichment.<sup>2</sup>

The Defendants failed to answer Plaintiff's complaint; therefore, judgment by default was entered against them on July 9, 2018. On July 18, 2018, Defendants timely filed a petition to open the default judgment, and attached thereto a Proposed Answer to Plaintiff's complaint. On December 4, 2018, this Court opened the default judgment and instructed the Defendants to file their Answer to Plaintiff's complaint within ten days. This Court opened the judgment because the Defendants had attached to their Proposed Answer a verification subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.<sup>3</sup> This Court thus reasoned that notwithstanding a lack of specific denials in the Proposed Answer, as required under Pa. R.C.P. 1029(b), Defendants had nevertheless created the bases for the establishment of a "meritorious defense" by attaching a verification which exposed them to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.<sup>4</sup> Defendants however filed no Answer to Plaintiff's Complaint, notwithstanding the Court's specific instruction that the Answer be timely filed.

On December 21, 2018, Plaintiff filed a motion for judgment on the pleadings. This motion argued that the Defendants' Proposed Answer to the Complaint had failed to specifically deny the allegations therein, in violation of Pa. R.C.P. 1029(b). The motion thus concluded that the general denials contained in the Defendants' Proposed

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<sup>1</sup> Complaint, ¶¶ 5-8, 11-12.

<sup>2</sup> *Id.*, ¶¶ 13-17, 18-21.

<sup>3</sup> Verification, attached to the Defendants' petition to open default judgment.


<sup>4</sup> Order entered April 17, 2019, footnote. Pa. R.C.P. 237.3(b)(2) instructs that the court shall open a default judgment "[i]f the petition [to open] ... is filed within ten days after the entry of a default judgment ... [and the proposed answer to the complaint] states a meritorious defense."

Answer should be deemed as admissions, and judgment on the pleadings should be granted in favor of Plaintiff. This Court granted the un-answered motion for judgment on the pleadings and entered judgment in favor of Plaintiff because the Defendants, by failing to file an Answer to Plaintiff's Complaint, had admitted the factual allegations therein.<sup>5</sup> Stated another way, the Defendants' failure to deny the factual allegations in Plaintiff's Complaint cleared the dispute of any issues of material fact; therefore, the Court determined that Plaintiff was entitled to judgment on the pleadings.

On April 26, 2019, Defendants filed a motion for reconsideration; subsequently, on May 16, 2019, Defendants appealed the Order of this Court granting Plaintiff's motion for judgment on the pleadings. On July 22, 2019, this Court denied the motion for reconsideration as moot.

For the reasons articulated above, it is respectfully suggested that the Order of this Court dated April 17, 2019 be affirmed on appeal.

**BY THE COURT**

  
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**RAMY I. DJERASSI, J.**

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<sup>5</sup> “[U]nder the fact pleading system in Pennsylvania, the general rule is that averments of fact require denial.” Devine v. Hutt, 863 A.2d 1160, 1168 (Pa. Super. 2004). A failure to file a timely responsive pleading amounts to an admission of the allegation contained in the complaint. Noel v. Puckett, 235 A.2d 380, 385 (Pa. 1967). A failure to file a required responsive pleading “results ... in the admission of factual averments.” Landis v. City of Philadelphia, 369 A.2d 746 (Pa. Super. 1976).