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

DOCKETED

WESTWYNNE INVESTMENTS, LLC, ET AL.,	:	September Term 2020
Plaintiffs,	:	
v.	:	No. 1442
KEITH BUNCH, ET AL.,	:	
Defendants.	:	Commerce Program
	:	
	:	Control Number 24024074

MAR 27 2024

R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 26th day of March, 2024, upon consideration of Defendants Keith Bunch, Prime Renovation and Remediation, Inc. and Marilyn Rigmaiden-DeLeon, Esquire's Preliminary Objections to Plaintiffs' Amended Complaint pursuant to Pa. R. Civ. P. 1028 (a)(1) and (a)(2), Plaintiffs' Response in Opposition, and in accord with the attached Opinion, it hereby is **ORDERED and DECREED** that the Preliminary Objections are **SUSTAINED** and the Amended Complaint is Dismissed against Defendants.

It is further **ORDERED and DECREED** that the *Lis Pendens* indexed on September 25, 2020 against 4431-35 Lancaster Avenue, Philadelphia, PA 19104-1305, OPA # 882933870 is **STRICKEN**.

BY THE COURT,



PAULA A. PATRICK, J.

200901442-Westwynne Investments, Llc Etal Vs Bunch Etal



20090144200147

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	:	
Defendants.	:	Commerce Program
	:	
	:	Control Number 24024074

OPINION

Before the Court are the Preliminary Objections of Defendant Keith Bunch, Prime Renovation and Remediation, Inc., and Marilyn Rigmaiden-DeLeon, Esquire. For the reasons discussed below, the Preliminary Objections are sustained and the Amended Complaint is dismissed against Defendants¹.

BACKGROUND

Plaintiff Megan Gibson (“Gibson”) and Defendant Keith Bunch (“Keith Bunch”) consulted with Defendant Marilyn Rigmaiden – DeLeon, Esquire (“Defendant Attorney”) for legal advice on forming a limited liability company. On August 25, 2017, Plaintiff and Keith Bunch formed WestWynne Investments, LLC (the LLC) for the purpose of purchasing, rehabilitating and/or developing real estate for resale to the general public.² Gibson and Keith Bunch respectively own 50% of the LLC; Gibson is primarily responsible for providing the financing for the company’s

¹ On April 12, 2023, the Court granted summary judgment in favor of defendant Kevin Bunch, the remaining defendant in this matter. (Order of the Court- Docket at 4/12/23).

² Amended Complaint ¶¶ 10-12; Exhibit “A” to the Amended Complaint, Certificate of Organization, and Exhibit “B”, Operating Agreement.

real estate ventures and Keith Bunch is primarily responsible for providing physical labor to complete the real estate ventures.³

In March and/or April 2018, Defendant Kevin Bunch (“Kevin Bunch”), Keith Bunch’s father, owned real properties located at 4431-4435 Lancaster Avenue, Philadelphia, Pennsylvania 19104-1305 (“Property”). Kevin Bunch offered to sell the Property to the LLC for \$50,000.⁴ Keith Bunch and/or Kevin Bunch allegedly communicated the offer to Gibson and the LLC.⁵ On May 2, 2018, Gibson and the LLC accepted the offer. Keith Bunch then sought permission to withdraw \$30,000 from the LLC as a deposit toward the sale price for the Property.⁶ On May 2, 2018, Keith Bunch allegedly transferred \$30,000 from a LLC account to a checking account owned, operated and controlled by Keith Bunch and/or Kevin Bunch.⁷

On July 10, 2018, instead of selling and transferring the Property to the LLC, Defendant Attorney and Kevin Bunch sold and transferred the Property to Keith Bunch for \$1.00.⁸ Defendant Attorney prepared the deed.⁹ In addition to the \$30,000, Keith Bunch allegedly transferred approximately \$65,000 from the LLC’s account and used the money to purchase materials and

³ Amended Complaint Id. ¶ 12.

⁴ Id. ¶ 16.

⁵ Id. ¶¶17-18.

⁶ Id. ¶19.

⁷ Id. ¶¶20, 21.

⁸ Id ¶ 24.

⁹ Id. ¶25.

construction equipment for Defendant Prime Renovation and Remediation, Inc. (“Prime”), a company owned by Keith Bunch.¹⁰

First Lawsuit

On October 10, 2019, Gibson and the LLC (collectively “Plaintiffs”) filed a lawsuit against Keith Bunch, Kevin Bunch, and Prime in the Court of Common Pleas of Philadelphia County in an action captioned *Gibson et al. v. Bunch et al.* 1910-782. Keith Bunch was served with the Complaint by the Montgomery County Sheriff on June 20, 2020 at 8 ½ Lantham Park, Elkins Park, Philadelphia, PA.¹¹ Defendant Attorney entered her appearance on behalf of Keith Bunch. On September 24, 2020, the action was marked settled, discontinued and ended without prejudice.¹²

This Lawsuit

On September 24, 2020, Plaintiffs commenced this action by Writ of Summons against Keith Bunch, Kevin Bunch and Prime and also indexed a *lis pendens* against the Properties. On September 25, 2020, Plaintiffs filed the Complaint against Keith Bunch, Kevin Bunch and Prime¹³

Plaintiffs attempted to serve the Writ and the Complaint on Keith Bunch and Prime as follows:

1. On September 29, 2020, service on Keith Bunch was attempted at 6230 North Smedley Street, Philadelphia, Pennsylvania, by Best Legal Services, Inc. The attempt at service was unsuccessful. The process server noted the property was vacant and there were no windows. (Affidavit of Non Service-Docket [Dkt.] 11/9/20).

¹⁰ Id. ¶30.

¹¹ Id. ¶¶ 31-32.

¹² Id. ¶ 33-34.

¹³ Id. ¶ 35-36.

2. On September 29, 2020, service on Prime was attempted at 4219 Lancaster Avenue, Philadelphia, Pennsylvania, the alleged registered address for Prime with the Pennsylvania Department of State by Best Legal Services, Inc. Service was unsuccessful. The process server noted the building was closed and vacant; the security gate was padlocked. (Affidavit of Non Service- Dkt. 11/9/20).
3. On October 20, 2020, service on Keith Bunch was attempted at 8 ½ Elkins Park, Philadelphia, Pennsylvania by the Montgomery County Sheriff's Department. This was the address where Keith Bunch was previously served with the Complaint in the first lawsuit. The return of service contains a notation that Keith Bunch moved. (Affidavit of Non Service -Dkt. 11/9/20).

From October 20, 2020 to November 2, 2022, Plaintiffs did not make any attempts to serve Keith Bunch or Prime. Plaintiffs reinstated the Complaint 27 times between November 9, 2020 and November 1, 2022. From December 20, 2020 to March 1, 2021 and from March 19, 2021 to November 8, 2021, Plaintiffs did not reinstate the Complaint.

Plaintiffs hired Dianne L. Cowan, an investigator with Confidential Investigative Services, Inc., to locate Keith Bunch and Prime. The investigator's efforts concluded that Keith Bunch organized a new company called Mr. Dump Truck LLC which was registered at 4431 Lancaster Avenue, one of the properties to be sold to the LLC. The Smedley Street property was titled in the name of Mr. Dump Truck, LLC, Keith Bunch's driver's License in 2018 reflected an Elkins Park address. The PennDOT records for a truck was registered to Keith Bunch at the Elkins Park address, the voting records showed that a 2020 voter registration reflected a Smedley Street address, Keith Bunch had a rental apartment in Bryn Mawr and no forwarding addresses existed for the Elkins Park address.¹⁴

¹⁴ Amended Complaint ¶¶41, 42.

On November 2, 2022, more than two years from the filing of the Writ and the Complaint and more than two years from the last attempt at service, Plaintiffs filed a motion for alternative service incorporating the findings of the investigator set forth above and attaching her report.¹⁵ On November 7, 2022, the motion for alternative service was denied.¹⁶ The Court found that Plaintiffs failed to make a good faith effort to locate defendant Keith Bunch and Prime, failed to show practical efforts to serve Defendants, and that the proposed alternative means were not reasonably calculated to provide Defendants with notice of the proceedings since the last attempt at personal service was 2020. The Court further found that additional investigation was required and that there were no exhibits explaining the relationship between Keith Bunch and Prime attached to the motion for alternative service.¹⁷

From November 7, 2022 to August 31, 2023, the Complaint was reinstated by Plaintiffs. On March 2, 2023, the investigator produced another report which showed that the property on Lancaster Avenue was vacant, Keith Bunch no longer resided in Bryn Mawr and that his driver's license was updated to reflect an address in Elkins Park on December 31, 2022.¹⁸ On March 3, 2023, Best Legal Services Inc. attempted to serve Keith Bunch at 2828 Livingston Street, Philadelphia, Pennsylvania. The attempt at service was unsuccessful.¹⁹ The process server noted that no one on the property knew Keith Bunch and the contractor had a different name.²⁰

¹⁵ Amended Complaint ¶ 42.

¹⁶ Court's Order- Dkt. at 11/7/22.

¹⁷ Id.

¹⁸ Amended Complaint ¶¶46-47.

¹⁹ Affidavit of Service- Dkt. at 3/23/23.

²⁰ Id.

On November 5, 2023, Defendant Attorney entered her appearance on behalf Keith Bunch and Prime and filed Preliminary Objections. On November 26, 2023, Plaintiffs filed an Amended Complaint adding Defendant Attorney as a defendant alleging, she conspired with Keith Bunch and Prime to transfer the Properties to Keith Bunch only. On January 8, 2024, the Amended Complaint was reinstated. From November 25, 2023 to January 8, 2024, no attempts were made to serve original process on the Defendants.

On February 18, 2024, Defendants Keith Bunch, Prime and Defendant Attorney filed preliminary objections to the Amended Complaint. The Preliminary Objections are now ripe for consideration.

DISCUSSION

I. Plaintiffs failed to make good faith efforts to serve Defendants Keith Bunch and Prime with original process as required by Pa. R. Civ. P. 402.

A defendant may file a preliminary objection for improper service.²¹ When a defendant challenges the court's assertion of personal jurisdiction, that defendant bears the burden of supporting such objections to jurisdiction by presenting evidence. The burden of proof only shifts to the plaintiff after the defendant has presented affidavits or other evidence in support of its preliminary objections challenging jurisdiction.²²

In *Lamp v. Heyman*, 469 Pa. 465, 366 A.2d 882 (1976), the Pennsylvania Supreme Court sought to end abuses of process by plaintiffs who tolled the statute of limitations by filing a writ

²¹ Pa. R. Civ. P. 1028 (a)(1).

²² *Trexler v. McDonald's Corp.*, 118 A.3d 408, 412 (Pa. Super. 2015)(citations omitted).

of summons, had the writ repeatedly reissued, and deliberately failed to notify the defendant of the pending litigation.²³ This process defeated the purpose of the statute of limitations, which is to protect defendants from stale claims.²⁴ Thus, in *Lamp*, the Court held that “a writ of summons shall remain effective to commence an action only if the plaintiff then refrains from a course of conduct which serves to stall in its tracks the legal machinery he has just set in motion.”²⁵ This “*Lamp* rule” applies equally to actions commenced by way of the filing of a complaint.²⁶

In *Farinacci v. Beaver County Industrial Development Authority*, 510 Pa. 589, 511 A.2d 757, 759 (1986), the *Lamp* rule was refined when the Pennsylvania Supreme Court clarified that: (1) the plaintiff carries an evidentiary burden of proving that she made a good-faith effort to ensure that notice of the commencement of an action was served on the defendant; and (2) “[i]n each case, where noncompliance with *Lamp* is alleged, the [trial] court must determine in its sound discretion whether a good-faith effort to effectuate notice was made[.]”²⁷

In *McCreesh v. City of Philadelphia*, 585 Pa. 211, 888 A.2d 664 (2005), the Court recognized an exception to serving original process when plaintiffs’ improper actions in serving original process put defendants on actual notice of the commencement of actions. The Court held that trial courts should “dismiss only those claims where plaintiffs have demonstrated an intent to stall the

²³ *McCreesh v. City of Philadelphia*, 585 Pa. 211, 888 A.2d 664, 665 (2005).

²⁴ *Id.*

²⁵ *Lamp v. Heyman*, 366 A.2d at 889

²⁶ *Id.*

²⁷ *Farinacci*, 511 A.2d at 759.

judicial machinery or where plaintiffs' failure to comply with the Rules of Civil Procedure has prejudiced defendant." ²⁸

Although *McCreesh* made clear that a plaintiff could fulfill its good-faith service mandate without strictly complying with the service rules as long as its efforts resulted in actual notice of the lawsuit to the defendant, like *Farinacci*, *McCreesh* did nothing to modify a plaintiff's duty to act diligently to serve notice of the commencement of an action so as not to undermine the policies that drive the statute of limitations. Nor, for that matter, did *McCreesh* change the rule clarified in *Farinacci* that the plaintiff carries an evidentiary burden to prove that she made a good-faith effort to effectuate service of process in a timely manner.

Most recently in *Gussom v. Teagle*, 247 A.3d 1046 (Pa. 2021) the Pennsylvania Supreme Court summarized Plaintiff's burden as follows:

When a defendant presents a factual dispute as to whether a plaintiff fulfilled this duty, the plaintiff carries an evidentiary burden to demonstrate that he met his good-faith mandate. If a plaintiff presents credible evidence that they made this attempt at service, then they fulfill their requirement to prove good faith. If a plaintiff does not present such evidence, then they have failed to satisfy their evidentiary burden, regardless of whether her actions (or inaction) were intentional, unintentional, or otherwise. However, a trial court should not punish a plaintiff by dismissing their complaint where they are able to establish that their improper but diligent attempts at service resulted in the defendant receiving actual notice of the commencement of the action, unless the plaintiff's failure to serve process properly evinced an intent to stall the judicial machinery or otherwise prejudiced the defendant.²⁹

The case at bar does not involve a factual scenario like *McCreesh* where Plaintiffs served Defendants improperly within the applicable statute of limitations, and consequently, Defendants

²⁸ *McCreesh*, 888 A.2d at 674.

²⁹ *Gussom*, 247 A.3d at 1057.

received timely notice of the lawsuit.³⁰ Here, there is no evidence of service of original process on Keith Bunch and Prime. Additionally, there is minimal evidence of good faith efforts to serve Defendants. Plaintiffs service attempts on Keith Bunch and Prime amount to unsuccessful initial attempts at service when the case was commenced for Keith Bunch and Prime on a single day, September 29, 2020, and subsequently two unsuccessful discrete service attempts on Keith Bunch on October 20, 2020 and March 3, 2023. Further, while Plaintiffs did file a motion with the Court seeking leave to serve the Defendants through alternative means which was denied, Plaintiffs made no effort to refile a motion seeking leave for alternative service with the Court. This Court finds that Plaintiffs failed to satisfy their burden of demonstrating good-faith efforts to timely serve Keith Bunch and Prime with original process and notice of this litigation. The filing of the Amended Complaint does not alter this conclusion or salvage Plaintiffs' claims. Plaintiffs' inaction in failing to make good faith efforts to serve original process on Keith Bunch and Prime embodies the concerns of *Lamp* and its progenies, the stalling of the judicial machinery. Based on the foregoing, Keith Bunch and Prime's preliminary objection for lack of service is sustained and the Amended Complaint is dismissed against these Defendants.

II. The Amended Complaint is also dismissed against Defendant Attorney

Pa. R. Civ. P. 1033 states that "a party, either by written consent of the adverse party or by leave of court, may at any time ...add a person as a party..." Here, Plaintiffs filed an Amended Complaint adding defendant Attorney as a party defendant. Plaintiffs did not seek leave of Court to add Defendant Attorney to this action. Given Plaintiffs failure to follow the Pennsylvania Rules

³⁰ Compare *McCreesh, supra* (plaintiff served the defendant with the writ via certified mail, rather than by personal service, and later reissued the writ and properly served it after the limitations period ran).

of Court, the Preliminary Objections are sustained, and the Amended Complaint is dismissed against Defendant Attorney.

CONCLUSION

For the foregoing reasons, the Preliminary Objections are sustained and the Amended Complaint is dismissed against Defendants and the *lis pendens* indexed on the Lancaster Properties is stricken.

BY THE COURT:



PAULA A. PATRICK, J.