

THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

ALEX PIERRE

Appellant

V.

POST COMMERCIAL REAL ESTATE CORP.,

DAWN RODGERS, NANCY WASSER and

NANCY WASSER AND ASSOCIATES (sic)

Appellees

:
:
: **TRIAL DIVISION - CIVIL**
:
:
: **DECEMBER TERM, 2010**
: **No. 0384**
:
: **Superior Court No.**
: **2560 EDA 2011**

OPINION

PROCEDURAL HISTORY

Plaintiff, Alex Pierre, appeals an Order dated August 26, 2011, wherein this Court granted Defendants Post Commercial Real Estate Corp., Dawn Rodgers, Nancy Wasser and Nancy Wasser and Associates' Motion for Judgment on the Pleadings, dismissing all counts with prejudice, sanctioning Plaintiff pursuant to 42 Pa.C.S. §2503, and awarding Defendants attorney's fees and costs incurred in filing of the aforementioned Motion.

FACTUAL BACKGROUND

Between October 1993 and December 8, 2008, Plaintiff Alex Pierre (hereinafter called "Pierre"), leased apartment C-1 of the Cloverly Building located at 437 West School House Lane in Philadelphia, Pennsylvania. (See Complaint ¶ 6). Plaintiff Pierre alleges that in September of 2008, Defendant Post Commercial Real Estate Corp., (hereinafter called "Post") commenced an action against him in the Landlord-Tenant

Division of Philadelphia Municipal Court. (See Complaint ¶ 7). In October of 2008, judgment was entered against Plaintiff Pierre, awarding possession of the premises to the landlord. Plaintiff's Complaint confirms that judgment was in favor of Defendant Post (See Complaint ¶ 8).

Plaintiff Pierre states that he supplied to, and Defendant Post received and cashed money orders for the December 2008 and January 2009 monthly rent. (See Complaint ¶ 9-15). On December 8, 2008, Plaintiff asserts that Defendant Post caused the Philadelphia Sheriff to evict Plaintiff Pierre from his apartment. (See Complaint ¶20). The amount of Plaintiff's January 2009 monthly rent was returned to him on the day of his eviction. (See Complaint ¶ 23, 24).

Plaintiff commenced this action by filing his complaint on December 7, 2010. (See Docket).¹ The Complaint contains five separate claims. Count I is a breach of contract claim against Defendant Post. Count II is a tortious interference with contract claim against Defendants Nancy Wasser and Nancy Wasser and Associates. Count III is a claim that all Defendants violated the Philadelphia Code. Count IV is a wrongful use of civil proceedings claim against Defendants Post, Nancy Wasser, and Nancy Wasser and Associates. Count V is an abuse of process claim against all Defendants. (See Complaint ¶ 27 - 61).

Defendants answered Plaintiff's complaint, with new matter, on January 13, 2011. (See Docket). In the Answer, the Defendants emphasized that MP Cloverly Partners, LP, (hereinafter called "Cloverly") not Defendant Post was the Plaintiff's landlord and the

¹ Plaintiff Pierre filed a Motion to proceed In Forma Pauperis, at the time of the filing of his Complaint, which was granted on December, 29, 2010. (See Docket). It should be noted that Plaintiff, at the time of the Complaint filing, was a Suspended Attorney. (See Defendants' Answer With New Matter, Exhibit "A").

entity that brought legal action to evict Plaintiff Pierre. (See Defendants' Answer With New Matter, at pg. 2 and "Exhibit D").²

Plaintiff Pierre filed a Motion for Leave to Amend Caption and Complaint on March 14, 2011. (See Docket). In the Motion, Plaintiff sought to amend his Complaint to add Cloverly as a defendant and also asserted new theories of liability. (See Motion for Leave to Amend Caption and Complaint ¶¶ 6, 9).

On March 22, 2011, the Defendants filed their Response to Plaintiff's Motion to Amend. (See Docket). On April 1, 2011, Plaintiff Pierre filed his Reply to Defendant's Opposition to Motion For Leave To Amend. (See Docket). On May 2, 2011, the Plaintiff filed a Motion for Reconsideration of the Order Denying Leave to Amend Caption and Complaint. (See Docket). On May 10, 2011 this Court denied the aforementioned motion. The Order was entered on May 11, 2011. (See Docket).

On May 19, 2011, the Plaintiff filed yet another Motion for Reconsideration, asking that this Court's May 11, 2011 Order be reversed. (See Docket). On June 20, 2011, this Court denied the Motion for Reconsideration, and directed that no further reconsiderations be filed. (See Docket).

On July 21, 2011, the Defendants filed a Motion for Judgment on the Pleadings. (See Docket). The Defendants averred that the breach of contract claim could not stand because there was no privity between Plaintiff Pierre and Defendant Post. (See Memo of Law in Support of Motion at pg. 9). With respect to the tortious interference claim, since there was no contract, Defendants Wasser and Nancy Wasser and Associates could not have interfered. *Id.* at 10. Defendants argued the wrongful use of civil proceedings and

² On or around January 23, 2008, MP Cloverly Partners LP, purchased the apartment complex where Plaintiff resided until his eviction on December 8, 2008. See Defendants' Answer With New Matter, at pg. 2

abuse of proceedings counts could not stand because Defendant Post did not commence the eviction proceedings. *Id.* at 10, 11. The Defense, also argued, via footnote, that the violation of Philadelphia Code claim is without merit because the Plaintiff was evicted pursuant to a valid court order. *Id.* at 12. Finally, the Defense requested attorney fees and court costs on the basis that the Plaintiff acted in bad faith. *Id.*

On August 10, 2011, the Plaintiff filed his Opposition to Defendants' Motion for Judgment on the Pleadings. (See Docket). Plaintiff argued that service of the Defendants' Motion for Judgment on the Pleadings was ineffective, so the motion should be denied. (See Plaintiff's Memo of Law in Support of Motion at pg. 3). He also asserted that Defendants failed to meet their burden for entry of judgment on the pleadings. *Id.* at 3.

On August 26, 2011, this Court granted the Defendants' Motion for Judgment on the Pleadings and found the Plaintiff's conduct sanctionable under 42 Pa.C.S. §2503. (See Docket). The Plaintiff appealed this decision to the Superior Court. On October 7, 2011, this Court issued its notice for Plaintiff to file his Statement of Errors pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). *Id.* Plaintiff filed his 1925(b) Statement of Errors on October 13, 2011. *Id.*

The three issues to be addressed on appeal are: 1) did the court err or abuse its discretion in denying Plaintiff's leave to amend, where Plaintiff failed to comply with the Rules of Civil Procedure for amending his caption to correctly identify the Defendants, and the statute of limitation on his claims against the original defendants had run; and 2) did the court err or abuse its discretion in granting judgment on the pleadings when service of the motion was proper, and no issues of fact exists; and 3) did the court err or

abuse its discretion in awarding sanctions where Plaintiff's conduct during the course of the underlying proceedings was vexatious, obdurate, and in bad faith ?

LEGAL ANALYSIS

The granting of leave to amend is within the discretion of the trial court. *Geiman v. Board of Assessment and Revision of Taxes*, 412 Pa. 608, 614, 195 A.2d 352, 355-56 (1963) (citing *Kilian v. Allegheny County Distributors*, 409 Pa. 344, 185 A.2d 517 (1962)). Unless a clear abuse of discretion is demonstrated, the trial court's decision will not be reversed. *Daley v. John Wanamaker, Inc.* 317 Pa. Super. 348, 359, 464 A.2d 355, 361 (1983).

There is a heavy burden placed on a challenger of a trial court's discretionary decision. "It is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power. *Mackarus's Estate* 431 Pa. 585, 596, 246 A.2d 661, 666-67 (1968). An abuse of discretion is more than an error of judgment, rather in reaching a conclusion of the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, or ill will, as shown by evidence on the record, then discretion is abused. *Brown v. Delaware Valley Transplant Program*, 371 Pa. Super. 583, 587, 538 A.2d 889, 891 (1988).

A new cause of action may not be offered in an amendment after the statute of limitations has run. *Daley* 464 A.2d at 358. "A new cause of action does not exist if plaintiff's amendment merely adds to or amplifies the original complaint. *Id.* at 359 (citing *Wilson v. Howard Johnson Restaurant*, 421 Pa. 455, 460, 219 A.2d 676, 678-79

(1966). A new cause of action arises when the amendment offers a different theory, or type of negligence, or if the operative facts have changed. *Id.*

42 Pa.C.S § 5524 dictates what actions have a two year statute of limitations. They include actions for trespass of real property, an action upon a statute for civil penalty or forfeiture, and any action to recover damages based on negligent or tortious conduct, including deceit, or fraud. *Id.* Plaintiff Pierre in his amended complaint seeks to add counts for fraud, conversion, fraudulent misrepresentation, negligent misrepresentation, and negligence against the original Defendants. (See Plaintiff's Offered Amended Complaint.)

The events giving rise to the Complaint, and request to amend, arose on December 8, 2008. (See Complaint). The Amended Complaint was not filed until March 14, 2011. Per 42 Pa.C.S § 5524, the statute of limitations for the new claims the Plaintiff seeks to add expired on December 8, 2010. Therefore, based on *Daley*, these claims are barred. Therefore there was no abuse of discretion in denying Plaintiff's Motion for leave to amend to add additional causes of action.

Plaintiff attempts to add a breach of contract claim against an additional defendant, Cloverly. Pa.R.Civ.P. 2253(a)(1) dictates the time frame for adding an additional defendant:

Neither a praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by complaint shall be filed later than sixty days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof.

Plaintiff asserts that service was made on the Defendants on January 8, 2011. (See Plaintiff's Motion for Leave to Amend ¶ 2). Based on Pa.R.Civ.P. 2253(a)(1), it

was necessary for Plaintiff to join Cloverly as an additional defendant by March 9, 2011, to meet the sixty day deadline. Plaintiff, a lawyer by trade, should have been keenly aware that Cloverly was his landlord, and thus the only landlord party he could have pursued. (See Answer With New Matter, Exhibit “D,” Municipal Court’s Order of October 23, 2008, in which Cloverly was listed as the plaintiff who commenced the eviction proceeding against Mr. Pierre.)

Furthermore, the Defendants’ Answer, which was filed on January 13, 2011, made it abundantly clear they would argue that Cloverly was the landlord. *Id.* a pg. 2. Plaintiff’s Motion to Amend the Complaint was filed on March 14, 2011, five days after the deadline to join an additional defendant, and without a verification statement. Plaintiff Pierre failed to comply with Rule 2253(a)(1) to properly add an additional defendant. Also, the Plaintiff failed to state facts which would establish that a contractual relationship with Cloverly existed. The rental payments were made to Defendant Post, not Cloverly. Consequently, Cloverly should not be added for a breach of contract claim. This court did not abuse its discretion by refusing to allow Cloverly to be added on a breach of contract claim.

In an attempt to keep his case alive, Plaintiff attempts to add an unfair trade practice claim against the existing Defendants and Cloverly. Plaintiff’s vague claim emanates from his eviction from his apartment. His eviction was pursuant to a valid eviction procedure which culminated in eviction pursuant to a Municipal Court Order. Therefore, no unfair trade practice could have occurred. This Court did not abuse its discretion by prohibiting the addition of an unfair trade practice claim.

Plaintiff Pierre asserts that this Court abused its discretion in granting the Defendants' Motion for Judgment on the Pleadings. His argument centers on his misguided reasoning that both service of the motion was flawed and that fact issues remain.

With respect to the inadequate service claim, Pa.R.Civ.P. 440(a)(2)(i) governs this analysis. The relevant section of the rule states that service of papers, after original process, on a party with no attorney of record, "shall be made by...mailing a copy to or leaving a copy for the party at the address endorsed on appearance or prior pleading." *Id.* The service of process rules must be strictly followed. *Sharp v. Valley Forge Medical Center and Heart Hospital, Inc.*, 422 Pa. 124, 221 A.2d 185 (1966). In *Parastino v. Lathrop*, the court held that service was proper because the defense served plaintiff at the address plaintiff himself provided. 697 A.2d 1004 (Pa. Super. Ct. 1997).

Plaintiff Pierre asserts that service was to an address other than the one of record.³ (See Plaintiff's Opposition to Defendants' Motion for Judgment on Pleadings at pg. 1). Plaintiff would like us to believe that his address of record (and also his place of residence) is 45 E. City Avenue- No. 399, Bala Cynwyd, PA 19004-2124. (See Complaint ¶ 1). The Defendants reveal this to be a post office box. (See Answer, Exhibit "C"). Regardless, the Defense mailed their Motion for Judgment on the Pleadings to the Plaintiff, at his mailing address, 374 Bleeker Street, New York, NY, 10014-3210

³ Plaintiff also argues, without proof, that the Defendants did not attach the requisite exhibits to their Motion for Judgment on the Pleadings in violation of Phila. Civ. Rule 208.3(b)(2)(E). (See Memo of Law in Opposition to Defendants' Motion for Judgment on the Pleadings at pg. 3). A review of the publicly accessible docket system demonstrates all attachments were filed with the Defendants' Motion. The Plaintiff could have accessed these exhibits, if his unsubstantiated claims were in fact accurate.

He also alleges that service was made on August 8, 2011, two days prior to the expiration of the response time. (See Plaintiff's Opposition to Defendants' Motion). However, the Docket shows the Motion was filed on July 21, 2011, and Plaintiff did indeed respond to the Motion in a timely fashion.

pursuant to Pa.R.Civ.P. 440(a)(2)(i). (See Motion, Certificate of Service.) This address was provided by the Plaintiff during sworn testimony on June 14, 2011. *Id.* Following *Parastino*, mailing to the address supplied by the Plaintiff is sufficient to satisfy the service requirements. This Court did not err in granting the Defendants' Motion as service was proper.

Plaintiff Pierre also proffers the substantive argument that the Motion should not be granted because fact issues remain. A motion for judgment on the pleadings under Pa.R.Civ.P 1034(a) is properly granted where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. *Gidding v. Tartler* 130 Pa. Cmmw. 175, 178, 567 A.2d 766, 767 (1989).

On appeal, the court shall only consider whether the trial court abused its discretion or committed an error of law in granting the moving party's motion. *Old Guard Ins. Co*, 2004 Pa. Super. 491, P7, 866 A.2d 412, 416 (2004). (See also *Kurz v. Lockhart*, 656 A.2d 160, 162 n. 1 (Pa. Cmwlth. 1995). The reviewing court

Must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed, considering only those facts which were specifically admitted. Further, the court may grant judgment on the pleadings only where the moving party's right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise. *Steiner v. Bell of Pennsylvania*, 426 Pa. Super. 84, 88, 26 A.2d 584, 586 (1993).

Pa.R.Civ.P 1017 delineates what constitutes a valid pleading, which includes a complaint, an answer with new matter and any appropriately attached documents. Based on this rule, and *Steiner*, the court must only review the Complaint, the Answer with new matter and any exhibits properly attached to either document. These are the only valid pleadings submitted. (See Docket). Because it is the Defendants' Motion, the court's

review is limited to the Plaintiff's Complaint, and all factual allegations by Plaintiff must be taken as true.

In Count I, the Plaintiff asserts that Defendant Post breached its contract with the Plaintiff when it had the Plaintiff evicted. (See Complaint). A breach of contract exists where it can be shown that there was a contract, a duty imposed by the contract was breached, and damages resulted. See *Koken v. Steinberg*, 825 A.2d 723, 729 (Pa. Commw. Ct. 2003). Of paramount importance, it is essential contract law that a party cannot be liable for a breach of contract unless one is a party to the contract. *Electron Energy Corp. v. Short*, Pa. Super. 563, 571, 597 A.2d 175, 178 (Pa. Super. Ct. 1991) (court ruled a corporate president cannot be liable for breach of contract where he is not a party to the contract). See also, *Fleetway Leasing Co. v. Wright*, 697 A.2d, 1000, 1003 (Pa. Super. Ct. 1997) (“A person who is not a party to a contract cannot be held liable for breach by one of the parties to a contract.”)

Plaintiff Pierre states that Defendant Post initiated the eviction proceedings in Municipal Court, and had him evicted on December 8, 2008. (See Complaint ¶ 7, 19). Plaintiff also states that he tendered payments for December and January rent to Defendant Post, which created a lease agreement. (*Id.* at ¶ 9-15, 28). However, Plaintiff Pierre failed to allege any facts which would establish that Defendant Post owned the Cloverly Apartments, was his landlord, or was in a position to accept rental payments for the Cloverly Apartments. Therefore, Plaintiff failed to demonstrate the requisite facts necessary for the court to conclude that a valid contract existed between Defendant Post and the Plaintiff.

It should be noted that the Defense demonstrates that Cloverly initiated the Municipal Court proceeding. (See Answer With New Matter, Exhibit “D”.) Furthermore, they completely refute the alleged fact that Defendant Post caused the December 8, 2008 eviction. (*Id.* at Exhibit “E,” a Writ of Possession with Cloverly listed as the plaintiff.) Finally, Defendants note that the apartment complex was purchased by Cloverly on January 23, 2008. (*Id.* at pg. 5)

In summary, the Plaintiff cannot meet the breach of contract standard set out in *Koken*. Cloverly was the apartment complex’s owner, and thus Plaintiff’s landlord. Following *Energy Corp*, Post cannot be liable for the eviction because Post was not a party to the lease/contract. The Plaintiff failed to allege facts that Defendant Post either owned the apartment complex, or was the landlord. No contract existed between Defendant Post and the Plaintiff. Based on the pleadings, this Court determined that no genuine issue of fact remains, and thus the Defendant was entitled to a judgment as a matter of law on the breach of contract claim.

In Count II of Plaintiff’s Complaint, he alleges that Defendants Wasser and Wasser and Associates tortiously interfered with the contract alleged in Count I. Pennsylvania has adopted the Restatement (Second) of Torts § 766, pertaining to the malicious interference with a contract. It reads:

One who intentionally and improperly interferes with the performance of a contract...between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract. *Daniel Adams Associates, Inc., v. Rimbach Pub., Inc.*, 360 Pa. Super. 72, 78 (Pa. Super. Ct. 1987).

To plead a tortious interference with contract claim, the following test must be met. First, the party must demonstrate that either a contract or prospective contractual relationship exists between the complainant and a third party. Secondly, there must be purposeful action by the defendant to harm the relationship, or prevent the relationship from occurring. Thirdly, the absence of privilege or justification on the part of the defendant for their actions must be shown. Finally, Plaintiff must prove that Defendant's conduct resulted in actual legal damage to the Plaintiff. (See *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super 1997).

Furthermore, an agent cannot tortiously interfere with its principal's contract when acting within the scope of his agency. "Where employees or agents for the corporation act within the scope of their employment or agency, the employees, the agents and the corporation are one in the same; there is no third party." (See *Rutherford v. Presbyterian-University Hosp.* 417 Pa. Super. 316, 332 (Pa. Super. Ct. 1992)

Based on the above analysis regarding Count I, no contractual relationship existed between Plaintiff and Defendant Post. Therefore, the first prong of the test laid out in *Strickland*, cannot be met. Since there was no contract, *a priori* defendants Wasser and Wasser and Associates could not have interfered. Furthermore, based on *Rutherford*, if you take as true that Defendant Post engaged Defendants Wasser and Wasser and Associates for legal representation, then an agency relationship resulted. Consequently, no third party exists and the first prong of the *Strickland Test* cannot be fulfilled. Hence, Defendants Wasser and Wasser and Associates are entitled to judgment as a matter of law.

In Count III, Plaintiff alleges that each Defendant violated Title 9, Section 1600 et seq. of the Philadelphia Code for evicting him from his apartment on December 8, 2008. This section calls for fines for those who are responsible for, or assist in wrongful eviction.⁴

However, Plaintiff acknowledges that he was evicted pursuant to a valid municipal court order was entered in October of 2008. (See Complaint ¶ 8). He attempts to argue that his alleged rent payments to Defendant Post should have stayed the eviction. (*Id.* at ¶ 45). Mentioned previously, Plaintiff failed to allege any facts which would establish that he and Defendant Post entered into a valid lease agreement on December 8, 2008. Therefore, the Plaintiff cannot make out a valid claim for wrongful eviction against any Defendant.

In Count IV, Plaintiff avers that Defendants Post, Wasser and Wasser and Associates wrongfully used civil proceedings in evicting Plaintiff on December 8, 2008. *The Dragonetti Act* codifies actions for wrongful use of civil proceedings. A claim may be brought if the person “acts in a grossly negligent manner or without probable cause... and the proceedings have terminated in favor of the person against whom they are brought.” (See 42 Pa.C.S. §8351(a)) (emphasis added).

To bring an action under this statute, the plaintiff must prove “(1) that the underlying proceedings were terminated in their favor; (2) that defendants caused those proceedings to be instituted without probable cause; and (3) that the proceedings were instituted for an improper purpose.” (See *Banner v. Miller*, 701 A.2d 232, 238 (Pa. Super. 1997)). Here, neither the underlying cause of action, the December 8, 2011 eviction, nor was the Municipal Court proceeding were terminated in Plaintiff’s favor.

⁴ Plaintiff rants that the Defendants moved for judgment on the pleadings for Count III via footnote.

(See Complaint). Hence, the test set forth in *Banner* cannot be met by the Plaintiff. The Defendants are entitled to a judgment as a matter of law on Count III.

In Count V, the Plaintiff brings an abuse of process claim against Defendants Post, Wasser and Wasser and Associates. “Abuse of process is, in essence, the use of legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process.” (citing *McGee v. Feege*, 517 Pa. Pa. 247, 259, 535 A.2d 1020, 1026 (1987)). To establish a claim for abuse of process, plaintiff must demonstrate that the defendant used a legal process against the plaintiff primarily to accomplish a purpose that was not the design of the process, and harm resulted to the plaintiff. (See *Rosen v. American Bank of Rola*, 627 A.2d 190, 192 (Pa. Super. 1993). (Service of subpoena was found not to be an abuse of process because its primary purpose was for discovery to obtain relevant information.)

Bad or malicious intentions are not enough to sustain a claim for abuse of process. (See *Rosen v. Tesoro Petroleum Corp.*, 399 Pa. Super. 226, 237, 582 A.2d 27, 32 (1990), *allocator denied*, 527 Pa. 636, 592 A.2d 1303 (1991)). Rather, the Defendant must have committed an act or threat not authorized by the process, used the process for an illegitimate aim, such as extortion, blackmail or to coerce the plaintiff to take some collateral action. *Id.* There can be no liability where the defendant has done nothing more than “carry out the process to its authorized conclusion even though with bad intentions.” (See *Shaffer v. Stewart*, 326 Pa. Super. 135, 137, 473 A.2d 1017, 1018 (1984)).

In his Complaint, Plaintiff recognizes that he was evicted on December 8, 2008 pursuant to a valid Municipal Court Order. *Id.* at ¶ 8. The Plaintiff has failed to plead

facts, which if taken as true, would demonstrate that Defendants used the eviction process primarily for an improper purpose. As in *Rosen v. American Bank of Rola*, where a subpoena was found legitimate to aid in discovery, here the Defendants' actions were undertaken to effectuate Plaintiff's eviction pursuant to a valid court order. It should also be noted that it was Cloverly, and not Defendants, who initiated the Municipal Court proceeding and caused the Writ of Possession to be filed against Plaintiff Pierre. (See Answer with New Matter, Exhibits "D" and "E"). Therefore, the Defendants are entitled to judgment on the pleadings relating on Plaintiff's abuse of process claim.

This Court concluded that Plaintiff Pierre failed to aver material facts substantiating the aforementioned five counts. Where no relevant issues of fact are raised, the trial becomes an expensive, unnecessary and fruitless exercise, and these cases warrant judgment on the pleadings. (See *DiAndrea v. Reliance Savings & Loan*, 310 Pa. Super. 537, 456 A.2d 1066 (1983).

Finally, this Court did not abuse its discretion in awarding the Defendants attorneys' fees due to the conduct of the Plaintiff, per 42 Pa.C.S. §2503.⁵ The trial court has great latitude and discretion when awarding attorneys' fees pursuant to a statute. (*Cummins v. Atlas R.R. Construction Co.*, 2002 Pa Super 418, 814 A.2D 742, 746 (2002). In reviewing a trial court's award of attorneys' fees, the appellate review standard is abuse of discretion. (*Lucchino v. Commonwealth*, 570 Pa. 277, 284, 286, 809 A.2d 264, 269-70 (2002). If support exists in the record for the trial court's decision that the conduct of the party was obdurate, vexatious or in bad faith, the appellate court will not

⁵ In Plaintiff's 1925 (b) Statement of Errors, he claims this Court abused its discretion in awarding sanctions because service of the motion was improper. Our analysis of this issue above determined that service was indeed proper.

disturb the trial court's decision. *Id.* at 269-70. (See also *Thunberg v. Strause*, 545 Pa. 607, 682 A.2d 295, 299 (Pa. 1996)).

Pursuant to 42 Pa.C.S. §2503, the following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

(7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter. And,

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith. *Kulp v. Hrivnak*, 2000 PA Super 407, 765 A.2d 796, 799 (Pa. Super. 2000).

“Obdurate” is defined, in the Funk and Wagnalls New Comprehensive International Dictionary of the English Language as “unyielding and stubborn.” *Scalia v. Erie Ins. Exch.* 2005 Pa. Super 223, 878 A.2d 114, 116 (Pa. Super. 2005). A party's actions are vexatious if the party commenced or continued a lawsuit without legal or factual support, and if the suit served only to cause annoyance. *Id.* (See also *Thunberg v. Strause*, 545 Pa. 607, 615, 682 A.2d 295, 299 (1996)). “A party has acted in bad faith when he files a lawsuit for purposes of fraud, dishonesty or corruption.” *Id.*

In *Scalia*, the court found that the plaintiffs brought a frivolous suit against their insurance carrier for denying their claim. *Id.* at 118. The insurance carrier, Erie, had no responsibility to provide coverage for damages if they resulted from the policy owner's arson, or if the policy holder misrepresented or concealed information. *Id.* Although Plaintiffs were on notice that their claims would be denied, due to their admitted arson, the plaintiffs filed suit regardless. *Id.* The court awarded attorneys' fees, stating, “The Scalias knew that they had no legal or factual grounds on which to base their suit and the only result of the suit was annoyance; therefore the Scalias' conduct was vexatious.” *Id.*

The court continued by saying that the Scalias “stubbornly persisted in this litigation, through rounds of discovery and several days of trial,” knowing that Erie was justified in denying their claim, consequently their conduct was obdurate. *Id.* Because the lawsuit was based on dishonest claims, it was deemed to be in bad faith. *Id.*

Like *Scalia*, the Plaintiff’s actions in these proceedings were vexatious, obdurate and in bad faith. Plaintiff Pierre’s conduct was vexatious and obdurate, as he had no legal or factual grounds to support his claims. He admitted his eviction was pursuant to a valid court order. (See Complaint). Plaintiff filed this exact same action in December of 2009; (See Defendants’ Answer With New Matter at pg. 4), however, that action was dismissed for lack of prosecution, as Plaintiff failed to file a complaint and failed to appear at a Rule to Show Cause. *Id.* at Exhibit “G.” Certainly, Plaintiff had the opportunity to ensure his next attempt was based upon a factually and substantively accurate Complaint.

An attorney by training, Plaintiff knew or reasonably should have known that his attempt to add additional claims and a defendant through his Motion to Amend was barred by the statute of limitations. He stubbornly persisted and filed two Motions for Reconsideration after his request was denied. (See Docket).

Finally, Plaintiff should reasonably have been aware that Cloverly, not Defendant Post was his landlord. As stated before, a valid court order and a writ of possession listed Cloverly as the plaintiff. Based on the record, this Court determined that Plaintiff’s actions served only to annoy the Defendants. Because this suit was based on dishonest claims, it was done in bad faith. This Court did not abuse its discretion in awarding Defendants attorneys’ fee pursuant to 42 Pa.C.S. §2503 (7) and (9).

CONCLUSION

For the foregoing reasons, this Court respectfully requests its decisions denying Plaintiff's leave to amend, granting Defendants' Motion for Judgment on the Pleadings, and awarding attorneys' fees to the Defendants pursuant to 42 Pa.C.S. §2503, be **AFFIRMED.**

BY THE COURT:

7/2/2012

Date

ALLAN L. TERESHKO, J.

cc:
Alex H. Pierre, pro se, Appellant
Nancy Wasser, Esq., for Appellees