

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

STONEBRIDGE LIFE INSURANCE CO.,	:	JULY TERM, 2009
	:	
Plaintiff,	:	NO. 00061
	:	
v.	:	Control No. 11030386
	:	
CATHERINE BREWINGTON, et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 12th day of May, 2011, upon consideration of defendants' Preliminary Objections to plaintiff's Amended Complaint, the response thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that plaintiff show cause on May 24, 2011, at 9:30 am in Courtroom 246, City Hall, why the court should not dismiss plaintiff's Amended Complaint or impose some other sanction for violation of Pa. R. Civ. P. 1023.1(c) and 1024, such as payment of the reasonable attorneys' fees incurred by defendant in connection with the Preliminary Objections.

BY THE COURT:

MARK I. BERNSTEIN, J.

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	:	
Defendants.	:	

OPINION

On February 24, 2011, the court granted plaintiff's Motion to file an Amended Complaint. In doing so, the court signed the exact form Order which had been submitted by plaintiff. Plaintiff's proposed Order required plaintiff to "file its Amended Complaint, attached as Exhibit 1 to the motion, within five (5) days of the date of this Order." The date of the Order was February 23rd. Pursuant to its own request, plaintiff was required to file its Amended Complaint on or before February 28, 2011.

Plaintiff filed its Amended Complaint on March 2, 2011, two days late. Defendant filed Preliminary Objections to the Amended Complaint based on the untimely filing. Normally, the court would overrule such an objection because this minor delay would not be considered sufficiently egregious to dismiss a party's claim. The Pennsylvania Rules of Civil Procedure specifically admonish "the court [to] disregard any error or defect of procedure which does not effect the substantial rights of the parties."¹ However, plaintiff misrepresented the reasons for the untimely filing.

In response to the Preliminary Objections, plaintiff made the following statement of fact:

¹ Pa. R. Civ. P. 126.

[Plaintiff] had intended to file its Amended Complaint as soon as possible after receiving the Court's order granting it leave to file the Amended Complaint, but [plaintiff] first required the signed verification of a company representative. Due to a company-wide email transition, [plaintiff's] counsel's email of February 24, 2011 transmitting the Court's Order and the requested verification were [sic] not received until a follow-up communication was made on March 1, 2011. The signed verification was received by undersigned counsel first thing in the morning on March 2, 2011, and the Amended Complaint was promptly filed thereafter.

This factual claim is belied by the fact that the late filed Amended Complaint had a Verification from an earlier pleading attached to it. A Verification dated January 10th was attached to the Amended Complaint. In that Verification, plaintiff "verif[ied] that the factual statements in the foregoing Reply to New Matter, Answer to Counterclaim, Answer to Amended Counterclaim and New Matter are true and correct." No proper Verification of the Amended Complaint was filed until two weeks later, and then only after defendants' Reply brief directed the court's attention to the inadequacy of plaintiff's Verification.

Since the Verification filed on March 2nd did not verify the Amended Complaint, the Amended Complaint was an unverified pleading in violation of Pa. R Civ. P. 1024. Plaintiff compounded the problem by claiming in its Response that obtaining a Verification was the reason for its late filing of the Amended Complaint. No proper Amended Complaint was filed until March 16, 2011, when plaintiff finally filed a proper Verification.

Plaintiff's clear misconduct, which includes making false representations to the court in a pleading and otherwise violating the Rules of Civil Procedure, must be sanctioned.² Therefore, plaintiff must show cause why the court should not dismiss the Amended Complaint or impose

² Pa. R. Civ. P. 1023.1(c). Such a sanction should be "sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Pa. R. Civ. P. 1023.4(a)(1).

some monetary sanction, such as reimbursement of the reasonable attorneys' fees incurred by defendants in connection with the Preliminary Objections.

BY THE COURT:

MARK I. BERNSTEIN, J.