COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
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DOVER, DELAWARE 19901
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CHARLES W. WELCH, III
JUDGE

May 10, 2017

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Ms. Nina Shahin
103 Shinnecock Road
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RE: Nina Shahin v. JKMR, Inc. d/b/a "The UPS Store," et al.
C.A. No.: CPU5-14-000379

Defendant JKMR, Inc.'s Amended Answer and Jury Trial Demand

Dear Mr. Alderson and Ms. Shahin:

This correspondence constitutes the Court's *sua sponte* ruling on Defendant JKMR, Inc.'s ("JKMR"), jury trial demand as contained in its amended answer. As you know, this matter originated with the filing of this action in this Court on May 16, 2014. JKMR, through its original counsel, filed an entry of appearance for "United Parcel Service (UPS) Store, Inc." on June 10, 2014, along with an answer that was filed on behalf of defendant, "UPS Store #4435." An amended answer was then filed on June 27, 2014, whereby the designation "UPS Store #4435" was struck and information was provided that the defendant is "JKMR, LLC d/b/a 'The UPS Store'". Information was also provided that the defendant is a franchisee of Mailboxes, Etc., Inc. JKMR made no demand for a trial by jury in any of those pleadings. Since these initial pleadings, both parties have filed numerous motions and responses. At no time has JKMR attempted to demand a jury trial. Now, more than two years after JKMR's first amended answer,

JKMR has filed its second amended answer whereby it demands a jury trial.[1] This amended answer appears to have been filed in response to an amended complaint filed by the plaintiff on or about November 23, 2016, which was filed to correct the names of the parties to the action and add United Parcel Service of America, Inc., as a party.

Court of Common Pleas Civil Rule 15 states that "a party may amend the party's pleading only by leave of court … and leave shall be freely given when justice so requires." The Delaware Supreme Court has held that, unless there is "prejudice to another party, the trial court is required to exercise its discretion in favor of granting leave to amend."[2] Rule 15 "affords the parties the right, inter alia, to state additional claims, to increase the amount of damages sought, to establish additional defenses and to change the capacity in which the action was commenced."[3]

A demand for a trial by jury in an action commenced in this Court, however, is governed by a statute that defines and limits the jurisdiction and power of this Court. Section 1328 of Title 10 of the Delaware Code provides that "a non-commencing litigant must both serve his jury trial demand in writing, and deposit the Superior Court filing fee within 5 days of service of 'the last pleading directed to such issue.'"[4] In *Anemone Carpentry, LLC v. Roberts*, the court clarified that an answer constitutes the "last pleading" as intended by the statute, but a motion to amend a

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[1] It is apparent that JKMR considers this its first amended answer because it was improperly named in Plaintiff's original complaint. However, Plaintiff corrected this error when she requested the Court modify the named parties to this suit. JKMR did not object when the Court granted Plaintiff's request, nor did it object to any filings by the Plaintiff within the past two years of litigation. As a result, JKMR's argument that its amended answer constitutes its first is without merit.

[2] *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 263 (Del. 1993).

[3] *Id.*

[4] *Anemone Carpentry, LLC v. Roberts*, 2012 WL 174938, at *2 (Del. Com. Pl. Jan. 5, 2012) (citing 10 *Del. C.* § 1328).

pleading would not.[5] As a result, JKMR is not entitled to now demand a trial by jury by amending its pleadings.

Furthermore, as in *Anemone Carpentry, LLC v. Roberts*, if this Court permitted JKMR to amend its answer to demand a jury trial, "prejudice to another party" clearly would result if, after more than two years of litigation in this forum without the prospect of a trial by jury, the non-moving party was forced to re-commence this action in Superior Court.

For the foregoing reasons, JKMR's jury trial demand as contained in its amended answer is rejected.

IT IS SO ORDERED

Sincerely,

Charles W. Welch, III

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[5] *See id.*