

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John W. Gracey, :
Appellant :
 : No. 2604 C.D. 2010
v. :
 : Submitted: May 6, 2011
Cumru Township, Allen Madeira, :
individually and in his official capacity, :
Envirotech, individually and in its :
official capacity, Jeanne Johnston, :
individually and in her official capacity, :
Michael Setley, individually and in his :
official capacity, Shea Brianna Scharding, :
individually and in her official capacity, :
E. Kenneth Remp, individually and in his :
official capacity, Edward L. Gottschall, :
individually and in his official capacity, :
David Kalin, individually and in his :
official capacity, Ruth O’Leary, :
individually and in her official capacity, :
Barry E. Rohrbach, individually and in :
his official capacity, and Tony J. Sacco, :
individually and in his official capacity :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: December 27, 2011

John W. Gracey appeals, pro se, the order of the Court of Common Pleas of Berks County (trial court) sustaining the preliminary objections of Cumru Township (Township) and a number of other defendants (collectively, Defendants)¹ and dismissing Gracey’s complaint. We now affirm.

¹ The other defendants named in Gracey’s complaint are: Allen Madeira, individually and in his official capacity; Envirotech, individually and in its official capacity; Jeanne Johnston, **(Footnote continued on next page...)**

Gracey owns a single-family house located at 1613 Meade Street in the Township.² On December 23, 2009, Remp, the Township's building inspector, inspected the house due to complaints by Gracey's tenants regarding its habitability. (Reproduced Record (R.R.) at 97a.) On December 28, 2009, Remp sent Gracey a letter warning Gracey of violations of the 2003 edition of the International Property Maintenance Code (IPMC) that were found to exist on the premises during the inspection. (R.R. at 96a-98a.) On February 18, 2010, Envirotech became the Township's code enforcement agency. (R.R. at 28a.) On March 4, 2010, Madeira, an employee of Envirotech, conducted another inspection of the house. (R.R. at 26a, 99a.) On March 16, 2010, the Township's Board of Commissioners enacted Ordinance No. 694 which adopted the 2009 edition of the IPMC. (R.R. at 88a, 89a.) On March 30, 2010, Madeira sent Gracey a notice of maintenance code violations. (R.R. at 26a, 30a-31a, 99a-100a.) The letter outlined a number of violations of the

(continued...)

individually and in her official capacity; Michael Setley, individually and in his official capacity; Shea Brianna Scharding, individually and in her official capacity; E. Kenneth Remp, individually and in his official capacity; Edward L. Gottschall, individually and in his official capacity; David Kalin, individually and in his official capacity; Ruth O'Leary, individually and in her official capacity; Barry E. Rohrbach, individually and in his official capacity; and Tony J. Sacco, individually and in his official capacity.

² Cumru Township is a first class township. 119 The Pennsylvania Manual 6-73 (2009). Section 1502 of the First Class Township Code (Code), Act of June 24, 1931, P.L. 1206, as amended, 53 P.S. §56502, vests the Township's corporate power in its board of commissioners, and it specifically empowers the Board to enact ordinances adopting the provisions of a standard or nationally recognized code or parts thereof. 53 P.S. §56502(d). Section 1502 of the Code also empowers the Township to enact and enforce suitable ordinances to govern and regulate all housing designed or used for human habitation or occupancy. 53 P.S. §56519. Section 1502 also empowers the Township "[t]o provide for the inspection of the construction and repair of buildings and housing, including the appointment of one or more building inspectors and housing inspectors...." 53 P.S. §56520.

2009 edition of the IPMC provisions and stated that the property was condemned as unfit for occupancy. (R.R. at 26a, 99a-100a.)

On October 4, 2010, Gracey filed a complaint in the trial court that was 16 pages in length with a number of exhibits and did not contain separately numbered paragraphs or separate counts. (R.R. at 6a-48a.) The complaint was divided into five sections: section A. provided the summary statement of the case; section B. provided an introduction to the plaintiff and the defendants; section C. provided background of the case; section D. provided the nine legal issues involved; and section E. provided the remedy and relief requested. (Id.)

Part I of the legal issues in section D. of the complaint related to Remp's December 28, 2009, letter and alleged an unspecified "Lack of Due Process." (R.R. at 11a.) Part II of the legal issues in section D. related to Madeira's March 30, 2010, letter and alleged: "Violation of Pennsylvania Constitution: Article 1 section 17; Ex Post Facto, Impairment of Contracts"; "Lack of authority for private individual and company to condemn property"; "[Sewer Enforcement Officer] Lacks authority to condemn property for Codes"; "Months later, Madeira became Codes Enforcement"³; "Willful misconduct to send Madeira to Gracey property"; "Malice, and Arbitrary"; "Arbitrariness and Animosity"; and "Disregard for the provision of the IPMC 2009 – concerning Vacant Structures." (R.R. at 12a-20a.^{4,5})

³ The third, fourth, and fifth legal issues in the complaint related to the condemnation of property under the Eminent Domain Code, 26 Pa.C.S. §§101-1106. (R.R. at 14a.)

⁴ There are no factual allegations in the complaint relating to Johnston, Setley, Scharding, Remp, Gottschall, Kalin, O'Leary, Rohrbach, or Sacco as individuals. (R.R. at 12a-20a.)

⁵ Section E. of the complaint stated, in pertinent part:

(Footnote continued on next page...)

On October 19, 2010, the Defendants filed preliminary objections alleging: (1) the complaint failed to conform to Rules 1022 and 1024 of the Pennsylvania Rules of Civil Procedure⁶; (2) the complaint was legally insufficient⁷;

(continued...)

John Gracey is requesting the release of his property and removal of condemnation, as well as monetary damages including the following:

actual monetary damages; the reduction of the property's value due to the condemnation; the full financial value of the total property if the condemnation and taking is not removed; past, present, and future loss of income and earnings from the property during the condemnation; other costs and expenses; attorney fees; interest (at Pennsylvania legal rate); plus punitive damages....

(R.R. at 21a.)

⁶ Rule 1022 states that “[e]very pleading shall be divided into paragraphs numbered consecutively. Each paragraph shall contain as far as practicable only one material allegation.” Pa.R.C.P. No. 1022. Rule 1024 provides, in pertinent part:

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information or belief as to the remainder.

* * *

(c) The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or

(Footnote continued on next page...)

and (3) the complaint included scandalous and impertinent matter. (R.R. at 53a-60a.) Although Gracey filed a reply to the preliminary objections on November 8, 2010, (R.R. at 67a-100a.), he never sought to amend his complaint.

(continued...)

information and belief and shall set forth the source of the person's information as to matters not stated upon his or her knowledge and the reason why verification is not made by a party.

Pa.R.C.P. No. 1024(a), (c).

⁷ Rule 1028 provides, in pertinent part:

(a) Preliminary objections may be filed by an party to any pleading and are limited to the following grounds:

* * *

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

* * *

(4) legal insufficiency of a pleading (demurrer);

* * *

(c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

Pa.R.C.P. No. 1028(a)(2), (4), (c)(1).

On November 17, 2010, the trial court issued the instant order sustaining the preliminary objections and dismissing Gracey's complaint. Gracey filed this appeal of the trial court's order.⁸

In this appeal, Gracey claims⁹: (1) the trial court erred in sustaining the preliminary objections and dismissing the complaint; (2) the condemnation was a nullity as it was void from the start; (3) the condemnation was inappropriate because it was based on non-existent or erroneous IMPC requirements and the house was not unfit for human habitation; and (4) the condemnation violated his constitutional due process and ex post facto rights.

Gracey first claims that the trial court erred in sustaining the preliminary objections and dismissing the complaint. We do not agree.

Rule 1028(a)(2) of the Rules of Civil Procedure states that preliminary objections may be filed where a complaint fails "[t]o conform to law or rule of court...." Pa.R.C.P. No. 1028(a)(2). In turn, Rule 1022 states that "[e]very pleading shall be divided into paragraphs numbered consecutively. Each paragraph shall contain as far as practicable only one material allegation." Pa.R.C.P. No. 1022.

In general, the test of compliance with Rule 1022 is the difficulty or impossibility in filing an answer to the complaint. General State Authority v. Sutter Corporation, 356 A.2d 377, 380 (Pa. Cmwlth. 1976). The complaint in this case utterly fails to conform to the requirements of Rule 1022 as it is not divided into

⁸ This Court's scope of review of a trial court order granting preliminary objections is limited to determining whether the trial court committed legal error or abused its discretion. Bell v. Township of Spring Brook, ___ A.3d ___, ___ (Pa. Cmwlth., No. 2119 C.D. 2010, filed September 28, 2011) (citation omitted).

⁹ We consolidate and reorder the claims raised by Gracey in this appeal in the interest of clarity.

consecutively numbered paragraphs with each containing only one material allegation. (R.R. at 6a-22a.) The Defendants’ inability to craft an appropriate answer to the instant complaint is manifest.

Rule 1024(a) states, in pertinent part, that “[e]very pleading containing an averment of fact not appearing of record in the action ... shall state that the averment ... is true upon the signer’s personal knowledge or information and belief and shall be verified....” Pa.R.C.P. No. 1024(a). In addition, Rule 1024(c) provides, in pertinent part, that “[t]he verification shall be made by one or more of the parties filing the pleading....” Pa.R.C.P. No. 1024(c). The Explanatory Comment to Rule 1024 provides, in pertinent part:

These amendments extend the concept of the verified statement to the Rules of Civil Procedure generally. The definitions of “affidavit” and “verified” in Rule 76¹⁰ have been enlarged to include two alternatives: an affidavit or verified document may contain (1) the usual oath or affirmation before a notary or other person authorized to administer oaths or (2) a statement by the signer that it is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Pa.R.C.P. No. 1024 cmt. 1981.

As the Superior Court has stated:

“[T]he requirement of a verification is not waivable because without it a pleading is mere narration, and amounts to

¹⁰ In turn, Rule 76 provides, in pertinent part:

“[V]erified,” when used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Pa.R.C.P. No. 76.

nothing.” 2 Goodrich Amram 2d § 1024(a):1. While our cases acknowledge that amendment should be liberally allowed to cure technical defects in a verification, *see, e.g., George H. Althof, Inc. v. Spartan Inns of America, Inc.*, [441 A.2d 1236 (Pa. Super. 1982)]; *Monroe Contract Corp. v. Harrison Square, Inc.*, [405 A.2d 954 (Pa. Super. 1979)], there is no doubt but that the verification attached to the complaint in the instant case falls so far short of the statutory mandate that the verification is wholly defective and inadequate to support entry of a ... judgment against appellants.

Atlantic Credit and Finance, Inc. v. Giuliana, 829 A.2d 340, 344 (Pa. Super. 2003), appeal denied, 577 Pa. 676, 843 A.2d 1236 (2004).

Likewise, the complaint in this case utterly fails to conform to the requirements of Rule 1024 as it is not verified at all. (R.R. at 6a-48a.¹¹) The complete absence of a verification falls so far short of the requirement imposed by Rule 1024 that the instant complaint is patently insufficient. Atlantic Credit and Finance, Inc., 829 A.2d at 344 (“[T]here is no doubt but that the verification attached to the complaint in the instant case falls so far short of the statutory mandate that the verification is wholly defective and inadequate to support entry of a ... judgment against appellants.”).

Finally, Rule 1028(a)(4) states that preliminary objections may be filed based on the “legal insufficiency of a pleading (demurrer).” Pa.R.C.P. No. 1028(a)(4). In the preliminary objections, the Defendants claimed that the nine legal issues raised in Gracey’s complaint failed to state claims for which relief could be granted. (R.R. 55a-57a.)

As this Court recently noted:

¹¹ Although Gracey never sought to amend his complaint he inserted a defective “supplemental verification” in his reply to the preliminary objections. (R.R. at 82a.)

[A] demurrer can only be sustained where the complaint clearly is insufficient to establish the pleader's right to relief. A preliminary objection in the nature of a demurrer admits as true all well-pled material, relevant facts and every inference fairly deducible from those facts. Conclusions or averments of law are not considered to be admitted as true by a demurrer. Since the sustaining of a demurrer results in a denial of the petitioner's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim upon which relief may be granted. If the facts as pleaded state a claim for which relief may be granted under any theory of law, there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.

Bell, ___ A.3d at ___ n. 7.

Rule 1019(a) states that “[t]he material facts on which a cause of action ... is based shall be stated in a concise and summary form.” Pa.R.C.P. No. 1019(a). In addition, Rule 1020(a) provides, in pertinent part, that “[e]ach cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief.” Pa.R.C.P. No. 1020(a).

In Steiner v. Markel, 600 Pa. 515, 524-25 n. 11, 968 A.2d 1253, 1258-59 n. 11 (2009) (citations omitted and emphasis in original), the Supreme Court explained:

[A] “legal theory” and a “claim” are two different concepts. Black’s Law Dictionary defines a “legal theory” as “the principle under which a litigant proceeds, or on which a litigant bases its claims or defenses in a case.” A “claim” is defined as “the aggregate of operative facts giving rise to a right enforceable by a court.” Pennsylvania courts have recognized this distinction, holding that:

The purpose behind the rules of pleading is to enable parties to ascertain, by using their own professional discretion, the claims and defenses in the case. This purpose would be thwarted if courts, rather than the

parties, were burdened with the responsibility of deciphering the causes of action from a pleading of facts which obscurely support the claim. *While it is not necessary that the complaint identify the specific legal theory of the underlying claim, it must apprise the defendant of the claim being asserted and summarize the essential facts to support that claim.* If a plaintiff fails to properly plead a separate cause of action, the cause he did not plead is waived.

A plaintiff need not disclose a particular theory in the complaint, but the plaintiff must clearly plead a claim which can then be pursued under whatever theory the plaintiff determines is prudent.

Although Rule 1019(a) is to be liberally construed,¹² “[l]iberal construction does not permit unpled elements [to] be pulled from thin air and grafted onto the pleading; it does not excuse the basic requirements of pleading....” McShea v. City of Philadelphia, 606 Pa. 88, 98, 995 A.2d 334, 340 (2010). In addition, “[t]he requirement of [Rule 1020(a)] that the plaintiff set forth each cause of action against each defendant in a separate count under a separate heading is mandatory and the complaint will be stricken for failing to comply with this requirement....” General State Authority v. Lawrie and Green, 356 A.2d 851, 853 (Pa. Cmwlth. 1976) (citation omitted).

¹² Rule 126 states:

The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceedings may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

The nine legal issues raised by Gracey in his complaint are not divided into separate counts for each cause of action against each defendant, are not supported by any verified facts for each element of each of those claims, and they do not each contain a separate demand for relief. (R.R. at 11a-20a.) Based on the foregoing, it is clear that the trial court did not err in granting the Defendants' preliminary objections and dismissing the complaint as it is patently insufficient to establish Gracey's right to relief.¹³

Accordingly, the trial court's order is affirmed.¹⁴

¹³ See Kovalev v. Sowell, 839 A.2d 359, 367 (Pa. Super. 2003), appeal denied, 580 Pa. 698, 860 A.2d 124 (2004) (holding that a pro se litigant is not entitled to any particular advantage due to his lack of legal training because any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove to be his undoing).

¹⁴ Due to our disposition of this allegation of error, we need not address the remaining claims raised in this appeal.

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individually and in her official capacity, :
Barry E. Rohrbach, individually and in :
his official capacity, and Tony J. Sacco, :
individually and in his official capacity :

PER CURIAM

ORDER

AND NOW, this 27th day of December, 2011, the November 17, 2010 order of the Court of Common Pleas of Berks County is affirmed.