

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

JOHN J. LYNCH, SR.,

Appellant

v.

JOSEPHINE RICH, KRISTINO L. WESTON,  
KEITH BAIN, JAMES MULCAHY, JOHN  
DOE, RICHARD SITES AND R&S HOME  
MANAGEMENT,

Appellees

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1791 EDA 2012

Appeal from the Order of May 4, 2012,  
in the Court of Common Pleas of Philadelphia County,  
Civil Division at No. January Term, 2012, No. 02267

BEFORE: ALLEN, OTT and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

**FILED NOVEMBER 07, 2013**

This is a *pro se* appeal from the order which, *inter alia*, dismissed the underlying action as frivolous pursuant to Pa.R.C.P. 240(j). We reverse and remand.

Although neither Appellant's *pro se* filings, the trial court's opinion, nor the state of the record have significantly aided this Court in determining the precise posture of the underlying litigation, we are readily able to determine that the order on appeal was improperly entered.

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\*Retired Senior Judge assigned to the Superior Court.

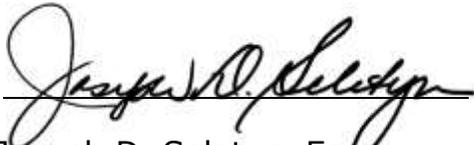
The relevant plain language of Rule 240(j)(1) permits a trial court to dismiss an action as frivolous **prior to acting upon** a petition for leave to proceed *in forma pauperis*. In this case, the trial court granted Appellant permission to proceed *in forma pauperis* on February 8, 2012. The instant order dismissing the action as frivolous was not entered until May 4, 2012. Thus, the trial court could not have used Rule 240(j) as a basis for dismissal.

Accordingly, we reverse the order and remand for further proceedings.

Order reversed. Case remanded. Jurisdiction relinquished.

Judge Ott notes her dissent.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 11/7/2013