

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

VERONICA SMITH,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
	:	
ERIC CHEUNG, KENNETH L. BARITZ,	:	
ESQ. AND BRENDA SACKS, ESQ.,	:	
	:	No. 1406 EDA 2013

Appeal from the Order Entered April 16, 2013  
In the Court of Common Pleas of Philadelphia County  
Civil Division No(s): 120801077

BEFORE: PANELLA, MUNDY and FITZGERALD,\* JJ.

MEMORANDUM BY FITZGERALD, J.:

**FILED APRIL 15, 2014**

Veronica Smith, plaintiff below (“Appellant”), appeals from the April 16, 2013 order sustaining the preliminary objections filed by defendant Kenneth L. Baritz, Esquire (“Baritz”), and dismissing Appellant’s complaint with prejudice.<sup>1, 2</sup> Appellant also appeals the April 3, 2013 order sustaining,

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> These orders became final and appealable after entry of the April 16<sup>th</sup> order sustaining Baritz’s preliminary objections and dismissing Appellant’s complaint. **See *Strausser v. Pramco, III***, 944 A.2d 761, 764 (Pa. Super. 2008); **see also** Pa.R.A.P. 341.

<sup>2</sup> Although Eric Cheung is listed as a party in the caption, Counsel for Cheung sent a letter of no-interest to the Superior Court Prothonotary on September 13, 2013 indicating that, because Appellant was not appealing

with prejudice, the preliminary objections filed by defendant Brenda Sacks, Esquire ("Sacks"), the January 7, 2013 orders sustaining Sacks's and Baritz's (collectively "Appellees") preliminary objections without prejudice, and the January 22, 2013 order denying Appellant's motion to amend complaint. On appeal, Appellant claims she was entitled to further leave to amend her complaint against Appellees. We affirm.

The facts and complex procedural history are as follows. On August 13, 2012, Appellant filed a *pro se* complaint ("Original Complaint") against Appellees and Eric Cheung ("Cheung") alleging malicious prosecution, intentional infliction of emotional distress, and violations of her rights under the First and Fourteenth Amendments of the U.S. Constitution. Appellant's claims arise from a prior landlord tenant dispute between Appellant and Cheung in which Appellees were Cheung's counsel.

On September 25, 2012, Cheung filed preliminary objections in the nature of a demurrer to Appellant's Original Complaint. Cheung also averred the Original Complaint should be dismissed because Appellant failed to properly serve it on him. Also on September 25, 2012, Appellant's counsel entered an appearance in the trial court.

Although Appellant's complaint had not been withdrawn or discontinued, on October 4, 2012, counsel for Appellant filed a *praecipe* to

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the October 23, 2012, order dismissing Appellant's complaint against Cheung, he would not be submitting a brief on Cheung's behalf.

reinstate Appellant's complaint. On October 15, 2012, Appellant filed a memorandum in opposition to Cheung's preliminary objections and an amended complaint ("First Amended Complaint"). In it, Appellant sought to demonstrate that she had properly served her Original Complaint on Cheung and indicated that she wished to discontinue her constitutional law claims against Appellees and Cheung.

Baritz and Sacks filed preliminary objections in the nature of a demurrer to Appellant's Original Complaint on October 17, and October 23, 2012, respectively, in which they argued Appellant's Original Complaint failed to state a claim upon which relief could be granted. While Appellees' preliminary objections to Appellant's Original Complaint were pending, Cheung's preliminary objections were sustained on October 23, 2012, and Appellant's claims against Cheung were dismissed without prejudice.<sup>3</sup> Appellees' preliminary objections were marked as moot after Appellant again amended her complaint on November 5, 2012 ("Second Amended Complaint").<sup>4</sup> In her Second Amended Complaint, Appellant raised claims

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<sup>3</sup> Although, as noted *supra*, Appellant is not appealing the October 23<sup>rd</sup> order dismissing her complaint against Chung herein, Appellant filed an appeal to the Commonwealth Court from that order on November 26, 2012. The appeal was quashed as interlocutory on February 4, 2013. **See** Order, 11/26/2012, No. 2262 CD 2012.

<sup>4</sup> The trial court docket reflects that Appellant filed the Second Amended Complaint on November 5, 2012 and another amended complaint on November 9, 2012. In its Rule 1925(a) opinion, however, the trial court only references the November 5<sup>th</sup> amended complaint.

for abuse of process and intentional infliction of emotional distress and omitted her claim for malicious prosecution.

Baritz and Sacks filed preliminary objections to Appellant's Second Amended Complaint on November 26, and November 27, 2012, respectively. Both preliminary objections allege that Appellant violated Pa.R.C.P. 1019(a) in her Second Amended Complaint in numerous ways.<sup>5</sup> Appellant filed answers to the preliminary objections on December 14 and December 17, 2012. On January 7, 2013, the trial court sustained Appellees' preliminary objections and dismissed the complaints against them without prejudice to Appellant's right to file an amended complaint within twenty days.

Meanwhile, on December 17, 2012, Appellant filed a motion to amend her complaint, now alleging negligence on the part of Cheung and Appellees. The motion to amend was denied by the trial court on January 22, 2013.

On January 25, 2013, Appellant filed another amended complaint ("Third Amended Complaint"). Appellant indicated that the Third Amended Complaint also served as a response to the preliminary objections filed by

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We further note that, while these pleadings are entitled "Amended Complaint," Appellant construes them as motions to amend complaint. However, at times, it appears that Appellant's pleadings are, in fact, responses to Appellees' respective preliminary objections. The trial court appears to have treated the pleadings as amended complaints as no leave of court was necessary for Appellant to amend the complaint. **See** Pa.R.C.P. 1028(c)(1).

<sup>5</sup> Specifically, Appellees claim Appellant failed to make her averments in separate numbered paragraphs, did not state any claim for relief, and, Appellant's "Amended Complaint" was actually a motion to amend complaint.

Appellees and included references to the motion to amend complaint that had been denied three days earlier. Appellees again filed preliminary objections in the nature of a demurrer to the Third Amended Complaint on February 13, 2013. They again claimed that Appellant's most recent complaint failed to state a claim upon which relief could be granted, and violated Pa.R.C.P. 1019(a). Appellant filed a response to Appellees' preliminary objections on March 5, 2013. On April 3, 2013, and April 16, 2013, the trial court sustained Appellees' preliminary objections, and dismissed Appellant's complaint with prejudice. This timely appeal followed.<sup>6</sup> Both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant has presented the following issues for review:

Appellant, . . . , is entitled to the granting of her Petition to File an Amended Complaint. When applying the Pennsylvania Rules of Civil Procedure, the trial court abused its discretion and/or misapplied the law in reviewing the following questions:

Whether or not the court(s) gave leave freely, when justice so required to Appellant . . . to file an Amended Complaint thereby dismissing Appellant's Complaint.

Whether or not the court(s) ruled on the merits of Appellee . . . Sacks' [sic] Preliminary Objections, which did not conform with Pennsylvania Rules of Civil Procedure, in a light most favorable to Appellant . . . .

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<sup>6</sup> Appellant filed separate appeals from the April 3<sup>rd</sup> and April 16<sup>th</sup> orders. This Court quashed the appeal filed from the April 3<sup>rd</sup> order as duplicative without prejudice to Appellant's right to raise the issues contained therein at the appeal filed from the April 16<sup>th</sup> order. **See** Order, 8/2/2013, No. 1395 EDA 2013.

Whether or not the court(s) ruled on Appellee . . . Baritz's Preliminary Objections and Response to Appellant's . . . Motion to Amend the Complaint, in a light most favorable to Appellant . . . .

Appellant's Brief at 9.

Preliminarily, we note that, although Appellant purports to appeal from the court's January 22, 2013 order denying her motion to amend complaint, in the argument section of her brief Appellant makes no claim of trial court error with respect to entry of this order. Accordingly, we find any challenge to this order waived. **See *Umbelina v. Adams***, 34 A.3d 151, 161 (Pa. Super. 2011); **see also** Pa.R.A.P. 2119(a).<sup>7</sup> For her remaining issues, Appellant essentially claims that the trial court erred by sustaining Appellees' preliminary objections and dismissing Appellant's Third Amended Complaint with prejudice. Specifically, Appellant claims her complaint and other pleadings met the requirements of Pa.R.C.P. 1019(a), were not overly broad, and, therefore, should not have been dismissed.<sup>8</sup>

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<sup>7</sup> Pa.R.A.P. 2119(a) states: "[t]he argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part—in distinctive type or in type distinctively displayed—the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent."

<sup>8</sup> Appellant also appears to suggest that the trial court erred in sustaining Appellees' preliminary objections in the nature of a demurrer. However, despite extensive citation to authority for the standard of review of such an order, Appellant neglects to set forth any analysis as to how the trial court committed an error of law in finding that Appellant had failed to state a legally sufficient claim. We therefore find this claim waived. **See *Umbelina***, 34 A.3d at 161.

We begin by noting that “[o]ur standard of review of an order of the trial court overruling or granting preliminary objections is to determine whether the trial court committed an error of law.” ***O’Donnell v. Hovnanian Enter., Inc.***, 29 A.3d 1183, 1186 (Pa. Super. 2011) (citations omitted).

Pa.R.C.P. 1019(a) sets forth the requirements for the contents of pleadings. It states “[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” Pa.R.C.P. 1019(a).

In the argument section of her brief, Appellant makes the following bald assertions:

[H]er complaint nor any of her pleadings are overly broad or not specific. There are no “conclusory allegations” contained in Appellant’s complaint. The complaint does not in any way place the [Appellees’] “substantive interests” in serious jeopardy, nor can [Appellees] prove otherwise. There was enough information contained in Appellant’s . . . complaint and motions to put [Appellees] on notice of what Appellant intended to prove at trial. Consequently, it does not, in any way whatsoever, deny the [Appellees] the ability to adequately prepare.

Again, not to belabor the point, but Appellant has met the requirements of Pa.R.A.P. 1019(a) by concisely stating the basis for her defenses.

Appellant’s Brief at 18.

Although we recognize that Appellant has cited extensively to authority in the argument section of her brief, we note that her citations are, in large part, to federal case law and rules of civil procedure and Pennsylvania

Commonwealth Court and Common Pleas Courts cases. **See, e.g.,** Appellant's Brief at 16-17. None of those cases and rules are binding on this Court. **See *In re Barnes Foundation***, 74 A.3d 129, 134 n.2 (Pa. Super. 2013) (stating Commonwealth Court decisions are not binding on Superior Court); ***Liberty Mut. Ins. Co. v. Domtar Paper Co.***, 77 A.3d 1282, 1285 (Pa. Super. 2013) (concluding Superior Court not bound by decisions of courts of common pleas); ***NASDAQ OMX PHLX, Inc. v. PennMont Secs.***, 52 A.3d 296, 303 (Pa. Super. 2012) (holding decisions of lower federal courts are not binding on Pennsylvania courts). To the extent that Appellant has cited to applicable authority, she has failed to identify how the holdings in the cases she cited are pertinent or how they should inform our analysis of whether the trial court abused its discretion or committed an error or law in sustaining Appellees' preliminary objections. Appellant has presented nothing more than a skeletal argument comprised merely of bald allegations and citation to authorities of questionable relevance.<sup>9</sup> It is not the

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<sup>9</sup> The District Court for the Northern District of Illinois noted:

A "skeletal argument," unsupported by relevant authority or reasoning, is merely an assertion which does not sufficiently raise the issue to merit the court's consideration. ***United States v. Giovannetti***, 919 F.2d 1223, 1230 (7th Cir. 1990) ("A litigant who fails to press a point by supporting it with pertinent authority or by showing why it is a good point despite a lack of authority ... forfeits the point. We will not do his research for him") (emphasis in original; citations omitted); ***United States v.***



responsibility of this Court to act as counsel and develop arguments on Appellant's behalf. **See Commonwealth v. Kane**, 10 A.3d 327, 331 (Pa. Super. 2010). Accordingly, we find Appellant's issues waived in light of her failure to develop them with detailed argument and citation to relevant authorities. **See Umbelina**, 34 A.3d at 161; **see also** Pa.R.A.P. 2119(a).

Moreover, even if we were to consider the merits of Appellant's issues, we would conclude no relief is due. Appellant has not demonstrated that the trial court abused its discretion in sustaining Appellees' preliminary objections and in refusing to allow her another opportunity to amend her complaint. **See Spain v. Vicente**, 481 A.2d 833, 837 (Pa. Super. 1983) (noting right to amend will be withheld if there does not appear to be a reasonable possibility that amendment will be successful). In four previous attempts, Appellant was unable to conform her complaints to the Pennsylvania Rules of Civil Procedure because she failed to state material facts on which a cause of action is based in a concise and summary form, failed to include a prayer for relief, and failed to state a cause of action. **See, e.g.**, Appellant's Third Amended Complaint, 1/25/13, at 6-7.<sup>10</sup>

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**Dunkel**, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs") . . . .

**Diamond v. Chulay**, 811 F. Supp. 1321, 1335 (N.D. Ill. 1993).

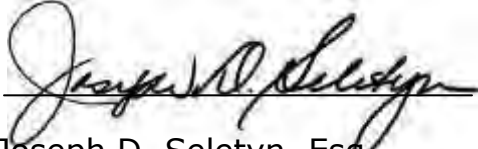
<sup>10</sup> Appellant's Third Amended Complaint was not paginated.

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Therefore, the trial court did not abuse its discretion in dismissing Appellant's complaint with prejudice. **See Spain**, 481 A.2d at 837.

Order affirmed.

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: 4/15/2014