

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bethran Mbagwu, :
 :
 Appellant :
 :
 v. : No. 1533 C.D. 2018
 : Submitted: February 21, 2020
 PPA Taxi and Limousine :
 Division :

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
 HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE MICHAEL H. WOJCIK, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE WOJCIK

FILED: April 22, 2020

Bethran Mbagwu (Mbagwu), appeals *pro se* from the order of the Court of Common Pleas of Philadelphia County (trial court), sustaining the preliminary objections filed by the Philadelphia Parking Authority, Taxi and Limousine Division (PPA), and dismissing his Amended Complaint. Mbagwu, a taxicab driver, challenged PPA’s authority to tow and search his vehicle when he committed a parking violation. He also alleged PPA harassed him through enforcement of parking and taxicab rules. The trial court concluded that Mbagwu had failed to exhaust his administrative remedies for the parking disputes or for the taxicab citations. Accordingly, the trial court sustained PPA’s preliminary objections. Upon review, we reverse and remand to the trial court to permit further amendment of the Amended Complaint.

I. Background

Mbagwu's claims involve the following incident. On December 7, 2015, PPA issued a \$51.00 parking citation to Mbagwu and towed his vehicle. Original Record (O.R.) at 82.¹ PPA released the vehicle to Mbagwu that same day, O.R. at 78; however, he was required to pay a fine of \$175.00. Amended Complaint (Am. Compl.)² at 8 (¶29).

Mbagwu requested a hearing before the Bureau of Administrative Adjudication (BAA) to contest PPA's actions to tow his vehicle and require him to pay the fines and penalties for a parking violation. O.R. at 133. On February 7, 2016, BAA notified Mbagwu of his March 2, 2016 hearing date. O.R. at 139. Significant to the exhaustion of administrative remedies, the pleadings are unclear whether BAA conducted the hearing or rendered any decision on the matter.

On December 1, 2017, Mbagwu filed a civil complaint seeking \$3,400,000.00 in monetary damages from PPA for unauthorized enforcement. In response, PPA filed preliminary objections, alleging that Mbagwu's complaint failed to conform to Pa. R.C.P. No. 1019(a), and that he failed to exhaust his administrative remedies, Pa. R.C.P. No. 1028(a)(7). The trial court sustained PPA's objections and struck Mbagwu's complaint, but allowed him to amend it within 20 days.

Mbagwu timely filed an Amended Complaint, in which he stated four separate counts against PPA: (1) unauthorized warrantless search and seizure of his taxi and its contents; (2) harassment; (3) extortion; and (4) ethical violations

¹ References to the original record refer to the electronic pagination.

² References to the Amended Complaint refer to both page and paragraph number because the paragraphs in each count start with the number 1.

(Amended Complaint). He claimed that PPA improperly targeted him when it had his taxi impounded and searched his bag and cellular telephone. He emphasized that PPA precluded him from accessing his daily medication, which was in his bag in the taxi. He also alleged that he wrote to PPA on two occasions, December 19, 2015 and October 20, 2016, “demanding an explanation why [PPA] did conduct illegal search on my cell phone and my bag, but [PPA] never responded.” Am. Compl. at 4 (¶9); *see* Exhibits (Exs.) 8, 11. He claims that PPA did not respond to his correspondence. *Id.* at 5 (¶12).

Relevant here, Mbagwu appended several exhibits to the Amended Complaint, including correspondence from PPA and BAA, to support his claims. *See* Am. Compl., Exs. 1-11. In addition to the incident with PPA in December 2015, he alleged that PPA improperly issued a ticket to him for \$425.00 for refusing a credit card of a customer. With regard to this incident, he asserted that PPA extorted him to pay the fine, despite the evidence at the hearing establishing that it was not his taxi, under threat of nonrenewal of his taxi license. *Id.* at 13 (¶¶2-6), 15 (¶5).

PPA again filed preliminary objections to the Amended Complaint, reasserting its previous grounds. Specifically, PPA asserted that Mbagwu’s Amended Complaint failed to conform to a rule of court in violation of Pa. R.C.P. No. 1019(a), in that it was repetitive and confusing, and failed to aver material facts in a “concise and summary form.” Pa. R.C.P. No. 1019(a). PPA also asserted that Mbagwu did not exhaust his statutory remedies pursuant to Pa. R.C.P. No. 1028(a)(7). However, PPA did not assert a demurrer.

During argument on the preliminary objections, PPA’s counsel emphasized that Mbagwu failed to state a claim for relief or to follow the

appropriate administrative process. Moreover, PPA's counsel noted that Mbagwu already paid the parking ticket in the underlying December 2015 incident, thus admitting liability.

Following argument, the trial court issued an order, without opinion, sustaining PPA's preliminary objections and dismissing the Amended Complaint. Mbagwu appealed to our Superior Court, which transferred the matter to this Court. In the interim, the trial court issued an opinion recommending dismissal of the Amended Complaint for failure to file post-trial motions under Pa. R.C.P. No. 227.1(c)(2).

After clarifying that Mbagwu sought review of the trial court's July 2018 order disposing of the preliminary objections, this Court determined that post-trial motions at the preliminary objection stage were not proper. As a result, we remanded the matter to the trial court to issue an opinion supporting its order on the preliminary objections.

On remand, the trial court issued a brief, six-paragraph opinion supporting its dismissal of Mbagwu's Amended Complaint. Although no demurrer was asserted, the trial court explained Mbagwu's 25-page Amended Complaint was "riddled with confusing, repetitive sentences and did not state a claim for relief." Trial Court 4/15/19 Opinion at 2. The trial court also noted that Mbagwu did not allege he exhausted available statutory remedies. It explained that Mbagwu had an adequate remedy as to the taxi violations through an appeal to the court of common pleas, but he failed to exercise it. Mbagwu's appeal of the trial court's July 2018 order is now before us.³

³ Although Mbagwu objected to the timeliness of PPA's preliminary objections, based on the date of service of the Amended Complaint, they were timely filed.

II. Discussion

“Our review of a trial court’s order sustaining preliminary objections and dismissing a complaint is limited to determining whether the trial court abused its discretion or committed an error of law.” *Finan v. Pike County Conservation District*, 209 A.3d 1108, 1110 n.2 (Pa. Cmwlth. 2019) (citation omitted). In this context, we consider all well-pled relevant and material facts as true. *Public Advocate v. Brunwasser*, 22 A.3d 261, 266 n.5 (Pa. Cmwlth. 2011). Our review is plenary as to questions of law. *Finan*.

A. Failure to Conform to Rule (Rule 1019)

Pa. R.C.P. No. 1019(a) requires a pleading to set forth “the material facts on which a cause of action . . . is based . . . in a concise and summary form.” To meet this requirement, a complaint must give a summary of material facts that support the claims that it contains to enable the opposing party to defend. *Commonwealth v. Percudani*, 844 A.2d 35, 49 (Pa. Cmwlth. 2004). The purpose of this rule is to provide adequate notice of the claims to enable the opposing party to assert a defense.

The trial court described the 25-page Amended Complaint as “riddled with confusing, repetitive sentences” that did not conform to Pa. R.C.P. No. 1019(a). Trial Court 4/15/19 Opinion at 2. Although Mbagwu’s Amended Complaint is lengthy and repetitive, it sets forth four claims (unconstitutional search and seizure, harassment, extortion and ethical violations), separated into four counts. Each count contains facts describing the alleged wrongful conduct of PPA, including specific dates of interactions with PPA. Moreover, Mbagwu

appended several exhibits to his Amended Complaint in support of his claims. *See* Am. Compl., Exs. 1-11.

That a pleading contains additional immaterial facts, evidence or legal conclusions does not render the pleading defective. Rather, such contents “may be treated as harmless surplusage, and ignored in a responsive pleading.” 2 Goodrich Amram 2d §1019(a):11 (West 2012).

We recognize that “the [trial] court has broad discretion in determining the amount of detail that must be averred since the standard of pleading set forth in [Pa. R.C.P. No.] 1019(a) is incapable of precise measurement.” *United Refrigerator Company v. Applebaum*, 189 A.2d 253, 255 (Pa. 1963) (citation omitted). Nevertheless, an appellate court may reverse a trial court’s dismissal of a complaint for noncompliance with Pa. R.C.P. No. 1019(a) when the pleading as a whole alleges sufficient material facts to enable the opposing party to defend the claims. *Percudani*, 844 A.2d at 49 (noting the complaint “when viewed in its entirety . . . is sufficient to allow [the defendant] to prepare a defense to those allegations”); *see, e.g., Baker v. Rangos*, 324 A.2d 498, 508 (Pa. Super. 1974) (reversing a trial court’s order as to dismissal of conspiracy claim for noncompliance with Pa. R.C.P. No. 1019(a)).

In combination, the averments contained within and the attachments to the Amended Complaint provide adequate notice to PPA of the claims against it. Accordingly, the trial court abused its discretion in striking the Amended Complaint with prejudice on this basis. *Baker*.

B. Exhaustion of Statutory Remedies

We next consider the trial court's dismissal of the Amended Complaint under Pa. R.C.P. No. 1028(a)(7) for failure to exhaust statutory remedies. The trial court, in the two paragraphs devoted to this issue in its opinion, noted that Mbagwu "failed to exhaust or exercise a statutory remedy." Trial Court 4/15/19 Opinion at 2. It also stated that Mbagwu "had adequate statutory remedies available to him" *Id.*

"The doctrine of exhaustion prohibits prospective parties to administrative agency actions from bypassing that process and challenging the administrative action directly in the courts." *Mundy v. Bureau of Administrative Adjudication* (Pa. Cmwlth., No. 1984 C.D. 2012, filed Apr. 5, 2013), slip op. at 8.⁴ In *Mundy*, we explained:

The reasons for requiring exhaustion are that it is more efficient to allow an agency to proceed uninterrupted until its conclusion so that it can find facts, apply its expertise and exercise its discretion. The doctrine also allows agencies the opportunity to correct their own mistakes.

Id. (citation omitted).

Through what is known as the Parking Authorities Law, 53 Pa. C.S. §§5501-5517, "PPA assumed control of taxicab and limousine operations in and outside of Philadelphia. 53 Pa. C.S. §5505(d)(23), (24)." *Finan*, 209 A.3d at 1114.⁵

⁴ We cite this case for its persuasive value in accordance with Section 414(a) of this Court's Internal Operating Procedures, 210 Pa. Code §69.414(a).

⁵ PPA (*i.e.*, Taxicab and Limousine Division), which is regulated by The Pennsylvania Code, governs disputes regarding taxicab citations. *Germantown Cab Company v. Philadelphia* **(Footnote continued on next page...)**

Similarly, the City of Philadelphia, by ordinance (Traffic Code), delegated to PPA the authority to enforce “on-street parking regulations,” which included issuing parking citations, imposing fines, and impounding vehicles. Phila., Pa., The Traffic Code (Phila. Code) §12-2801(4) (2016); *see Mainor v. Philadelphia Parking Authority* (Pa. Cmwlth., No. 1252 C.D. 2013, filed Apr. 7, 2014), slip op. at 3-6 (explaining the PPA and BAA roles and the appeals process).⁶

The trial court opined that regardless of whether the locus of Mbagwu’s claims was the December 2015 parking violation and subsequent impounding of his vehicle, which are appealed through the BAA, or whether his claims arose from PPA’s alleged improper enforcement, Mbagwu did not utilize the administrative process available. However, this is not consistent with the well-pled allegations of the Amended Complaint, and the supporting documents that Mbagwu appended thereto.

(continued...)

Parking Authority, 155 A.3d 669, 673-74 (Pa. Cmwlth. 2017). To challenge a taxicab citation, the litigant must exercise his remedies under Title 52 of The Pennsylvania Code, Part II (Philadelphia Parking Authority).

⁶ The initiation of the administrative process is to request a hearing regarding the parking citation through the BAA. The City of Philadelphia employs a two-step administrative appeal process to contest parking violations. *See* Phila. Code §§12-2807–12-2808. First, a parking violation matter is heard by a “Parking Hearing Examiner.” Phila. Code §12-2807(1). Second, an appeal from a Parking Hearing Examiner’s determination “shall be submitted to [the] Parking Appeals Panel.” Phila. Code §12-2808 (2). Following the administrative process, a litigant may appeal to the local court of common pleas. *O’Neill v. City of Philadelphia*, 711 A.2d 544, 548 (Pa. Cmwlth. 1998) (explaining the appeals of “the decision of the [parking] hearing examiner to the BAA Parking Appeals Panel [pursuant to] Phila. Code §12-2808, and the decision of the Parking Appeals Panel to the Court of Common Pleas, and then to this Court.”).

At a minimum, the Amended Complaint reflects that Mbagwu attempted to utilize the administrative process. With regard to the parking violation, he attempted to avail himself of the administrative appeal process through BAA. *See* Am. Compl., Ex. 5 (letter scheduling the hearing before the BAA). Although it is not clear from Exhibit 5 whether BAA held the hearing on March 2, 2016, *id.*, or issued a final determination regarding the December 2015 incident, it is evident that Mbagwu pursued a remedy through the BAA.

Further, regarding PPA's targeting and alleged improper enforcement actions against him, Mbagwu repeatedly alleged that he contacted PPA on at least two occasions in writing, to which PPA did not respond. *See* Am. Compl., at 3 (¶7), 4 (¶¶8-11), 5 (¶12), 17 (¶3), 18 (¶11), 19 (¶1). He explained that these were his attempts at exhausting the available remedies in an effort to respond to PPA's preliminary objections to his initial complaint. Am. Compl. at 4 (¶8) ("But, [PPA] never replied or responded to my demand, because the defendant's preliminary objection pursuant to [Pa. R.C.P. No.] 1028(a)(7)- Failure to Exhaust or Exercise a Statutory Remedy . . . stated 'Mbagwu's Complaint fails to address whether he exhausted his statutory remedies before filing the instant action.'"); *id.* at 4 (¶9) ("My answer to [PPA's] preliminary objection, I wrote to [PPA] on 12/19/2015, and also on 10/20/2016 respectively, demanding an explanation To me that was a very remedial approach."). His allegations suggest an inadequacy in the administrative process, and an unsuccessful attempt to utilize it. *Id.* at 4 (¶8-9); *see also id.* at 13 (¶¶2-6) (relating to ineffective hearing on taxi citation), 18-19 (¶12).

In determining whether a litigant will be excused from exhausting administrative remedies, courts must look to whether an adequate administrative remedy exists. *See County of Berks, ex rel. Baldwin v. Pennsylvania Labor*

Relations Board, 678 A.2d 355, 360 (Pa. 1996). Here, where Mbagwu describes the administrative process, and explains how the hearing process was unfair when he utilized it, the adequacy of the statutory remedy has been put at issue. The trial court did not explain why the statutory remedies were adequate despite Mbagwu's averments in the Amended Complaint.

Moreover, as the Pennsylvania Superior Court has explained:

A plaintiff is entitled to amend if the complaint doesn't exclude the possibility of recovery under a better statement of facts. This is especially true when a plaintiff's claim is dismissed on a defendant's demurrer as in the instant case. If any material fact remains in dispute a judgment cannot be entered on a demurrer. In the event a demurrer is sustained because a complaint is defective in stating a cause of action, if it is evident that the pleading can be cured by amendment, a court may not enter final judgment, but must give the pleader an opportunity to file an amended complaint. This is not a matter of discretion with the court but rather a positive duty. Conversely, if it clearly appears that a defective complaint cannot be cured, a demurrer to it and dismissal of the action is proper.

Framlau Corporation v. County of Delaware, 299 A.2d 335, 337 (Pa. Super. 1972) (citations omitted). *See also Jones v. City of Philadelphia*, 893 A.2d 837, 846 (Pa. Cmwlth. 2006) (“[W]here a trial court sustains preliminary objections on the merits, it is generally an abuse of discretion to dismiss a complaint without leave to amend.’ If it is possible that the pleading can be cured by amendment, a court ‘must give the pleader an opportunity to file an amended complaint. . . . This is not a matter of discretion with the court but rather a positive duty.’”) (citations omitted).

Because Mbagwu includes facts in his Amended Complaint indicating that he utilized and attempted to utilize statutory remedies available to him, there is

a reasonable possibility that he may cure the defects in his pleading by further amendment. As a result, the trial court abused its discretion in dismissing the Amended Complaint with prejudice without addressing the legal sufficiency of Mbagwu's attempts, and without considering the adequacy of the statutory remedies to address his claims.

Whether Mbagwu will ultimately prevail is unknown. Nevertheless, based on the foregoing, it is not appropriate to resolve outstanding factual issues against him at the preliminary objection stage. Accordingly, the trial court's order dismissing Mbagwu's Amended Complaint is reversed, and the matter is remanded to the trial court with instructions to permit amendment of the pleading to address the exhaustion of remedies issues.

MICHAEL H. WOJCIK, Judge

