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OPINIONS

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PLJ

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Opinions

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Deborah S. Johnson v. Pennsylvania American Water Company, the Municipality of Bethel Park and John Does 1-2

Negligence—Nuisance—UTPCPL—Strict Liability

In action by Homeowners against Municipality and Water company for house fire damages resulting from non-functioning fire hydrants, preliminary objections sustained on nuisance counts. However, strict liability and UTPCPL claims permitted to go forward even though defendants were not manufacturers of defective fire hydrants. Negligent supervision claim permitted to go forward despite lack of allegations related to intentional acts.

No. GD-16-020584. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—March 9, 2017.

MEMORANDUM ORDER

This case involves a civil action claim filed by Plaintiff, Deborah S. Johnson, against Defendants Pennsylvania American Water Company (PAWC), the Municipality of Bethel Park (Bethel Park) and John Does 1-2 over incidents that occurred as a result of a fire at Plaintiff's home at 984 Willow Glen Drive, Bethel Park, on January 11, 2015. At approximately 2:50 p.m., fire crews from Bethel Park Volunteer Fire Company arrived at Plaintiff's Property to extinguish a house fire. Firefighters initially battled the fire with water contained in the firetruck but when they attempted to obtain additional water, all three nearby fire hydrants were either inoperable or had insufficient pressure. In her Complaint, Plaintiff alleges that as a result of the malfunctioning or nonfunctioning fire hydrants, firefighters were unable to contain the fire. Plaintiff claims that the fire hydrants were owned or maintained by the Defendants.

Plaintiff alleged eight counts in her Complaint including negligence, negligent supervision, strict liability, negligent infliction of emotional distress, public nuisance, private nuisance, breach of contract and a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL). Plaintiff made no distinction among the four (4) defendants named and asserts *all* claims against *all* defendants.

Defendants PAWC and Bethel Park filed Preliminary Objections to Plaintiff's Complaint asserting that it only supports a cause of action for negligence even though the Complaint contained eight counts. Specifically, they claim that Plaintiff failed to state any cause of action aside from negligence. I agree to the extent that public nuisance, and private nuisance do not lie and the Preliminary Objections to those allegations are sustained and the nuisance allegations are dismissed with prejudice.

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections. *Haun v. Community Health Systems. Inc.*, 14 A.3d 120, 123 (Pa. Super. 2011).

Plaintiff claims that Defendant PAWC failed to exercise ordinary care in instructing its employees to "properly maintain, inspect, repair, and replace the water lines responsible for providing water to Plaintiff Johnson's house." Defendants state that Plaintiff's negligent supervision claim cannot stand because Plaintiff made no allegations of intentional acts of any specific employees. *Dempsey v. Walso Bureau. Inc.*, 246 A.2d 418 (Pa. 1968) citing *Restatement (Second) of Torts § 317* (1965). I do not accept this theory and find negligent supervision to simply be an element of negligence.

In her strict liability claim, Plaintiff alleges that the Defendants "supplied, sold distributed, installed, manipulated and placed into the stream of commerce the fire hydrants, water lines and water delivery system that was designed to provide water to Plaintiff Johnson's house in the event of a fire." Defendants state that this count cannot stand because Plaintiff does not allege that they are a manufacturer of a defective product. I do not believe manufacture of the malfunctioning lines or hydrants is a necessary pre-condition to this allegation.

In her negligent infliction of emotional distress claim, Plaintiff claims that she experienced "intense emotional distress" as a result of the fire and the loss of her pets. Pennsylvania law states that a claimant must allege physical injury or contemporaneous observance of injury to a close relative to state a claim for negligent infliction of emotional distress. *Sinn v. Burd*, 404 A.2d 672 (Pa. 1979). At this juncture of the case, I will permit these allegations to stand so as to permit discovery. They may not survive Summary Judgment.

Plaintiff's breach of contract claim alleges that she entered into a contract with Defendants to supply water to her property. Defendant PAWC states that the Plaintiff's allegations are clearly barred by the gist of the action doctrine. *Bruno v. Erie Ins. Co.*, 106 A.3d 48 (Pa. 2014). Plaintiff states that the gist of the action doctrine is inapplicable because the Defendants' duty arises independently of a contract. Both Defendants cite the fact that Plaintiff failed to attach a copy of the alleged contract to her Complaint. At Argument I asked whether an implied contract could exist under these factors. After review, I will let this allegation stand.

Finally, Plaintiff claims that the Defendants violated the UTPCPL. The UTPCPL makes it unlawful to engage in any deceptive trade practices, including "representing that goods or services are of a particular standard, quality or grade" or "engaging in any fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." 73 P.S. § 201-2. Defendant PAWC states that although they maintain the fire hydrants, they do not manufacture or sell them and therefore this incident cannot constitute a violation of the UTPCPL. As noted above, manufacture of the lines or hydrants is not a necessary pre-condition. Discovery will shed more light on what trade practices PAWC engages in.

Defendant Bethel Park claims that they are immune to liability under the UTPCPL because they are not a "person" within the meaning of the UTPCPL. This is an attractive argument at first blush, but Bethel Park is a municipal corporation and I think that is enough. Business corporations – persons – are sued all the time under UTPCL.

A claim for punitive damages appear in the Plaintiff's *ad damnum* clause and not as a separate count. Whether punitive damages are available is a function of the facts developed. I will let that stand for now.

To recapitulate, the nuisance allegations are dismissed but all other allegations survive Preliminary Objections and those Preliminary Objections are overruled. Defendants to answer in 30 days.

BY THE COURT:
/s/O'Reilly, S.J.

Dated: March 9, 2017

In Re: Petition of Gregory A. Beluschak and at Least Five (5) Electors of the First Ward of the City of Clairton to Appoint Gregory A. Beluschak, a Registered Elector in and Resident of the First Ward of the City of Clairton, to fill the Current Vacancy on Clairton City Council for the First Ward of the City of Clairton, Allegheny County, Pennsylvania

Re: Petition of Richard L. Lattanzi, Raymond A. Kurta and Five (5) Electors of the First Ward of the City of Clairton to Appoint Raymond A. ("Tony") Kurta to fill the Vacancy on Clairton City Council Due to the Passing of Councilman John A. Lattanzi on October 24, 2016

Home rule—Candidates—City Council

Under a Home Rule Charter, Court was tasked with deciding between two candidates to fill a vacated City Council position. The Court weighed the merits of each candidate, and chose one accordingly.

No. GD-16-23932, GD-16-23965 consolidated at GD-16-23932. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—March 27, 2017.

OPINION

This Matter involves a vacancy on the City Council of the City of Clairton, occurred by the death of a member of Council to which I appointed one Raymond A. Kurta (Kurta).

The vacancy occurred on October 24, 2016 when Councilman John A. Lattanzi, died.

The Home Rule Charter, which Clairton had adopted many years ago, provided a procedure to fill such vacancy. It gave Council 45 days to appoint a replacement. If Council cannot agree, the matter can then come to court if 5 electors of Clairton petition the court to make the appointment. That is how the case came before me.

Specifically, the above-referenced Kurta and another applicant for the seat, Gregory Beluschak (Beluschak), both sought appointment by the Council. Due to the death of Councilman Lattanzi, there were only 4 members of Council and the vote split 2 to 2.

Thereafter, on December 9, 2016, Beluschak, by counsel, appeared before me and presented a Motion to be appointed to the Vacancy. Said Counsel represented this Motion as "uncontested" so I signed it.

Shortly thereafter, Counsel for Kurta and also the City Solicitor filed a Motion to Vacate said order because they had not had notice of its presentation and the Motion was certainly not "uncontested".

I heard argument on this issue on December 20, 2016 and Counsel for Beluschak did not deny the lack of notice but asserted none was required. Kurta and the City argued otherwise. I concluded that fundamental due process required notice particularly when Beluschak and his counsel were aware of Kurta's interest. Further, the representation that the Motion was uncontested was, in my judgment, sharp practice. After argument, I vacated my order. Beluschak's counsel advanced various arguments opposing the due process issue but I found none of them persuasive. Beluschak also contended that because I had signed the order, and he had immediately thereafter been sworn in, the only challenge was via a writ of *Quo Warranto*. I did not find this persuasive because the appointment had been made in violation of due process, and indeed fraud was committed when the motion was presented as uncontested. Accordingly I vacated my prior order.

Concurrent with the aforesaid proceedings, Kurta filed his own petition for appointment at Docket Number GD-16-23965. I consolidated these two petitions and set a hearing thereon for January 17, 2017.

At that hearing Beluschak testified on his own behalf as did the two members on Council who had voted for him. They were Richard L. Ford, Ill and Denise Johnson, both members of Council.

Similarly, Kurta testified on his own behalf as did the other two council persons, Richard L. Lattanzi and Levina Lashich. Kurta's cousin, Robert Kurta also testified.

In essence, then, my assignment was to assess the relative merits of the two applicants and the other testimony offered in their behalf. I found this to be an unenviable task given that both men evidenced a public spirit and a desire to serve their community.

Beluschak was a life-long resident of the City and had spent his entire working life with either the City or its Municipal Authority in a laborer capacity. He was on a disability leave and the likelihood of his returning to work was problematic. He had never held other office or been in a supervisory or managerial position. He was an active member of various social clubs in the city.

The council members who supported him thought he would do a good job if appointed and, more than likely, he would give them a majority on Council.

In this regard, the testimony was that Council usually voted unanimously on any issue that came before them. Although there may have been debate at non-public executive sessions but Council generally presented a united front and unanimity on all public votes.

Kurta testified that he was a manager with a Cable TV company serving the area (Comcast) and had 10 to 17 other employees under his supervision (N.T. 74). He was also active in the community and held an annual charity party to which the guest brought toys for distribution to disadvantaged children in the area. He coordinated this party and the distribution of the toys with the School District. Kurta, a non-drinker, does not belong to any of the social clubs in the city. The aforesaid members of Council, testified on Kurta's behalf and said they believed he was civic minded and always ready to lend a hand in any community project. Obviously his appointment would give the three (3) of them control of Council in the event of any dispute. None however was on the horizon and it seems the Council, for the most part, acted in harmony.

After analysis I determined that Kurta would be a better appointment for the city. I emphasized that I was *not* finding Beluschak to be unqualified, I simply pointed out that as between the two, Kurta was the better choice.

I entered an order to that effect at the close of the hearing. At that time an issue arose as to the length of the term to which Kurta was appointed. Beluschak argued that Kurta would have to seek election to the balance of the term in the May 2017 Primary.

Kurta contended the appointment was for the balance of John Lattanzi's term which ran until the first Monday in January 2020.

After briefing and analysis. I found the term to which I appointed Kurta is to run until the first Monday in January 2020. I entered a Memorandum Order and an Order of Court to that effect and they are attached as Exhibit 1-A and 1-B. I have already stated my conclusions as to the *Quo Warranto* issue which I have found not applicable.

BY THE COURT:
/s/O'Reilly, S.J.

Dated: March 27, 2017

EXHIBIT 1-A

In Re: Petition of Gregory A. Beluschak and at Least Five (5) Electors of the First Ward of the City of Clairton to Appoint Gregory A. Beluschak, a Registered Elector in and Resident of the First Ward of the City of Clairton, to fill the Current Vacancy on Clairton City Council for the First Ward of the City of Clairton, Allegheny County, Pennsylvania

Re: Petition of Richard L. Lattanzi, Raymond A. Kurta and Five (5) Electors of the First Ward of the City of Clairton to Appoint Raymond A. ("Tony") Kurta to fill the Vacancy on Clairton City Council Due to the Passing of Councilman John A. Lattanzi on October 24, 2016

In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
No. GD-16-23932 and GD-16-23965 consolidated at GD-16-23932.
Hon. Timothy Patrick O'Reilly—February 14, 2017.

MEMORANDUM ORDER

I conducted a hearing on January 17, 2017 involving the filling of a vacancy on the City Council in the City of Clairton caused by the death of Councilman, John A. Lattanzi. I appointed one, Raymond A. Kurta (Kurta) to the vacancy.

An issue arose as to duration of the appointment, that is, whether it was for the remainder of the deceased Councilman's term which would be until the first Monday in January, 2020 *or* whether the vacancy was to be placed on the ballot for the Municipal Election in 2017 and the winner of that election in May 2017, would serve out the balance of the term.

I gave Counsel 20 days to file briefs on this issue and they have filed able and insightful briefs in support of their contending positions.

Counsel for Beluschak argues that the vacancy must be on the ballot for the upcoming May 2017 primary. He bases that argument on the introductory sentence to the relevent section of the Clairton Charter at 2404(a) which reads:

> " … If a vacancy shall occur in any elective office in the municipality for any reason set forth in this Charter, the remaining members of the Council shall fill such vacancy by appointing a person eligible under the **Charter to hold such office until a successor is elected at the next municipal election. Such successor will serve the remainder of the unexpired term** … "
> (emphasis from Beluschak)

However, Counsel for Kurta cites to the second sentence of that section which reads:

> " … If the Council shall fail to fill such vacancy within forty-five (45) days after the vacancy occurs, then the Court of Common Pleas of Allegheny County shall, upon petition of the Council or of any five (5) electors of that ward of the municipality whose Council seat is vacant, *fill the vacancy in such office by the appointment of an eligible resident of the municipality for the unexpired term of office* … "

Beluschak argues that the first sentence should be controlling while Kurta argues the second sentence is controlling. Beluschak also argues that principals of Statutory Construction require the first sentence to take priority over the second, because that is the *only* way to achieve consistency between the two.

I fail to see how "consistency" is achieved by choosing the first sentence over the second. When consistency cannot be achieved and there is *direct* contradiction between parts of a statue, what is to be done?

We need to consult the Rules of Statutory Construction, 1 Pa.C.S.A. 1901 et seq at Section 1934. That section reads:

> " … Except as provided in Section 1933 of this title (relating to particular controls general. Whenever in the same statute several clauses are irreconcilable, the clause last in order of date *or position* shall prevail … "

Obviously, the second sentence then prevails by reason of its position and Kurta is to serve the remainder of the deceased Councilman's term.

To a like effect is the March 30, 2010 court order from my colleague, the Honorable Joseph M. James in the case of GD-10-4905 which also involved this City and this Charter. Judge James found an appointee to a vacancy on Council would serve the remainder of the term.

Beluschak also argues that the Home Rule Charter Legislation, which enables Home Rule Charters, "pre-empts" the Clairton in matters of filling vacancies. See 53. P.S. Sec. 2962.

Kurta however, cites the same legislation at 53.Pa C.S. Sec. 2961 for the proposition that powers of a municipality with a Home Rule Charter "Shall be liberally construed". Further, any limitations imposed by the Home Rule law apply only to matters of "statewide concern" involving the health, safety, security and general welfare of all inhabitants of the State. *Devlin v. City of Philadelphia*, 862 A.2d 1234 (Pa 2004).

The filling of a vacancy in Clairton is not a matter of statewide concern and thus there is no pre-emption.

Based on the foregoing, I am satisfied that Kurta is to serve the balance of the term of the deceased, John A. Lattanzi and he need not seek election in the May 2017 Primary.

An appropriate order is attached.

BY THE COURT:
/s/O'Reilly, S.J.

February 14, 2017

EXHIBIT 1-B

In Re: Petition of Gregory A. Beluschak and at Least Five (5) Electors of the First Ward of the City of Clairton to Appoint Gregory A. Beluschak, a Registered Elector in and Resident of the First Ward of the City of Clairton, to fill the Current Vacancy on Clairton City Council for the First Ward of the City of Clairton, Allegheny County, Pennsylvania

Re: Petition of Richard L. Lattanzi, Raymond A. Kurta and Five (5) Electors of the First Ward of the City of Clairton to Appoint Raymond A. ("Tony") Kurta to fill the Vacancy on Clairton City Council Due to the Passing of Councilman John A. Lattanzi on October 24, 2016

In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
No. GD-16-23932 and GD-16-23965 consolidated at GD-16-23932.
Hon. Timothy Patrick O'Reilly—February 14, 2017.

ORDER OF COURT

AND NOW to wit this 14th day of February, 2017, upon consideration of the foregoing petitions it is hereby Ordered, Adjudged and Decreed that Raymond A. Kurta shall be appointed to fill the vacancy on Clairton City Council for the unexpired term of Councilman, John A. Lattanzi, deceased, which shall run until the first Monday in January, 2020.

BY THE COURT:
/s/O'Reilly, S.J.

Thomas P. O'Toole v. Ocwen Loan Servicing, LLC

Summary Judgment—Facts—Burden

Defendant moved for summary judgment because plaintiff failed to comply with a court order that required him to provide discovery. Court denied the motion as it held that summary judgment was an inappropriate remedy for noncompliance with a discovery request. Instead, the Court left it to the trial judge to determine what, if any, evidence plaintiff would be permitted to present at trial in light of his noncompliance.

No. GD-12-017261. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—May 24, 2017.

MEMORANDUM ORDER

This case involves a claim by Plaintiff, Thomas O'Toole (O'Toole) (*Pro Se*) that his mortgage loan has not been properly serviced by the Defendant, Ocwen Loan Servicing, LLC, (Ocwen). O'Toole contends that payments have not been applied properly and that Ocwen has also inappropriately assessed various penalties against him. O'Toole asserts counts of Breach of Contract, Unfair Credit Reporting and Fraud.

O'Toole has resisted efforts at Discovery and has either refused to supply any documentation for his claim or has not answered completely. Ocwen filed 3 Motions to Compel O'Toole to provide documentation and my colleague, the Honorable R. Stanton Wettick, on October 14, 2016 entered an order giving O'Toole 90 days to produce all documents he will use at trial. Under that order, compliance would have been required by January 12, 2017.

It appears that O'Toole never did comply with the Wettick order.

Ocwen filed its Motion for Summary Judgment on January 1, 2017 asserting basically that because of the Judge Wettick order of October 14, 2016, O'Toole could not present any documentary evidence in support of his Complaint. Thus, Summary Judgment should now be granted. I heard Argument on that Motion on April 12, 2017.

While the forgoing Argument of Ocwen is well-taken; I do not find it dispositive.

Rather, and given the rubric that Summary Judgment should be granted only if there is no dispute of material Fact and the non-moving party cannot prevail on the Facts of the case, I am inclined to permit O'Toole to proceed. Even under the Wettick order, O'Toole can still testify himself. Thus I am not inclined to grant the Motion.

I will leave to the Trial Judge the duty to rule on what O'Toole may offer if anything. But for now, this Motion for Summary Judgment is DENIED.

BY THE COURT:
/s/O'Reilly, S.J.

Dated: May 24, 2017

Michael Coriston v. All About Autos, LLC, a Pennsylvania Limited Liability Company

Auto—Repairs—Damages

The Court weighed evidence regarding damages to a diesel vehicle. After hearing expert testimony, the Court found defendants to be liable, but not completely at fault. The Court also lowered plaintiff's damages due to unnecessary and duplicative expenses.

No. AR 14-003948. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—September 21, 2017.

MEMORANDUM ORDER

This case involves a dispute between a vehicle owner and a repair garage as to whether or not the repairs made or attempted were so inept so as to virtually destroy the engine. Plaintiff, Michael Coriston filed suit against Defendant, All About Autos, LLC on September 16, 2014. I heard the matter on September 1, 2016 and both Plaintiff and Defendant testified. A third witness, a purported expert, one Andrew Bittenbinder was not available to testify but I permitted his deposition to be taken for use at trial and it was submitted to me on July 30, 2017. Plaintiff is Michael Coriston the owner of a certain 2003 Dodge Sprinter van which he used in his business of delivering small packages for Federal Express. The vehicle had a diesel engine with approximately 225,000 miles of use at the time involved herein.

Defendant, All About Autos, LLC is an automobile repair business owned by Bill Rathbun with which Coriston had dealt occasionally in the past. (N.T. 8)

I am satisfied that Bittenbinder is an expert in his field and that his hands on experiences with vehicles and engines of this type qualifies him to render an opinion. Further, be actually worked on this vehicle. While his testimony was somewhat disjointed and he showed combative and argumentative tendencies, I think he correctly diagnosed the problem with Coriston's vehicle. Counsel did not do a good job in helping the deposition flow smoothly and repeated interruptions and talking over the witness and each other exacerbated the problem.

In February 2013, Coriston began to experience a loss of power in the vehicle. He testified that he talked to All About Auto's owner, Mr. Bill Rathbun about the problem. There is some dispute as the Facts and circumstance surrounding this conversation. According to Coriston, when he spoke by telephone to Rathbun about the problem Rathbun opined that it was, or may be, a "glow plug" issue with the diesel engine. (N.T. 31) According to Rathbun, a "glow plug" diagnosis had already been made by Coriston and when he brought the vehicle in he had already purchased glow plugs to be installed. Rathbun asserted that the "glow plug" issue was diagnosed by Coriston alone. (N.T. 90)

Rathbun attempted to install the new "glow plugs" but broke off the existing glow plugs so that the threaded holes for the new plugs could not be accessed.

From this point, according to Bittenbinder, a cascade of misdiagnosis and ineptitude were performed on this engine which ultimately had to be replaced.

In his deposition, Bittenbinder opined that the loss of power being experienced by Coriston had nothing to do with "glow plugs" but rather was a result of the turbine or supercharger powering this engine. In his opinion the turbine was failing and caused the loss of power due to an electrical problem which could have been easily remedied.

Coriston's testimony was that after the glow plugs had broken off, at Rathbun's advice he took the head of the engine to be re-machined. As a result the vehicle could not be used and stayed at the Defendant's garage. It appears to have been stored outside with the hood open and was exposed to the elements. (N.T. 17)

The chronology here, as shown by Coriston's Expedition, is also worthy of consideration:

1) March 18, 2013 - $846 for repair of head after the glow plugs broke off.

2) June 11, 2013 - $1,200.00 to Defendant to install the refurbished head.

3) October 19, 2013 - $2,700 to Rick's towing to tow vehicle to Schindler and purchase of parts needed.

4) March 24, 2014 - $1,978 - remove, repair and install motor.

5) April 5, 2014 - $3,500 - purchased rebuilt engine.

Other considerations are the age of the vehicle and the miles on the engine and circumstances under which Defendant stored the vehicle. Bittenbinder opined that diesel motors of this type usually run for 500,000 to a million miles.

The testimony was that the replacement engine failed shortly thereafter. I do not believe failure of the rebuilt engine gives rise to any further claim against Defendant. However, analysis of the facts and evidence does show that Defendant did not possess the necessary skill to properly service this engine and then his casual method of storage exacerbated the problem. I am not convinced that all of this cascade of events is all attributed to Defendants of this gross claim of $12,926.70. (N.T. 30) I do believe that some of these expenses were unnecessary or duplicated.

Accordingly and after analysis a verdict of $9,000.00 to Plaintiff is appropriate and the same will be entered. An appropriate verdict is attached.

BY THE COURT:
/s/O'Reilly, S.J.

Dated: September 21, 2017

Brian W. Jones, Assignee of ARP Associates LLC, Plaintiff v. John Skaro and Karen A. Skaro, Defendants Dorothy Donauer, Intervenor PNC Bank, Garnishee

Appeal—Garnishment—Interlocutory

Court had previously opened a judgment against the garnishee, which plaintiff appealed. Court thereafter requested that the Superior Court quash the appeal as premature and interlocutory.

No. GD-09-007166. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
Friedman, J.—March 30, 2017.

OPINION

Plaintiff Brian Jones has appealed our order dated February 8, 2017, which opened a judgment against the garnishee and permitted PNC to file an amended answer to interrogatories in garnishment. Mr. Jones is the assignee of a judgment entered in the captioned matter against the Defendants, John and Karen Skaro. PNC, the Garnishee, filed its Amended Answer and New Matter on February 17, 2017, nine days after the entry of the order but after the Notice of Appeal was filed. According to the docket, Plaintiff, Brian W. Jones, has not filed an Answer to the New Matter. It is possible that his appeal is slightly premature because of this; the pending appeal prevents him from filing a response to the new matter. The appeal also should have prevented the filing of the Amended Answer to Interrogatories. We suggest the appeal should be quashed, without prejudice to Mr. Jones's right to file an appeal after the garnishment issue is fully dealt with so a final appealable order on that issue may be entered. If the appeal is not quashed, we will file a supplemental opinion on its merits.

BY THE COURT:
/s/Friedman, J.

Dated: March 30, 2017