

# Franklin County Legal Journal

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*Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.*

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**Al-Mar RV, Inc., t/b/d/a Keystone RV Center, Plaintiff vs.  
Cheryl Everson, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch, Civil Action No. 1174-2015

**HEADNOTES**

*Pleadings > Judgment on the Pleadings*

1. Judgment on the pleadings is governed by Section 1034 of the Pennsylvania Rules of Civil Procedure. The rule states that if party has moved for a judgment on the pleadings at the appropriate time, “the court shall enter such judgment or order as is proper on the pleadings.” Pa.R.C.P. §1034.

2. “A motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. ... Neither party can be deemed to have admitted either conclusions of law or unjustified inferences.” Kelly v. Nationwide Ins. Co., 414 Pa. Super. 6, 9-10, 606 A.2d 470, 471-72 (1992).

3. “In conducting its inquiry, the court should confine itself to the pleadings themselves and any documents or exhibits properly attached to them. It may not consider inadmissible evidence in determining a motion for judgment on the pleadings. Only when the moving party’s case is clear and free from doubt such that a trial would prove fruitless will an appellate court affirm a motion for judgment on the pleadings.” Kelly v. Nationwide Ins. Co., 414 Pa. Super. 6, 9-10, 606 A.2d 470, 471-72 (1992) (internal citations omitted).

Appearances:

James M. Stein, Esq., *Attorney for Plaintiff*

Jay C. Whittle, Esq., *Attorney for Defendant*

**OPINION**

Before Meyers, J.

**FACTUAL & PROCEDURAL HISTORY**

The relevant facts giving rise to this dispute are as follows. The Plaintiff in this action, Al-Mar RV, Inc., t/d/b/a Keystone RV Center (hereinafter “Plaintiff”) filed a Complaint against the Defendant, Cheryl Everson (hereinafter “Defendant”) on March 26, 2015. The Plaintiff has employed the Defendant for approximately 10 years. Complaint, ¶6; Answer to Compl., ¶6. Plaintiff alleges that Defendant had “systematically stolen assets and cash belonging to the Plaintiff in a cumulative amount exceeding \$300,000” throughout Defendant’s employment, which was discovered by

Plaintiff on or around March 16, 2015. Compl., ¶ 7. Plaintiff claims that this theft has caused them to sustain “substantial damages.” Id., ¶¶ 8-9.

As a result of these alleged actions by Defendant, Plaintiffs sought a judgement against Defendant in the amount of \$300,000 plus any property “unjustly retained” by Defendant, as well as the costs and fees associated with the suit. Id., ¶10. In her Answer to the Complaint, filed April 13, 2015, Defendant denied that there had been any theft, and that there was any damage sustained by Plaintiff. Answer to Compl., ¶¶ 7-9.

On April 23, 2015, Plaintiff filed a Motion for Judgment on the Pleadings (hereinafter “Motion”). In their Motion, Plaintiffs claim that the general denials issued by Defendant in her Answer have the effect of an admission under Pa. R.C.P. §1029(b). Motion, ¶4. The Plaintiff’s Brief in Support of Motion for Judgment on the Pleadings (hereinafter “Brief”) claims that since Defendant has effectively admitted to the allegations contained in Plaintiff’s complaint, “there are no disputed facts in the case, and Plaintiff is entitled to judgment as a matter of law.” Brief, at 2.

Defendant filed an Answer to Plaintiff’s Motion for Judgment on the Pleadings with New Matter, on May 15, 2015. In the Answer to Plaintiff’s Motion for Summary Judgment, Defendant denied Plaintiff’s assertion that Defendant had admitted to all allegations contained in the Complaint.<sup>1</sup> Answer to Motion, ¶6. Defendant claimed that the general denials in paragraphs 7, 8, and 9 of their Answer to Complaint were sufficient to contest the allegations found in the same paragraphs of Plaintiff’s Complaint. Id., ¶4. The Defendant further argued that a general denial is sufficient under Pa.R.C.P. §1029(c) and (e). Id., ¶5. In the New Matter, Defendant argued that their general denials to each allegation by the Plaintiff were sufficient, and the only appropriate legal response to Plaintiff’s general allegations. Id., ¶¶9-11. Defendant further stated that she “was in a position to file Preliminary Objections” under Pa.R.C.P. §1028 in order to satisfy the Plaintiff. Id., ¶12.

Plaintiff filed an Answer to Defendant’s New Matter on June 9, 2015. In the Answer to the New Matter, Plaintiff claimed that Defendant did not properly deny the allegations in the Complaint, and that the Complaint “provide[d] specific allegations of theft” and damages. Answer to New Matter, ¶¶9-10. As such, Plaintiff rejected Defendant’s argument that Defendant was unable to provide anything but general answers to the allegations within Plaintiff’s Complaint. Id., ¶11. Plaintiff also mentioned that Defendant had failed to file any preliminary objections or otherwise suggest that the allegations of the Complaint were not sufficiently specific. Id., ¶¶ 9, 12.

<sup>1</sup> Defendant erroneously titled their answer as if the Plaintiff had filed a Motion for Summary Judgment under Pa.R.C.P. §1035, instead of the Motion for Judgment on the Pleadings that was actually filed.

## DISCUSSION

### *1: Judgment on the Pleadings – Applicable Standard*

Judgment on the pleadings is governed by Section 1034 of the Pennsylvania Rules of Civil Procedure. The rule states that if party has moved for a judgment on the pleadings at the appropriate time, “the court shall enter such judgment or order as is proper on the pleadings.” Pa.R.C.P. §1034. The standard determining what is proper on the pleadings is neatly set out in Kelly v. Nationwide Insurance Co., which states:

A motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. ... Neither party can be deemed to have admitted either conclusions of law or unjustified inferences. Moreover, in conducting its inquiry, the court should confine itself to the pleadings themselves and any documents or exhibits properly attached to them. It may not consider inadmissible evidence in determining a motion for judgment on the pleadings. Only when the moving party’s case is clear and free from doubt such that a trial would prove fruitless will an appellate court affirm a motion for judgment on the pleadings.

Kelly v. Nationwide Ins. Co., 414 Pa. Super. 6, 9-10, 606 A.2d 470, 471-72 (1992) (internal citations omitted).

### *2: General Denials as Admittance and a “Genuine Issue of Fact”*

In the Plaintiff’s Motion for Judgment on the Pleadings, they claim that because a general denial has the effect of an admission, under Pennsylvania Rule of Civil Procedure §1029, the Defendant effectively “admitted all of the allegations contained in the Complaint.” Motion, ¶6. This, the Plaintiff argues, eliminates the disputed facts of the case, and entitles the Plaintiff to judgment as a matter of law.<sup>2</sup> Defendant claims in their Answer to Motion that the allegations at issue were denied, as “a general denial is authorized under [Pa.R.C.P. Section] 1029(c) and (e).” Answer to Motion, ¶¶4-5.

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<sup>2</sup> In support of this claim, Plaintiff cites to First Wisconsin Trust v. Strausser, 459 Pa.Super. 192 (1995). However, this case discusses a Motion for Summary Judgment filed pursuant to Pa.R.C.P. §1035, instead of a Motion for Judgment on the Pleadings pursuant to Pa.R.C.P. §1034. “While these motions may supplement each other, and be made at the same time, there is a distinct difference between them, and each should be distinctly and procedurally named, pleaded, and argued in its own right.” Bensalem Twp. Sch. Dist. v. Com., 518 Pa. 581, 586, 544 A.2d 1318, 1321 (1988).

### *3: Application*

In this case, the pleadings indicate that there is a genuine issue of fact in this case. While the Plaintiff makes an admirable argument that Defendant's Answer to the Complaint constitutes an admittance of "all of the allegations contained in the complaint," this Court is not convinced that the general denials issued by Defendant in that answer should entitle Plaintiff to a judgment on the pleadings alone. Motion, ¶¶5-6.<sup>3</sup>

Furthermore, this Court is convinced that the general denials provided by the Defendant in their Answer to the Plaintiff's complaint were sufficient under the statute. Under Pa.R.C.P. §1029(e), averments "may be denied generally" when they are "in an action seeking monetary relief" for "property damage" and other situations not at issue here. Here, the Plaintiff is seeking monetary compensation for loss of their funds during the period in which they employed the Defendant. The issue then becomes whether the theft alleged by the Plaintiff constitute property damage under the statute.

There is no definition of the term "property damage" within the Pennsylvania Rules of Civil Procedure. However, the legislature has directed that "words and phrases shall be construed ...according to their common and approved usage." 1 Pa.S.C.A. §1903. When it is necessary to determine the common and approved usage of a word or term, Pennsylvania courts generally use dictionaries as source material. Fogle v. Malvern Courts, Inc., 554 Pa. 633, 637, 722 A.2d 680, 682 (1999); *see also* Love v. City of Philadelphia, 518 Pa. 370, 374, 543 A.2d 531, 532 (1988); and Philadelphia Eagles Football Club, Inc. v. City of Philadelphia, 573 Pa. 189, 219, 823 A.2d 108, 127 (2003).

Property is defined by Black's Law Dictionary as "everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal." Black's Law Dictionary 1095-96 (5th ed. 1979). Personal property generally indicates "all property other than real estate...include[ing] money." Id. The money the Plaintiff claims that the Defendant stole could then properly be termed the property of the plaintiff.

Damage is defined as the "loss, injury, or deterioration, caused by negligence, design, or accident." Id., at 351. Plaintiff claims that Defendant's actions caused them to lose money, which can, by definition, be deemed to be property damage.

As such, the Defendant is correct in their assertions that their general denials were sufficient under Pa.R.C.P. §1029(e). Because of this, Plaintiff's <sup>3</sup> This is especially true as Defendant failed to properly file a brief with the court supporting their Answer to Plaintiff's Motion for Judgment on the Pleadings. While Defendant submitted an answer to Plaintiff's Motion for Judgment on the Pleadings, Defendant failed to submit a brief in support of their position prior to the oral argument on September 3, 2015. In doing so, Defendant failed to comply with local rule 39-1034(a), and 39-211.6-7.

allegation that there is no issue of material fact is unfounded.

### **CONCLUSION**

For the foregoing reasons, Plaintiff's Motion for Judgment on the Pleadings is DENIED.

### **ORDER OF COURT**

**AND NOW THIS** 28th day of September, 2015;

**IT IS HEREBY ORDERED** that Plaintiff's Motion for Judgment on the Pleadings is DENIED.

*Pursuant to the requirements of Pa.R.Crim.P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.*