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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

B&S ASSOCIATES	:	March Term, 2014
<i>Plaintiff</i>	:	Case No. 00872
v.	:	
EMSTAR AMBULANCE SERVICES	:	Commerce Program
a/k/a/ PCA EMSTAR HOLDINGS a/k/a/ EMSTAR	:	
<i>Defendant</i>	:	Control Nos. 15092409, 15101668
KEYSTONE QUALITY TRANSPORT COMPANY	:	
<i>Garnishee</i>	:	

ORDER

AND NOW, this 10th day of December, 2015, upon consideration of the Application in the style of a Motion for Judgment on the Pleadings filed by Plaintiff B&S Associates under motion control No. 15092409, the opposition thereto, filed under motion control No. 15101668 by Defendant Emstar Ambulance Services in the style of Preliminary Objections in Opposition to Plaintiff's Motion for Judgment on the Pleadings, the response of Garnishee, Keystone Quality Transport Company, the respective *memoranda* of law, and all other filings under the above-mentioned motion control numbers, it is **ORDERED**:

I. The Motion for Judgment on the Pleadings is **GRANTED** and Garnishee shall pay to Plaintiff, in the care of Plaintiff's counsel, the sum of \$18,733.40 accruing to Defendant each month, pursuant to the terms of the Management Agreement identified in footnote 2 of this Court's *Memorandum* Opinion which

B&S Associates Vs Emsta-ORDMM



is filed simultaneously herewith. These payments accrued and accruing from service of the Writ of Execution upon Garnishee shall be paid commencing January 1, 2016. Additional payments of \$18,733.40 shall be remitted to Plaintiff's counsel on the first day of each successive month. The payment due January 1, 2016 shall include accrued post-judgment interest whose amounts shall be determined by this Court upon the filing by the parties of a short *memorandum* of law explaining the parties' respective calculations, to be filed no later than December 22, 2015.¹

Garnishee shall also pay to Plaintiff, in the care of Plaintiff's counsel, the additional sums accrued and accruing due to Defendant each month, pursuant to the terms of the Management Agreement identified in footnote 2 of this Court's *Memorandum* Opinion which is filed simultaneously herewith. Such sums represent the portion of payments owed by Garnishee to Defendant, as identified in the first sentence of paragraph 2 of the Supplemental Response of Keystone Quality Transport to Execution Interrogatories of Garnisher, B&S Associates, filed on September 9, 2015. These payments accrued and accruing from service of the Writ of Execution upon Garnishee shall be paid commencing January 1, 2016. Additional payments of these sums shall be remitted to Plaintiff's counsel on the first day of each successive month. The payment due January 1, 2016 shall include accrued post-judgment interest whose amounts shall be determined by this Court upon the filing by the parties of a short *memorandum* of law

¹ Plaintiff's Writ of Execution, served upon Garnishee on July 28, 2015, shall be valid through April 1, 2016. To obtain from Garnishee any judgment amounts identified in paragraph I. of this Order, and still owed to Plaintiff after April 1, 2016, Plaintiff shall serve upon Garnishee a new Writ of Execution. "[N]o money judgment entered against the garnishee shall exceed the amount of the judgment of plaintiff against the defendant together with interest...." Pa. R.C.P. 3147, Pa. R.C.P. 3146(b)(1).

explaining the parties' respective calculations, to be filed no later than December
22, 2015.

II. The preliminary objections of Defendant Emstar Ambulance Services are
OVERRULED in their **ENTIRETY**.

BY THE COURT,



MCINERNEY, J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

B&S ASSOCIATES	:	March Term, 2014
	:	
<i>Plaintiff</i>	:	Case No. 00872
	:	
v.	:	
	:	Commerce Program
EMSTAR AMBULANCE SERVICES	:	
a/k/a/ PCA EMSTAR HOLDINGS a/k/a/ EMSTAR	:	
	:	
<i>Defendant</i>	:	Control Nos. 15092409,
	:	15101668
KEYSTONE QUALITY TRANSPORT COMPANY	:	
	:	
<i>Garnishee</i>	:	

MEMORANDUM OPINION

The motion for judgment on the pleadings requires this court to determine whether garnishee shall remit to a judgment plaintiff certain sums which are owned by a judgment debtor and are held by the garnishee. For the reasons below, the court finds that the garnishee shall remit the sums to the judgment plaintiff.

BACKGROUND

This action began in March 2014, when plaintiff, B&S Associates (“Plaintiff” or “Creditor”), entered judgment by confession against defendant Emstar Ambulance Services, (“Defendant” or “Debtor”), a company engaged in the ambulance service business. Plaintiff’s complaint-in-confession-of-judgment asserted that Defendant had defaulted upon the terms of a commercial real estate lease which the parties had executed in December 2011. Subsequent to the entry of judgment by confession, Plaintiff filed a motion to amend the complaint. Specifically, the motion sought leave

from the court to include in the caption of the complaint the various names under which Defendant had conducted business. On June 24, 2015, after the court granted leave to amend the caption, Defendant filed a petition to strike or open the judgment confessed by Plaintiff, as well as a petition to stay proceedings. On July 10, 2015, Plaintiff filed a response in opposition to the petition to strike or open the confessed judgment. Three days later, on July 13, 2015, Plaintiff filed its response in opposition to Defendant's petition to stay execution proceedings.

On July 16, 2015, this action was transferred to the Commerce Program of the Civil Trial Division, Court of Common Pleas, Philadelphia County. On July 20, 2015, this court issued an Order and *Memorandum* Opinion denying Defendant's petition to strike or open the confessed judgment. The *Memorandum* Opinion explained that Defendant had failed to show a fatal defect in the record as to warrant striking the judgment, and had failed to meet the burden of proof necessary for opening the judgment. Simultaneously, the court also issued another Order lifting the stay of execution against Defendant.

On July 22, 2015, Plaintiff filed a praecipe instructing the Office of Judicial Records to enter a writ of execution against Defendant and certain named garnishees. One of the named garnishees was Keystone Quality Transport Company ("Keystone"), an entity which had contractually agreed to manage and operate Defendant's business, in exchange for payments, pursuant to the terms of a "Management Agreement." On July 29, 2015, Plaintiff served interrogatories to Keystone as garnishee. On August 18, 2015, Defendant appealed to the Pennsylvania Superior Court the Order of this court denying the petition to strike or open the confessed judgment.

On August 31, 2015, Keystone filed its answers to the interrogatories of Plaintiff.

Subsequently, on September 9, 2015, Keystone filed a supplemental response to Plaintiff's interrogatories. In this supplemental response, Keystone admitted that pursuant to the Management Agreement, Keystone was required to periodically remit to Defendant certain sums of money which Keystone received, *inter alia*, while operating and managing the business of Defendant. Specifically, Keystone stated as follows:

The amount of payments from [Keystone] to [Defendant] is not a constant amount because one portion of those payments are a percentage of sales. Subject to monthly variations in sales, the amount of this payment is approximately \$18,000.00 per month. The second portion of the payment is a fixed monthly reimbursement payment in the amount of \$18,733.40. This payment is made pursuant to a lease between [Defendant] and.... By practice, this portion of the payment is included with the first portion and one check is sent to [Defendant]....¹

On September 21, 2015, Plaintiff filed the instant application in the nature of a motion for judgment on the pleadings against Keystone, judgment garnishee. The motion prays for an Order compelling Keystone to pay to Plaintiff, in the care of counsel thereof, the fixed monthly amount of \$18,733.40, as accrued from July 29, 2015 to the present, with interest, plus subsequent payments in the same amount for every month thereafter, to be remitted on the first day of each new month. In addition, the motion seeks to compel Keystone to remit to the care of Plaintiff's counsel the accrued management fees from July 29, 2015 to the present, with interest, plus subsequent monthly payments for each month thereafter. These funds, representing 1% of the sales generated by Keystone as manager of the business of Defendant, fluctuate according to

¹ Supplemental response of Keystone to execution interrogatories of Plaintiff, filed September 9, 2015.

the volume of sale posted in any given month.²

On October 13, 2015, Defendant filed preliminary objections to Plaintiff's application in the nature of a motion for judgment to the pleadings.³ Through these preliminary objections, Defendant prays the court to dissolve the writ of execution against Keystone as garnishee. On October 15, 2015, Keystone, as garnishee, filed its response to Plaintiff's application in the nature of a motion for judgment on the pleadings. In this response, Keystone "takes no position ... and leaves the matter entirely to the Court."⁴

DISCUSSION⁵

Before turning to the substance of the motion, the court shall analyze whether Plaintiff's filing, styled as an "Application in the Nature of a Motion for Judgment on the Pleadings," is proper under the Pennsylvania Rules of Civil Procedure.

In Pennsylvania, the time in which a party may file a motion for judgment on the pleadings is defined under Pa. R.C.P. 1034:

[a]fter the relevant pleadings are closed, but within such

² Management Agreement between PCA Emstar Holdings, L.P. [*herein* Defendant], and Keystone, ¶ 3.1, attached to Plaintiff's motion for judgment on the pleadings against garnishee Keystone. See also supplemental response of Keystone to the execution interrogatories of Plaintiff.

³ Defendant styled its opposition to Plaintiff's motion for judgment on the pleadings as "preliminary objections," under motion control No. 15101668. Subsequently, Plaintiff filed under the same control number a *memorandum* mildly challenging the propriety of Defendant's filing. Specifically, Plaintiff asserts that preliminary objections are an improper response to a motion for judgment on the pleadings. Rather than concentrating on the form of Defendant's challenge to the motion for judgment on the pleadings, this court will focus on the merits presented by the arguments therein, as allowed under PA. R.C.P. 126 which states: "[t]he rules [of civil procedure] shall be liberally construed to secure the just, speedy and inexpensive determination of every.... The court ... may disregard any error or defect of procedure which does not affect the substantial rights of the parties."

⁴ Keystone's *memorandum* of law in support of its response to Plaintiff's application in the nature of a motion for judgment on the pleadings, p. 1.

⁵ In the motion for judgment on the pleadings, Plaintiff asserts that this court has jurisdiction notwithstanding the pending appeal. In the opposition to plaintiff's motion, Defendant does not appear to dispute this position. The court notes that the Pennsylvania Rules of Appellate Procedure instruct as follows: "after an appeal is taken ... the trial court ... may [e]nforce any order entered in the matter, unless the effect of the order has been superseded...." PA. R.A.P. 1701(b)(2). The court is satisfied that its Order denying Defendant's petition to strike or open judgment by confession has not been superseded; therefore, the court has jurisdiction to enforce the Order.

time as to not unreasonably delay the trial, any party may move for judgment on the pleadings.

A reading of this rule leads to conclude that a motion for judgment on the pleadings is properly filed **before judgment is entered**. Indeed, a motion for judgment on the pleadings may only be granted “when there are no disputed issues of fact and the moving party is entitled to **judgment** as a matter of law.”⁶ In other words, a motion for judgment on the pleadings seeks the entry of a judgment; however in this case, judgment was entered at the onset of the action upon the filing by Plaintiff of a complaint-in-confession-of-judgment. Based on the foregoing, a motion for judgment on the pleadings appears to be an improper filing in the case at hand. However, Plaintiff points out that under the Rules—

[t]he procedure between the plaintiff and the garnishee shall, as far as practicable, be the same as though the interrogatories were a complaint and the answer of the garnishee were an answer in a civil action.⁷

This provision indicates that after judgment is entered against a defendant, interrogatories by a judgment plaintiff to a garnishee, and an answer thereto by the garnishee, are treated as “pleadings,” which, under PA, R.C.P. 1017, are defined as—

a complaint, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a counterclaim contains new matter, a preliminary objection and an answer thereto.⁸

In conclusion, the above-quoted Rules of Civil Procedure, when examined together, convince this court that the interrogatories to the garnishee, and the answer

⁶ Consolidation Coal Co. v. White, 2005 Pa. Super 155, ¶ 13; 875 A.2d 318, 325 (2005) (emphasis supplied).

⁷ PA. R.C.P. 3145(a).

⁸ Joyce v. Mankham, 318 Pa. Super. 561, 566, 465 A.2d 696, 698 (1983) (citing PA. R.C.P. 1017)(a).

therefrom, as described in Pa. R.C.P. 3145, are substantially the same as the pleadings defined in PA. R.C.P. 1017. Consequently, the “pleadings” between Plaintiff and garnishee Keystone are now closed and any party, such a Plaintiff herein, may file a motion for judgment on the pleadings as between Plaintiff and garnishee Keystone. Based on the foregoing, the court finds that the filing by Plaintiff, styled as an “Application in the Nature of a Motion for Judgment on the Pleadings,” is proper and permissible.

Turning to the substance of the instant motion, Plaintiff asserts that pursuant to PA. R.C.P. 3147, Plaintiff is entitled to receive from garnishee, Keystone, specific accrued and accruing sums in Keystone’s possession which Keystone owes to Defendant. Under the rule invoked by Plaintiff—

[i]f the court enters judgment for plaintiff and against garnishee upon pleadings ... the judgment shall be for the property of the defendant found to be in garnishee’s possession, but no money judgment entered against the garnishee shall exceed the amount of the judgment of plaintiff against the defendant together with interest and costs.⁹

In this case, Keystone, as garnishee, has admitted in its supplemental response to the interrogatories of Plaintiff that it has in its possession certain accrued and accruing sums representing “a fixed monthly reimbursement payment of \$18,733.40. This [monthly] payment is made pursuant to a lease...”¹⁰ As a result of this admission, the court finds that there are no disputed issues of fact: Plaintiff is entitled to judgment on the pleadings against Keystone as to the accrued and accruing monthly sums of

⁹ PA. R.C.P. 3147.

¹⁰ Supplemental response of Keystone to execution interrogatories of Plaintiff, filed September 9, 2015.

\$18,733.40 owed to Defendant.¹¹

Keystone has also admitted that it has certain accrued and accruing sums representing a separate monthly payment owed to Defendant. Such a payment, calculated as a “percentage of sales,” is “[s]ubject to monthly variations in sales, the amount [of which] is approximately \$18,000.00 per month.”¹² As a result of this admission, the court finds that there are no disputed issues of fact: Plaintiff is entitled to judgment on the pleadings against Keystone as to the accrued and accruing monthly sums owed to Defendant, the amount of which shall be determined based on the percentage of sales, and subject to the monthly variations thereof.¹³

BY THE COURT,


MCINERNEY, J.

¹¹ “A motion for judgment on the pleadings ... may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law.” Consolidation Coal Co. v. White, 2005 Pa. Super 155, ¶ 13, 875 A.2d 318, 325 (2005). The court also notes that Plaintiff could have availed itself of PA. R.C.P. 3146(b)(1) to obtain judgment against Keystone, garnishee, upon the clear and unambiguous admission of Keystone in its supplemental response to the interrogatories. PA. R.C.P. 3146(b)(1) specifically states that: “the prothonotary, on praecipe from the plaintiff, shall enter judgment against the garnishee for property of the defendant admitted in the answer to interrogatories to be in the garnishee’s possession, subject to any rights therein claimed by the garnishee, but no money judgment entered against the garnishee shall exceed the amount of judgment of the plaintiff against the defendant together with interest and cost.” See also, Schewe v. Wagner, 13 Pa. D. & C.2d 272. (C.P. 1958) (holding that judgment may be entered against a garnishee only if the answer to Plaintiff’s interrogatories are clear and unequivocal).

¹² Supplemental response of Keystone to execution interrogatories of Plaintiff, filed September 9, 2015.

¹³ Defendant’s opposition to Plaintiff’s motion for judgment on the pleadings argues that the writ of execution against garnishee Keystone should be dissolved. Tenant relies on 42 Pa. C.S.A. § 8127, titled “Personal earnings exempt from process,” which specifically states:

(a)General rule and exceptions.—The wages, salaries and commissions of individuals shall while in the hands of the **employer** be exempt from any attachment, execution or other process except...
42 Pa. C.S.A. § 8127(a)(2015) (emphasis supplied).

In this case, Defendant has provided no evidence that the amounts held by garnishee Keystone are **wages, salaries or commissions**, of any **individual**, or that Keystone is an **employer** of Defendant. For this reason, Defendant’s argument cannot defeat Plaintiff’s motion.