

**TIN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

MIKE GAL MERKAM	:	
	:	CIVIL TRIAL DIVISION
Appellants,	:	
	:	SEPTEMBER TERM, 2006
v.	:	No. 2397
	:	
WACHOVIA CORPORATION, Individually	:	Superior Court Docket No.
and/or dba Wachovia, Wachovia Bank,	:	230 EDA 2007
Wachovia Bank, N.A., Wachovia Securities,	:	
LLC, and/or Wachovia Shared Resources, LLC	:	
	:	
AND	:	
	:	
DAWN LANG, Individually and/or as agent,	:	
servant, workman, and/or employee of	:	
Wachovia Corporation, Wachovia Bank, N.A.,	:	
Wachovia Securities, LLC, and/or Wachovia	:	
Shared Resources, LLC	:	
	:	
Appellees	:	

OPINION

Tereshko, J.

PROCEDURAL HISTORY

Plaintiff appeals from the Order dated December 28, 2006, wherein this Court granted Defendant's Preliminary Objections and dismissed Plaintiff's Complaint without prejudice.

FACTUAL BACKGROUND

Plaintiff Mike Gal Merkam, (hereinafter Plaintiff) began working for Defendant Wachovia (hereinafter Wachovia) on January 27, 2003 as a financial specialist at its 7345

Bustleton Avenue, Philadelphia Branch. (Complaint, pg.1). One of the plaintiff's duties was to process auto loans for customers that were placed with Wachovia by auto dealers. (Id).

On or about December 2005, Dawn Lang (hereinafter Ms. Lang) became Plaintiff's immediate supervisor. (Id.). On April 28, 2006, Plaintiff received a "Corrective Action and Counseling Report" from Lang indicating his immediate dismissal. (Complaint, Exhibit A). The report stated that during a review on March 8, 2006, Plaintiff admitted to receiving auto loans through a third party auto dealer, Tri State Auto. (Id.). When questioned, Plaintiff stated that Tri-State Auto would fax the loans to Plaintiff's office, he would enter a loan onto the system using only the information provided on the fax, without speaking to the customer. (Id.). Plaintiff also admitted to receiving all of his loans from Tri State Auto. According to the report, Plaintiff's action clearly violated Wachovia's code of conduct as it relates to third party, broker business and amounted to fraud under the circumstances. (Id.).

Despite, the reading of this report, Plaintiff states that he denied these allegations and filed an internal appeal of his discharge with Wachovia. (Complaint, pg. 2). Nevertheless, Plaintiff received a letter from Wachovia dated June 20, 2006, upholding the termination and informing him that he was ineligible for rehire due to the nature of his termination. (See Copy of June 20, 2006 Letter, Complaint, Exhibit B). Plaintiff believes that Ms. Lang made false accusations to have him dismissed from his position with Wachovia. (Complaint, pg.2). Plaintiff alleges that Ms. Lang further perjured herself, when on June 11, 2006, she testified under oath at the referee hearing on

Plaintiff's application for Unemployment Compensation benefits that Plaintiff was terminated by her for fraud and for contracting with a third party broker. (Id.).

Subsequent to the unemployment compensation hearing, Plaintiff received a letter from Wachovia dated July 17, 2006, informing him that his NASD securities registration through Wachovia had been terminated for violation of Wachovia's code of conduct (See letter dated July 17, 2006 attached to Complaint as Exhibit C).

On September 22, 2006, Plaintiff filed his Complaint alleging that the conduct of Ms. Lang, acting as an agent or employee of Wachovia, in accusing him of fraud and reporting it to Wachovia was defamatory. Further, the conduct by Wachovia in reporting the reasons for Plaintiff's termination to the NASD was also defamatory.

On November 2, 2006, Defendants filed their preliminary objections to Plaintiff's Complaint and their Motion to Determine Preliminary Objections on November 29, 2006. (See Docket). Plaintiff filed their response on December 19, 2006.

By Order dated December 28, 2006 this Court granted Defendants' Motion to Determine the Preliminary Objections and dismissed Plaintiffs Complaint without prejudice.

On January 26, 2007 Plaintiff filed their Notice to Appeal and issued their Statement of Matters accordingly on February 15, 2007.

The sole issue which is the subject of this Appeal is, "whether the Trial Court abused its discretion or committed an error of law in sustaining the Defendants' Preliminary Objections." (See Plaintiff's 1925(b) Statement of Matters).

LEGAL ANALYSIS

The Plaintiff's issue in his 1925(b) Statement as pled, is inadequate pursuant to the appellate rules and governing caselaw. See Pa.R.A.P. 1925(b). In *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306, 309 (Pa. 1998), the Supreme Court of Pennsylvania held that issues not included in a Rule 1925(b) Statement are deemed waived on appeal. *Wells v. Cendant Mobility Fin. Corp.*, 2006 PA Super 363, 913 A.2d 929 (2006).

Specifically, the Court stated:

The absence of a trial court opinion poses a substantial impediment to meaningful and effective appellate review. Rule 1925 is intended to aid trial judges in identifying and focusing upon those issues which the parties plan to raise on appeal. Rule 1925 is thus a crucial component of the appellate process. *Id.* (Citing *Lord*, 719 A.2d at 308).

Similarly, "[w]hen an appellant fails adequately to identify in a concise manner the issues sought to be pursued on appeal, the trial court is impeded in its preparation of a legal analysis which is pertinent to those issues." *Id.* (citing *In re Estate of Daubert*, 2000 PA Super 219, 757 A.2d 962, 963 (Pa. Super. 2000)). If the Rule 1925(b) statement is so overly broad and vague that the trial court has to guess what issues an appellant is appealing, then the statement is insufficient to enable meaningful review. *Commonwealth v. Dowling*, 2001 PA Super 166, 778 A.2d 683, 686 (Pa. Super. 2001). "In other words, a Concise Statement which is too vague to allow the Court to identify the issues raised on appeal is the functional equivalent of no Concise Statement at all." *Dowling*, 778 A.2d at 686-87. Therefore, the issues contained in a vague Rule 1925(b) statement will be deemed waived on appeal. *Dowling*, 778 A.2d at 687.

In *Lineberger v. Wyeth*, 2006 PA Super 35, 894 A.2d 141 (Pa. Super. 2006), the Superior Court extended *Dowling's* vagueness doctrine into the arena of civil torts. *Wells*,

913 A.2d 929 (citing, *Lineberger*, 894 A.2d at 148 n. 4). “Since the Rules of Appellate Procedure apply to criminal and civil cases alike, the principles enunciated in criminal cases construing those rules are equally applicable in civil cases.”) (citation omitted). In that case, the appellant took the diet pill fen-phen and later developed mitral valve regurgitation and aortic insufficiency. *Id.* (citing, *Lineberger*, 894 A.2d at 143). The appellant sued the manufacturer, alleging that the company's failure to issue a warning concerning the potential side effect of valvular heart disease was the proximate cause of her injuries. *Id.* After summary judgment was entered against the appellant for failing to present evidence of proximate cause, the appellant filed a Rule 1925(b) Statement, which contained the following issue: “the Court committed an error of law by granting [defendant's] Motion for Summary Judgment based on lack of proximate cause[.]” *Id.* On appeal, a panel of this Court noted that the appellant's Rule 1925(b) Statement was not specific enough for the trial court to conduct meaningful review. *Lineberger*, 894 A.2d at 148-49. Particularly, this Court suggested that the Rule 1925(b) Statement could have been as detailed as the arguments that the appellant raised in opposition to the defendant's motion for summary judgment. *Id.* at 149. The Superior Court found that the Rule 1925(b) Statement “announced a very general proposition” and was so overly broad and vague that the appellant's issues were waived under *Dowling*. *Id.*

The Statement of Matters in this case is even more vague than the one presented in *Lineberger*, the issue presented to the Court is “whether the Trial Court abused its discretion or committed an error of law in sustaining the defendants’ preliminary objections.” (Plaintiff’s Statement of Matters). The issue as framed by Plaintiff is insufficient for this Court to compose an Opinion, which would satisfactorily

address a specified error by presenting supporting authority for its ruling based on both the law and facts. (See Plaintiff's 1925(b) Statement of Matters, Exhibit A).

At best, Plaintiff's statements would amount to a general allegation that the Preliminary Objections were improperly granted. According to the principle as stated in *Dowling*, general statements amount to a waiver of one's appellate rights. In situations like this, where the Rule 1925(b) Statement is obviously vague and abstract, the trial court may find waiver and disregard any argument. *Commonwealth v. Reeves*, 2006 PA Super 196, 907 A.2d 1, 2 (Pa. Super. 2006).

CONCLUSION

In light of the foregoing circumstances this Court would recommend that the Plaintiff's Appeal be dismissed for failure to comply and to adequately plead and identify, in a concise manner, the issues sought to be pursued on Appeal pursuant to Pa.R.A.P. 1925(b).

BY THE COURT:

3-1-2007

Date

ALLAN L. TERESHKO, J.

cc:
Bruce Preissman, for Appellant
John F. Ward for Appellees

