

IN THE COURT OF COMMON PLEAS  
COUNTY OF PHILADELPHIA  
CIVIL TRIAL DIVISION

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<b>Cable Line, Inc. and McLaughlin Communications, Inc.</b> <i>Plaintiffs</i>	:	
	:	<b>February Term, 2014</b>
	:	<b>No. 01998</b>
	:	
<b>v.</b>	:	<b>Commerce Program</b>
	:	
<b>Comcast Cable Communications of Pennsylvania, Inc.</b> <i>Defendant</i>	:	<b>Control No. 16063971</b>
	:	

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**ORDER**

And now, this 26<sup>th</sup> day of October, 2016, upon consideration of defendant Comcast Cable Communications of Pennsylvania, Inc.'s ("Comcast") Motion to Strike Off Discontinuances Pursuant to Rule 229, plaintiffs Cable Line, Inc.'s ("Cable Line") and McLaughlin Communications, Inc.'s ("McLaughlin") Opposition and upon consideration of Cable Line and McLaughlin's Motion for Sanctions and Comcast's Reply, and all accompanying memoranda of law, it is hereby ORDERED and DECREED that:

1. Comcast's Motion to Strike off Discontinuances is DENIED; and
2. Cable Line and McLaughlin's Motion for Sanctions is DENIED.<sup>1</sup>

BY THE COURT:



Ramy I. Djerassi, J.

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R. POSTELL  
COMMERCE PROGRAM

<sup>1</sup> See accompanying *Memorandum Opinion*.

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**MEMORANDUM OPINION**

**DJERASSI, J.**

**October 26, 2016**

In the instant motion, defendant Comcast Cable Communications of Pennsylvania, Inc. (“Comcast”) seeks to strike off the voluntary discontinuance filed by plaintiffs McLaughlin Communications, Inc. (“McLaughlin”) and Cable Line, Inc. (“Cable Line”). In their response in opposition, McLaughlin and Cable Line ask this court to deny the motion to strike and also move to enforce sanctions against Comcast for filing their motion. For the reasons discussed below, Comcast’s motion to strike and McLaughlin and Cable Line’s motion for sanctions are denied.

The plaintiffs in this case are two former contractors of defendant Comcast. McLaughlin and Cable Line were hired by Comcast to perform cable installations as independent contractors in different geographic regions. Allegedly relying on Comcast’s representations, these two companies “ramped up” their operations to meet Comcast’s needs with the expectation that, if certain business metrics were met, McLaughlin and Cable Line would receive ongoing work from Comcast. Meanwhile, Comcast apparently initiated a company-wide plan to reduce the total number of independent contractors in their employ. Related to this plan or not, in 2012, Comcast terminated the agreements with Cable Line and McLaughlin.

Cable Line and McLaughlin filed this lawsuit against Comcast on February 20, 2014. In their Complaint, McLaughlin and Cable Line each bring counts alleging breach of an implied covenant of good faith and fair dealing, promissory estoppel, fraudulent misrepresentation, and unjust enrichment, all arising from Comcast's decision in 2012 to terminate agreements with Cable Line and McLaughlin to perform cable installations as regional independent contractors for Comcast.

Defendant Comcast filed preliminary objections, which were substantially overruled by retired President Judge Pamela Pryor Dembe.<sup>2</sup> The parties then engaged in discovery. A hearing was held on plaintiffs' Cable Line and McLaughlin's motion to compel the depositions of numerous Comcast corporate executives. Following the hearing, the court permitted certain depositions, requested Comcast file a written response in opposition, and held the remaining requests to compel depositions under review pending further discovery. Before the completion of permitted time for discovery, Comcast filed four motions for summary judgment to dismiss the case in its entirety.<sup>3</sup> On June 2, 2016, Cable Line and McLaughlin filed their respective responses, but plaintiff filed a Praecipe to Voluntarily Discontinue without Prejudice on June 17, 2016. This court had not yet decided the open summary judgment motions.

In its motion to strike, Comcast urges that we strike off discontinuance and then decide its summary judgment motions. Comcast argues they are prejudiced after more than two years of litigation and discontinuance should not be allowed. Additionally, Cable Line and McLaughlin filed a separate lawsuit against Comcast, filed on May 26, 2016 in the Middle District of

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<sup>2</sup> By order dated May 24, 2014, President Judge Dembe sustained Comcast's preliminary objections to punitive damages counts, dismissed another count but overruled the remaining preliminary objections.

<sup>3</sup> The docket reflects five motions for summary judgment, one of which appears to be an erroneous duplicate filing.

Pennsylvania. In this suit, plaintiffs accuse Comcast of statutory U.S. violations grounded in anti-trust and civil rights.

In response, Cable Line and McLaughlin argue that Comcast is not prejudiced because the new federal case invokes different causes of action from those in this case. Plaintiffs also state they are precluded from restoring this case because they are now barred by the statute of limitations.

Cable Line and McLaughlin have also moved for court sanction against Comcast for filing this motion and for claimed discovery obstruction.

A discontinuance is the exclusive method by which a plaintiff may voluntarily terminate an action.<sup>4</sup> Upon petition and after notice, a court may strike off a discontinuance “in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense, or prejudice.”<sup>5</sup> In determining whether to strike a discontinuance, “the trial court must consider all facts and weigh equities” and “must consider the benefits or injuries which may result to the respective sides if a discontinuance is granted.”<sup>6</sup>

Pennsylvania courts, as discussed by the Superior Court in *Pohl v. NGK Metals Corporation*, outline three specific categories of factual situations where a voluntary discontinuance should not be permitted to stand.<sup>7</sup> First, Pennsylvania courts have held the trial court abuses its discretion “in granting the discontinuance where appellants, who endured the burden of litigating the initial suit... may again be subjected to the same litigation.” Second, “[o]ur courts have also held that discontinuances are improper where it is apparent that the

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<sup>4</sup> Pa. R.C.P. 229(a).

<sup>5</sup> Pa. R.C.P. 229(c).

<sup>6</sup> *Pohl v. NGK Metals Corp.*, 936 A.2d 43, 47 (Pa. Super. 2007) (trial court properly struck a discontinuance where plaintiff’s Praecepto to Discontinue was filed on the same day the court filed an order granting summary judgment, which was then entered on the docket several days later).

<sup>7</sup> *Id.*

purpose of plaintiff discontinuance is to “forum shop” by bringing the same cause of action in another forum.<sup>8</sup> Third, discontinuances may be improper if there is a dispositive motion pending and “the party seeking to strike the discontinuance would be entitled to summary judgment if the discontinuance was not allowed.”<sup>9</sup>

Regarding the first category, on the one hand, the parties have engaged in two years of litigation. On the other hand, the statute of limitations now bars Cable Line and McLaughlin from refiling their actions in this case. Comcast will not have to litigate this case in the future while defending in federal court on other grounds.

Regarding the second category, Pennsylvania courts hold that a voluntary discontinuance should be disregarded when it suggests impermissible forum shopping. Comcast claims the new federal case is proof of this. *Cable Line, Inc., et al. v. Comcast Cable Communications of Pennsylvania, et al.*<sup>10</sup> However, Cable Line and McLaughlin’s claims are anti-trust and civil rights actions under U.S. law. The federal case involves very different legal elements and are statutory based unlike the Pennsylvania common law claims here.

Regarding the third category, after reviewing the summary judgment motions and their responses, we conclude there are factual issue present which would preclude full disposition of the case. Courts hold that striking a voluntary discontinuance is warranted when a trial court is about to grant a dispositive motion. For example, in *Pohl v. NGK Metals Corp.*, a discontinuance was struck under circumstances where a judge granted a dispositive summary judgment without knowledge of plaintiff’s praecipe to discontinue.<sup>11</sup> In *Nichols v. Horn*, an appeals court reversed

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<sup>8</sup> *Id.* (citing *Brown v. T.W. Phillips Gas & Oil Co.*, 365 Pa. 155, 74 A.2d 105 (1950)).

<sup>9</sup> *Id.* (citing *Nichols v. Horn*, 363 Pa.Super. 301, 525 A.2d 1242 (1987)).

<sup>10</sup> *Cable Line, Inc. v. Comcast Cable Communications of Pennsylvania*, 3:16-cv-01000 (M.D. Pa. filed May 26, 2016).

<sup>11</sup> *Pohl v. NGK Metals Corp.*, 936 A.2d 43, 47 (Pa. Super. 2007).

a trial court which had permitted a discontinuance where the defendant would have been entitled to summary judgment on statute of limitations grounds and the summary judgment motion was still pending.<sup>12</sup>

Here, neither *Pohl* nor *Nichols* apply because Comcast would not be entitled to summary judgment. There are disputed factual issues on whether Cable Line and McLaughlin justifiably relied on Comcast's representations that plaintiffs would be assigned more business by Comcast after plaintiffs "ramped up" (meaning building up capacity to meet allegedly promised business from Comcast). Factual disputes exist on other issues as well. These include whether oral promises were made to plaintiffs, and if so, how much investment was reasonable for Cable Line and McLaughlin to have invested.

Striking plaintiffs' voluntary discontinuances now would inevitably result in a lengthy and unnecessary trial and there is no prejudice to Comcast. The Motion to Strike off Discontinuances is denied.

We now address Cable Line and McLaughlin's sanction motion. Cable Line and McLaughlin argue that Comcast's conduct during discovery and in filing this motion to strike warrants attorney fees.

Pennsylvania statutory law authorizes a trial court to award attorney's fees as a sanction for the conduct of a party during litigation of a case, when the conduct is "arbitrary, vexatious or in bad faith."<sup>13</sup>

The relentless pursuit of a claim which plainly lacks legal merit warrants an award of counsel fees. A suit is vexatious if brought without legal or factual grounds and if the action served the sole purpose of causing annoyance. An opponent's conduct has been deemed to be 'arbitrary'

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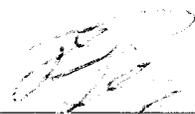
<sup>12</sup> *Nichols v. Horn*, 525 A.2d 1242, 1243 (Pa. Super. 1987).

<sup>13</sup> 42 Pa. C.S. § 2503.

within the meaning of the statute if such conduct is based on random or convenient selection or choice rather than on reason or nature.<sup>14</sup>

Comcast's conduct, as averred in Cable Line and McLaughlin's sanctions motion and as experienced by this court, does not meet the *In re Barnes* standard. Therefore, Comcast's sanctions motion for attorney's fees is denied. Discovery in this case was overseen by this court and no sanctions were necessary while discovery was ongoing, and Comcast's motion to strike presented genuine legal issues for decision. Accordingly, Cable Line and McLaughlin's motion for sanctions is denied.

BY THE COURT:

  
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Ramy I. Djerassi, J.

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<sup>14</sup> *In re Barnes Found.*, 74 A.3d 129, 136 (Pa. Super. 2013)