

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

RONALD URICH,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 11-0498
	:	
DANIEL AMAYA	:	
P B TRUCKING INC.,	:	
	:	
Defendants	:	
Joseph H Fox, Esquire		Counsel for Plaintiff
James M Flood, Esquire		Counsel for Defendants

MEMORANDUM OPINION

Matika, J. - August 29th 2012

Before the Court is Defendants', Daniel Amaya and P B Trucking Inc., (hereinafter "Defendants") Preliminary Objection to Plaintiff's, Ronald Urich (hereinafter "Plaintiff") Complaint in a personal injury action. For the reasons that follow, Defendants' Preliminary Objection is **DENIED**.

I. FACTUAL and PROCEDURAL BACKGROUND

On March 2, 2009, Plaintiff and Defendant, Daniel Amaya, who was employed by Defendant, P B Trucking, Inc., were involved in a motor vehicle accident that occurred around 10:30 A.M. on Interstate 80 in Kidder Township, Carbon County.¹ As a result,

¹ Plaintiff was the operator of a 2006 Freightliner semi-trailer, and Defendant Amaya was operating a 1999 Volvo semi-trailer, which was owned by Defendant P B Trucking Inc. Both Plaintiff and Defendant Amaya were traveling in the westbound direction on Interstate 80.

Plaintiff commenced this personal injury action on March 2, 2011, by filing a Praecipe for a Writ of Summons.² When the praecipe was filed, it listed both Defendants as having addresses in New Jersey.

On March 17, 2011, Plaintiff mailed the Writ of Summons to both Defendants by Certified Mail, one to Defendant Amaya at his residence and one to Defendant P B Trucking Inc., at its principal place of business.³ Both mailings were returned to Plaintiff "unclaimed and unable to forward." Plaintiff then sought to reinstate the Writ on April 27, 2011, which the Prothonotary did that day. Writs were again mailed by Certified Mail to the same addresses Plaintiff used before for both Defendants, and like the first time, they were returned unclaimed. For a third time, Plaintiff filed a Praecipe to reinstate the Writ of Summons on July 21, 2011, and again the writ was mailed to both Defendants, and again they were both returned to Plaintiff as "unclaimed and unable to forward."

This Court then entered an order on August 2, 2011, directing Plaintiff to either make service of the Complaint or file a

² Since Plaintiff's cause of action is based upon a claim of negligence, the Statute of Limitations governing this matter is two (2) years from the time of the accident. 42 Pa.C.S.A. § 5524. As a matter of law, the Statute of Limitations was set to expire on March 3, 2011, one day after Plaintiff filed his Praecipe for Writ of Summons.

³ Plaintiff mailed Defendant P B Trucking Inc.'s writ to the address of 38 Pine Street, Lodi, NJ 07644. Defendant Amaya's writ was mailed to the address of 352 New Brunswick Avenue 7, Perth Amboy, NJ 07075. These two addresses were the addresses listed for the Defendants on the Police Accident Report.

Petition for Alternative Service by Publication within ninety (90) days. Such petition for alternative service was denied by the Court on October 31, 2011.⁴

A fourth time, Plaintiff filed a Praecipe to reissue the Writ of Summons on November 7, 2011, with the writ being reissued once again on that day.

Eventually, Plaintiff hired a private investigator to personally serve both Defendants. On February 8, 2012, Plaintiff filed a Proof of Service regarding Defendant P B Trucking Inc., noting that personal service was made on January 24, 2012, at the address of 250 South Main Street, Wood Ridge, N.J. 07075. Defendant Amaya was personally served on January 22, 2012, at the address of 352 New Brunswick Avenue 7, Perth Amboy, N.J. 07075.

Defendants have filed this Preliminary Objection to Plaintiff's Complaint and ask the Court to dismiss Plaintiff's Complaint with prejudice for the failure of the Plaintiff to make a good faith effort to serve process upon the Defendants and after the Statute of Limitation has expired.

II. DISCUSSION

The crux of Defendants' argument is that Plaintiff did not

⁴ Plaintiff's petition was denied without prejudice with instructions for Plaintiff to make further inquiries into the location of Defendants before the Court would grant Plaintiff's petition.

make a good faith effort to effectuate service upon the Defendants. The only attempts by Plaintiff to effectuate service, as Defendants argue, were by having the writs reissued and mailed four times, and attempting to serve the writs each time upon each Defendant by Certified Mail to an address where previous attempts failed as the mailed was returned unclaimed.

Under the Pennsylvania Rules of Civil Procedure an action may be commenced by either filing a praecipe for writ of summons or a complaint. Pa.R.C.P. 1007. The filing of a writ of summons or a complaint will toll the running of the statute of limitations. *Wible v. Apanowicz*, 452 A.2d 545 (Pa. Super. 1982). Once a writ of summons is issued, the plaintiff is required to serve the defendant with this writ, or the complaint as the case may be, within ninety (90) days of that day if defendant is located outside the Commonwealth. Pa.R.C.P. 404. If service cannot be effectuated upon the defendant within a given period (measured from the time of the filing of the initial process, and not longer than the period of the applicable statute of limitations for the underlying action) the process loses its efficacy and plaintiff is once again subject to the bar of the statute of limitations. *Katz v. Greig*, 339 A.2d 115 (Pa. Super. 1975). However, plaintiff can prevent such lapse of its process by timely reinstating the action through a renewed filing with the prothonotary, and each such

reinstatement will remain effective for a period equal to that of the applicable statute of limitations. See, e.g., *Nath v. St. Clair Memorial Hospital*, 380 A.2d 820 (Pa. Super. 1977). A plaintiff can reinstate a complaint or reissue a writ of summons "at any time or any number of times." Pa.R.C.P. 401(b).

Pennsylvania, as established by *Lamp v. Heyman*, 366 A.2d 882 (Pa. 1976), and its progeny, also requires a plaintiff to make a good-faith effort to effectuate service of process in a timely manner where an action is commenced prior to the running of the applicable statute of limitations but the service does not occur until the expiration of the statutory period.⁵ *Siler v. Khan*, 689 A.2d 972 (Pa. Super. 1997); *Ramsay v. Pierre*, 822 A.2d 85 (Pa. Super. 2003). Good-faith effort is evaluated on a case-by-case basis. *Moses v. T.N.T. Red Star Express*, 725 A.2d 792 (Pa. Super. 1999). A plaintiff bears the burden in demonstrating

⁵ The *Lamp* Court reasoned as follows:

[W]e now conclude that there is too much potential for abuse in a rule which permits a plaintiff to keep an action alive without proper notice to a defendant merely by filing a praecipe for a writ of summons and then having the writ reissued in a timely fashion without attempting to effectuate service. In addition, we find that such a rule is inconsistent with the policy underlying statutes of limitation of avoiding stale claims, and with that underlying our court rules of making the processes of justice as speedy and efficient as possible.... Our purpose is to avoid the situation in which a plaintiff can bring an action, but, by not making a good faith effort to notify a defendant, retain exclusive control over it for a period in excess of that permitted by the statute of limitations.

Lamp, *supra* at 366 A.2d 889.

that his efforts were reasonable. *Cahill v. Schults*, 643 A.2d 121 (Pa. Super. 1994).

In determining what a good-faith effort requires, the Superior Court has explicitly stated that a plaintiff's conduct does not necessarily need to constitute bad faith or an overt attempt to delay service before the rule of *Lamp* will apply. *Watts v. Owens-Corning Fiberglas Corp.*, 509 A.2d 1268 (Pa. Super. 1986). Simple neglect and mistake on the part of the plaintiff to fulfill his responsibility to see that the service requirements are carried out may be sufficient to bring the rule in *Lamp* to bear. *Weiss v. Equibank*, 460 A.2d 271 (Pa. Super. 1983). "Thus, conduct that is unintentional that works to delay the defendant's notice of the action may constitute a lack of good faith on the part of the plaintiff." *Rosenberg v. Nicholson*, 597 A.2d 145, 148 (Pa. Super. 1991) (citing *Weiss v. Equibank*, 460 A.2d 271 (Pa. Super. 1983)).

The *Ramsay* Court identified two factors, neither of which, standing alone, is dispositive of the issue, that a court can consider in determining if a plaintiff acted within the good faith requirement set forth in *Lamp*. The first factor is whether the plaintiff complied with the applicable rules of procedure. *Ramsay v. Pierre*, 822 A.2d 85 (Pa. Super. 2003). In examining the record and Plaintiff's actions, this Court finds Plaintiff complied with the prescribed rules of service and did

not engage in any particular conduct that could be described as serving to stall the legal machinery. The original writ of summons was filed within the applicable statute of limitations, albeit the day before the statute would have run. Upon the issuance of the writ, Plaintiff attempted to serve Defendants immediately by sending both writs by Certified Mail. Once the writs were returned to Plaintiff as "unclaimed," Plaintiff reinstated the writs within the timeframe prescribed in Pa.R.C.P. 401(b). Eventually, Plaintiff hired a private investigator to locate Defendants, which he was successful in doing, and then personally served both Defendants. Defendants, located outside the Commonwealth, were served within the ninety days from the reissuance of the writ in accordance with Pa.R.C.P. 404. Therefore, this Court finds Plaintiff's actions to be those of an affirmative effort to effectuate service on the Defendants, and in compliance with the Pennsylvania Rules of Civil Procedure.

The second factor the *Ramsay* Court considered in its good faith analysis was timeliness. *Ramsay*, 822 at 91 (nine-month period between the date plaintiff filed the complaint and the date service was effected was a good faith effort as plaintiff did not attempt to prevent service, thwart the progress of the lawsuit, or stall the legal machinery); See *Shackelford v. Chester County Hospital*, 690 A.2d 732 (Pa. Super. 1997) (twelve-

month period between filing of writ and service was reasonable in light of plaintiff's five attempts to serve defendant); *Cf. Bigansky v. Thomas Jefferson Univeristy Hospital*, 658 A.2d 423 (Pa. Super. 1995) (two-year period between filing of writ and service was unreasonable and demonstrated lack of good faith).

Here, this Court does not find Plaintiff's actions to be that of one trying to prevent service or stall the legal machinery. Since the original filing of the writ, Plaintiff attempted to perfect service numerous times throughout the ten-month period. Furthermore, each time Plaintiff sought to reinstate the writ, the writ was reissued that same day. When service was returned to Plaintiff with the notation of "unclaimed," Plaintiff did not sit idly by or neglect his duty to effectuate service, but rather petitioned the Court for alternative service and later hired a private investigator to locate both Defendants. In examining Plaintiff's efforts to effectuate service, this Court finds the ten-month period it took Plaintiff to perfect service reasonable. *See Ramsay, supra*.

Lastly, Defendants claim Plaintiff's actions were not those of the good faith variety as prescribed in *Lamp*, because Plaintiff sent, by Certified Mail, each reissued writ to the same address from which previous mailings came back as "unclaimed." Plaintiff sent the writs to the addresses listed on the Police Accident Report for each Defendant. The same

exact situation was presented in *Siler v. Khan*, 689 A.2d 972 (Pa. Super. 1997). In *Siler*, plaintiff and defendant were in a car accident which resulted in the preparation of a police report. Defendant gave the police officer a Maryland address. Plaintiff tried to serve defendant at that Maryland address, but such attempts were not successful. Eventually plaintiff was able to serve defendant in person at his place of employment in Philadelphia, Pennsylvania. Defendant in *Siler* argued that plaintiff failed to make a good faith effort because he should have made further inquiries to determine if defendant still resided at the Maryland address before attempting service at that address. The Court rejected defendant's argument and stated, "[w]e find that where a plaintiff seeks to serve a defendant at an address the defendant provided to the police when making their report, the plaintiff has made a good faith effort at service." *Siler*, 689 at 973.⁶

Just as the plaintiff in *Siler*, Plaintiff in this case sent

⁶ In *Wible v. Apanowicz*, 452 A.2d 545 (Pa. Super. 1982), the Court determined that it is reasonable to expect a plaintiff, if he knows the process could not be served at the given address, to employ alternative means to effectuate service. However, in examining the two year period where process was still valid, the Court in *Wible* determined plaintiff's lack of actions, never seeking to have the sheriff reattempt service, never checking a phone book, or availing herself of alternative means of service, were evident that plaintiff did not act in good faith in effecting service. *Id.* at 547-48. As stated above, Plaintiff in this case took affirmative steps in his attempt to serve Defendants, unlike the plaintiff in *Wible*.

the writs to the address Defendants gave the police officer.⁷ Plaintiff had no reason to believe these address were inaccurate or fictitious. Thus we find Defendants' argument unsupported and Plaintiff's efforts to be those required by *Lamp*.

Accordingly, we enter the following:

⁷ In fact, Defendant Amaya was eventually served at the address he gave the police officer.

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 P B TRUCKING, INC., :
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 Defendants :

Joseph H Fox, Esquire Counsel for Plaintiff
James M Flood, Esquire Counsel for Defendants

ORDER

AND NOW, this day of August, 2012, upon consideration of the Preliminary Objection of Defendants, Daniel Amaya and P B Trucking, Inc., the briefs lodged and after argument held, it is hereby

ORDERED and **DECREED** that the Preliminary Objection is **DENIED** and **DISMISSED**.

It is further **ORDERED** and **DECREED** that the Defendants shall file an Answer to the Plaintiff's Complaint within twenty (20) days from the date hereof.

BY THE COURT:

Joseph J. Matika, Judge