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CITY OF PHILADELPHIA

Plaintiff

v.

TANNER OPERATIONS, ET AL.

Defendants

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

No. 230702394

**REPLY TO RESPONSE IN OPPOSITION TO MOTION FOR
RECONSIDERATION OF COURT'S ORDER DATED SEPTEMBER 27, 2024**

Frank's Gun Shop & Shooting Range LLC ("Frank's") files this reply to the response in opposition to its Motion for Reconsideration of this Court's September 27, 2024 order and avers as follows:

In its response in opposition to Frank's motion for reconsideration, plaintiff cites to two cases to support its argument that Frank's motion should be denied. First, plaintiff improperly cites to an unpublished decision of the Commonwealth Court, *Garner v. Se. Pennsylvania Transp. Auth.* No. 904 C.D. 2014, 2015 WL 5453095 at *1 (Pa. Commw. Ct. 2015). This case is not binding precedent. 21 Pa. Code. § 69.414 ("Parties may also cite an unreported panel decision of this Court issued after

January 15, 2008, for its persuasive value, but not as binding precedent.”) Moreover, unlike here, in that case the non-moving party failed to respond entirely to the motion.

Second, the plaintiff’s citation to *McCarthy v. City of Bethlehem*, 962 A.2d 1276, 1281 (Pa. Commw. Ct. 2008) is misplaced. In that case, the Commonwealth Court overturned the trial court’s granting of summary judgment to a defendant based on plaintiff’s failure to timely file a brief in compliance with a local rule. While the Commonwealth Court acknowledged that courts were empowered to intact local rules, enforcement of local rules must yield to Pennsylvania Rule of Civil Procedure 126 which states:

The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure **which does not affect the substantial rights of the parties.**

Pa. R. Civ. P. 126.

Here, Frank’s filed an opposition to plaintiff’s motion to compel, participated in argument regarding the substantive issue raised by the motion to compel, and was invited by the Court to submit supplemental briefing on the issue. This is hardly a case where a litigant blew off the Court rules and failed to respond entirely. Furthermore, allowing Frank’s arguments to be heard alongside the arguments of Delia’s, as Frank’s believed to be the case, is certainly not prejudicial to the substantive rights of the plaintiff.

To the contrary, the plaintiff is seeking to use the local rules as a gotcha and wishes to obscure the procedural history of plaintiff's motion practice and directives of the Court. If the motion is not granted, the only party whose substantive rights would be harmed is Frank's.

Accordingly, the Court should grant Frank's motion for reconsideration and vacate its September 24, 2024, order.

Respectfully submitted,

/s/Walter S. Zimolong
Walter S. Zimolong, Esquire
Attorneys for Defendant,
Frank's Gun Shop &
Shooting Range LLC

Dated: October 3, 2024

CERTIFICATE OF SERVICE

I, Walter S. Zimolong, hereby certify that on the date set forth below, in accordance with Pa.R.Civ.P. 205.4(g)(1)(ii), the foregoing was electronically filed with the Philadelphia County Court of Common Pleas electronic filing system website and is available for review on the Philadelphia County Court of Common Pleas electronic filing system's website, which filing constitutes proper service upon counsel of record.

Dated: October 3, 2024

/s/ Walter S. Zimolong