

II. STATEMENT OF QUESTION INVOLVED

- a. Should Plaintiff's First Amended Complaint be dismissed as to WRT, based on the inclusion of scandalous or impertinent matter pursuant to Pa. R. Civ. P.1028(a)(2)?

Suggested Answer: Yes

III. FACTS

In Plaintiff's First Amended Complaint the City of Philadelphia alleges that they are "awash with illegal guns" and that a "tide of gun violence inevitably follows the flow of these guns into neighborhoods and communities, leaving behind the wreckage of broken lives, shattered bodies, and communities of traumatized survivors." The Plaintiff goes on to state, without evidence, that "the tide of gun violence is not inevitable; it is in significant part the product of deliberate choices by certain gun retailers to engage in practices that supply the illegal and unregulated secondary market for guns." Plaintiff's First Amended Complaint then goes to great length to portray all of the crime taking place in the City of Philadelphia coming from gun violence and how this violence is the direct by product of several alleged firearms sales by WRT to individuals.

IV. ARGUMENT

A. LEGAL STANDARD

In ruling on Preliminary Objections, the Court must accept as true all well-pled allegations of material fact as well as inferences reasonably deducible therefrom. *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Commw. Ct. 2005). However, conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion are not accepted as true. *Larry Pitt & Assocs., P.C. v. Butler*, 785 A.2d 1092 (Pa. Commw. Ct. 2001). A court may properly sustain preliminary objections when the pleadings are legally insufficient for one or more of the several reasons

enumerated in Pennsylvania Rule of Civil Procedure 1028. *See* Pa.R.C.P. 1028; *Baker v. Cambridge Chase, Inc.*, 725 A.2d 757 (Pa. Super. Ct. 1999).

B. Plaintiff's Complaint should be dismissed as to WRT, based on the inclusion of scandalous or impertinent matter.

Plaintiff's First Amended Complaint must be stricken for containing scandalous or impertinent matter. "Pennsylvania Rule of Civil Procedure 1028(a)(2) permits a party to file preliminary objections to strike impertinent or scandalous matter included in a pleading. Our Pennsylvania Commonwealth Court held in *Common Cause/Pennsylvania v. Com.*, 710 A.2d 108, 115 (Pa Cmwlth., 1998) that scandalous and impertinent allegations are immaterial and inappropriate to the cause of action. *MacLeod v. Russo* 2010 Pa.Dist. & Cnty. Dec Lexis 219. In *MacLeod* the Court struck allegations referencing addictions and conspiratorial methods of procuring prescriptions in a medical negligence action. "Scandalous and impertinent matter is defined as 'allegations...immaterial and inappropriate to the proof of the cause of action.' ...There is some authority for the proposition that, even if the pleading of damages was impertinent matter, that matter need not be stricken but may be treated as 'mere surplusage' and ignored...Furthermore, the right of a court to strike impertinent matter should be sparingly exercised and only when a party can affirmatively show prejudice." *Legion Inc. v. Doeff*, 2001 Phila.Ct.Com.Pl. Lexis 98.

In the present case Plaintiff filed suit against WRT alleging Public Nuisance, Negligence, Negligence Per Se, and violation of the Sale or Transfer of Firearms, Pa Cons. Stat §6111. Plaintiff writes for pages and pages about the violence in the city of Philadelphia and makes conclusionary remarks, without any citations to sources, that the violence in the city can come from only one cause and that is WRT's alleged improper

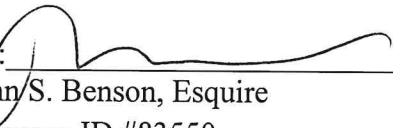
sales. Alleging a tidal wave of violence that can come from only one source; guns sold by WRT in the course of their business is immaterial to proof of the elements of Public Nuisance, Negligence, or a violation of the sale of firearms. Given the extent of the Plaintiff's description of the violence in the city and the placement of said language, in the beginning of the Complaint, leads to the inescapable conclusion that Plaintiff is trying to demonize WRT before any facts are alleged. Said language is not surplusage but instead designed to inflame the reader's mind and prevent WRT from having a fair trial on the merits. Given the extent to which the Plaintiff went to demonize WRT one can only conclude that Plaintiff chose this language carefully; it is not surplusage but instead choice words used to sway a trier of fact. It would be impossible for WRT to receive a fair trial in this matter and as such the Complaint must be dismissed against WRT.

V. RELIEF

For the above stated reasons Defendant WRT respectfully request that this Honorable Court dismiss all or part of this case as to WRT for the inclusion of scandalous or impertinent matter.

Respectfully submitted,

PENGLASE & BENSON, INC.

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Date: December 14, 2023

PROOF OF SERVICE

I hereby certify that I served a copy of the **Defendants' Memorandum of Law in Support of Preliminary Objections** upon the persons and in the following manner indicated below:

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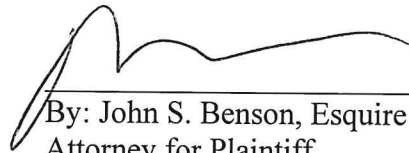
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Dated: December 14, 2023

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