

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

JOE MYERS,

Plaintiff,

vs.

TIMOTHY F. MCCUNE, JOSEPH H.
CHIVERS, JACK W. MURTAUGH JR.,
GRAYDON BREWER, CARL V. NANNI,
JACK LEWIS, JIM GALLAGHER, HANK
LEYLAND, GREG LOVERICK, EDWARD
TASSEY, AK STEEL, UAW, et al.,

Defendants.

CIVIL DIVISION

CASE NO. 19-10516

TYPE OF PLEADING:

**DEFENDANTS AK STEEL
CORPORATION'S AND EDWARD
TASSEY'S BRIEF IN SUPPORT OF
PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT**

Filed on behalf of:

Defendants AK Steel Corporation and
Edward Tassey.

Counsel of Record for these Parties:

Nicholas J. Koch (Pa. Id. No. 205549)

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I. BACKGROUND

Plaintiff Joe Myers ("Plaintiff") was formerly employed by Defendant AK Steel Corporation ("AK Steel"). Plaintiff's employment with AK Steel was terminated in 2001. Plaintiff's Complaint at 4. "An arbitrator upheld his termination." *Myers v. AK Steel Corp.*, 16 F. App'x 528, 529 (3d Cir. 2005). He then filed a lawsuit in federal district court, "alleging he was retaliated against for refusing to follow his employer's allegedly unsafe and illegal trucking practices and that the Union failed to adequately represent him with respect to his termination." *Id.* at 529. Plaintiff also alleged "he was defrauded by AK Steel." *Id.* at 531. The Third Circuit dismissed Plaintiff's case in its entirety on December 8, 2005. *Id.* It held Plaintiff's claims had been filed nearly two years outside of the applicable statute of limitations and his claims were time barred. *Id.* at 531.

On May 28, 2019, over eighteen years after Plaintiff's employment with AK Steel ended and nearly fourteen years after his original lawsuit was dismissed as untimely, Plaintiff filed the current action against AK Steel, Tassej, and ten other defendants. Plaintiff's Complaint is a sixteen-page rambling recitation of various legal terms and summaries of numerous "exhibits" which are not part of the record. Along with AK Steel and Tassej, Plaintiff is suing Judge Timothy McCune, several attorneys, the United Automobile Workers labor union, and several of his former coworkers.

II. LAW AND ARGUMENT

A. PRELIMINARY OBJECTION – 1028(a)(4) - Plaintiff's Complaint is Legally Insufficient.

Plaintiff's Complaint should be dismissed because it is legally insufficient on its face. Pa.R.C.P. 1028(a)(4) provides that preliminary objections may be filed to any pleading for legal insufficiency of a pleading (demurrer). In testing the legal sufficiency of a complaint, the court must accept as true all well-pleaded material facts in the complaint and all inferences fairly deducible from those facts, together with the documents and exhibits attached thereto. *See Bargo v. Kuhns*, 2014 PA Super 172, 98 A.3d 686, 689 (Pa. Super. Ct. 2014), and *Donaldson v. Davidson Bros., Inc.*, 2016 PA Super 150, 144 A.3d 93, 100 (Pa. Super. Ct. 2016), *reargument denied* (Sept. 19, 2016), *appeal denied*, 641 Pa. 561, 169 A.3d 11 (2017) "A demurrer will be sustained where the well-pled, relevant facts material to the complaint clearly fail to state a claim upon which relief can be granted." *Hess v. Pennsylvania Dept. of Corrections*, No. 26 M.D. 2007, 2008 WL 9404651, at *1 (Pa. Commw. Ct. June 10, 2008), *aff'd* 600 Pa. 375, 966 A.2d 550 (2009). "Blind suspicions and unsupported accusations simply do not state a cause of action pursuant to any theory of...recovery. Even our present liberalized system of pleading requires that the materials facts upon which a cause of action is premised be pled with sufficient specificity so as to set forth the prima

facie elements” of the claim(s) alleged. *Feingold v. Hill*, 360 Pa. Super. 539, 549, 521 A.2d 33, 38 (Pa. Super. Ct. 1987).

Plaintiff’s Complaint is legally insufficient and subject to dismissal because it fails to state any claim(s) against AK Steel or Tassej. And even if it did contain a legitimate claim, Plaintiff’s employment was terminated over eighteen years ago, so any action arising out of his employment and/or termination is barred by any potentially applicable statute of limitations. Plaintiff is also collaterally estopped from relitigating issues arising from his employment with AK Steel that were already disposed of during his federal litigation. Each of these bases is independently fatal to the legal sufficiency of Plaintiff’s claim.

1. Plaintiff’s Complaint Fails To State A Claim Upon Which Relief Can Be Granted.

Plaintiff acknowledges his employment was terminated in April 2001. Plaintiff’s Complaint at 4. However, other than that fact, Plaintiff’s Complaint is devoid of any relevant facts about AK Steel and Tassej to explain why Plaintiff has filed suit against them over eighteen years after his discharge.¹

Likewise, the Complaint lacks any cognizable claim(s) against AK Steel or Tassej. Try as they might, AK Steel and Tassej cannot determine from the face of the Complaint what claims – if any – Plaintiff is alleging against them. Accepting as true all well-pleaded facts, Plaintiff’s Complaint is legally insufficient because it fails to any claim – much less a claim upon which relief can be granted.

¹ At most, Plaintiff states that on May 16, 2019, Plaintiff spoke about AK Steel and Tassej in a phone conversation with another former AK Steel employee. Plaintiff’s Complaint at 6-7. However, Plaintiff does not allege that this conversation gave rise to a claim against either AK Steel or Tassej. Nor can this conversation possibly overcome the statute of limitations and collateral estoppel issues that defeat any potentials claims against AK Steel and Tassej. The conversation was related to allegations regarding Plaintiff’s termination, which he confirms occurred in 2001, over eighteen years ago.

2. Plaintiff's Complaint Is Barred By Any Potentially Applicable Statute of Limitations.

Even if Plaintiff identified a valid claim, it would be barred by any potentially applicable statute of limitations. AK Steel Defendants are not aware of a single civil claim under state or federal law with a statute of limitations exceeding **eighteen years**.

When preliminary objections are particularly concerned with the legal futility of a claim, judicial economy strongly suggests that all specious causes of action should be disposed of quickly under Pa. R.C.P. 1028(a)(4), despite the underlying reasons. *See Feingold v. Hill*, 521 A.2d 33, 39 (Pa. 1987) (discussing the purpose of Pa. R.C.P. 1028(a)(4) regarding futile claims in the context of allowing amendments to the pleadings). Given the significant period of time that has passed since Plaintiff's separation from employment with AK Steel, there is no set of facts under which any potential claim Plaintiff might assert against AK Steel Defendants would not be barred by the statute of limitations. As such, Plaintiff's Complaint is legally insufficient and subject to dismissal.

Plaintiff's untimeliness is confirmed by the federal Third Circuit Court of Appeals decision on December 8, 2005, dismissing all of his claims as outside the statute of limitations. *Myers v. AK Steel Corporation*, 156 F. App'x 528 (3d Cir. 2005). Since his claims were time-barred approximately fourteen years ago, they are most certainly time-barred now.

3. Plaintiff's Complaint is Barred By Collateral Estoppel.

Additionally, the Third Circuit case fully and finally disposed of any claims Plaintiff might be attempting to assert against AK Steel Defendants, so the current litigation is barred by collateral estoppel. According to the Superior Court of Pennsylvania:

Collateral estoppel applies if (1) the issue decided in the prior case is identical to the one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior

proceeding and (5) the determination in the prior proceeding was essential to the judgment.

Collateral estoppel is also referred to as issue preclusion. It is a broader concept than *res judicata* and operates to prevent a question of law or issue of fact which has once been litigated and fully determined in a court of competent jurisdiction from being relitigated in a subsequent suit.

Perelman v. Perelman, 2015 PA Super 224, 125 A.3d 1259, 1265 (2015) (internal citation omitted).

Although the issue presented in this case is far from clear, to the extent Plaintiff is attempting to allege claims arising from his termination from AK Steel, any such claims must somehow be related to his prior work. *Myers*, 16 F. App'x at 529, 531. All of the elements of collateral estoppel are met because there was a final judgment on the merits dismissing Plaintiff's case, AK Steel was a party in the prior case, Plaintiff had a full and fair opportunity to litigate the issues in the prior proceeding, and the Third Circuit's determination that all claims were time-barred was essential to the judgment. Any claims arising from Plaintiff's employment have been fully litigated and determined by the Third Circuit. Plaintiff cannot relitigate them in this suit nearly fourteen years later, so his Complaint must be dismissed.

Plaintiff's claim is legally insufficient for three independent, but equally fatal reasons. First, it fails to state a cognizable claim. Second, eighteen years after Plaintiff's termination, there are no claims for which the statute of limitations has not already passed. And third, Plaintiff is collaterally estopped from pursuing litigation against AK Steel by his federal litigation which was dismissed by the Third Circuit. The legal insufficiency of Plaintiff's specious Complaint warrants summary dismissal as a matter of law.

B. PRELIMINARY OBJECTION – 1028(a)(3) Plaintiff's Complaint Lacks Specificity.

Finally, Plaintiff's Complaint is subject to summary dismissal because it is so lacking in specificity that AK Steel and Tassej cannot defend themselves. "The pertinent question under Rule 1028(a)(3) is whether the complaint is sufficiently clear to enable the defendant to prepare his defense, or whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense." *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. Ct. 2006) (internal citations omitted). Here, Plaintiff has not provided any discernible basis for recovery against AK Steel and Tassej. As such, AK Steel and Tassej cannot prepare a defense when they are unaware of why Plaintiff has filed this litigation or what he seeks. Plaintiff's utter lack of specificity warrants summary dismissal.

III. CONCLUSION

Plaintiff's Complaint should be dismissed with prejudice in its entirety and AK Steel and Tassej awarded attorneys' fees pursuant to 42 Pa.C.S.A. § 2503(9).

Respectfully submitted,



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*Attorney for Defendants, AK Steel Corporation
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Defendants, AK Steel Corporation and Edward Tasse

Signature: /s/ Nicholas J. Koch

Name: Nicholas J. Koch, Esquire

Attorney No. (if applicable): 205549

CERTIFICATE OF SERVICE

I, the undersigned, certify that the foregoing DEFENDANTS AK STEEL CORPORATION'S AND EDWARD TASSEY'S BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT was served on the following via U.S. Mail, First-Class, postage prepaid, this 18th day of June, 2019.

Joe Myers
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