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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

JOE MYERS,

CIVIL DIVISION

Plaintiff,

Case No. 19-10516

v.

**MOTION TO DISMISS *PRO SE*  
PLAINTIFF'S AMENDED  
COMPLAINT (STYLED AS  
"COMMON LAW CLAIM OF  
TRESPASS") PURSUANT TO  
Pa.R.C.P. 233.1**

TIMOTHY F. MCCUNE, JOSEPH H.  
CHIVERS, JACK W. MURTAGH, JR.,  
GRAYDON BREWER, CARL V.  
NANNI, JACK LEWIS, JIM GALLGHER,  
HANK LEYLAND, GREG LOVERICK,  
EDWARD TASSEY, AK STEEL et al,  
UAW (formerly Butler Armco Independent  
Union) et al.,

Filed on behalf of Defendant,  
JOSEPH H. CHIVERS

Defendants.

Counsel of Record for this Party:

DENNIS J. ROMAN, ESQUIRE  
PA ID #36904

LEECH TISHMAN  
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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

JOE MYERS,

CIVIL DIVISION

Plaintiff,

Case No. 19-10516

v.

TIMOTHY MCCUNE, et al.,

Defendants.

**MOTION TO DISMISS *PRO SE* PLAINTIFF'S AMENDED COMPLAINT (STYLED AS "COMMON LAW CLAIM OF TRESPASS") PURSUANT TO Pa.R.C.P. 233.1**

Defendant, JOSEPH H. CHIVERS, by his attorneys, Dennis J. Roman, Esquire and Leech Tishman, sets forth the following Motion to Dismiss *Pro Se* Plaintiff's Amended Complaint (Styled as "Common Law Claim of Trespass") Pursuant to Pa.R.C.P. 233.1, as follows:

1. On January 8, 2024, *pro se* plaintiff Joe Myers ("Myers") filed an Amended Complaint without leave of court seeking to resurrect professional liability claims against his former legal counsel, defendant Joseph H. Chivers ("Attorney Chivers"), and other named defendants.

2. Myers' claims against Attorney Chivers arise out of a former attorney-client relationship formed with Attorney Chivers in 2001 to represent Myers in connection with the termination of Myers' employment. (*See* Am. Compl. ¶¶ 7b, 32, 43 at pp. 5, 25-28 and 39).

3. Previously, in 2004, Myers brought a legal malpractice lawsuit against Attorney Chivers in this Court. (*See, Myers v. Chivers*, Case No. 04-10707 (C.P. Butler Cnty., Pa).

4. Myers' earlier legal malpractice lawsuit brought in 2004 also arose out of Attorney Chivers' prior handling of Myers' employment litigation, which suit culminated in a dismissal of that action with prejudice on February 12, 2008.

5. On May 29, 2019, the instant lawsuit was filed by Myers, once again asserting professional liability claims against Attorney Chivers.

6. Upon Myers' failure to file a Certificate of Merit within thirty days after being given proper notice to do so, on August 14, 2019, a judgment of *non pros* was entered in favor of Attorney Chivers and against Myers as to all claims made by Myers against Attorney Chivers.

7. All notifications and filings on behalf of Attorney Chivers were Rule-compliant such that the entry of a judgment of *non pros* was properly taken against Myers.

8. By Opinion and Order dated June 25, 2020, the Superior Court affirmed this Court on all matters addressed by Myers' appeal. A copy of the Superior Court's Opinion is attached hereto as **Exhibit A**.

9. A Petition for Allowance of Appeal filed by Myers with the Pennsylvania Supreme Court at 283 WAL 2020 was denied by Order filed March 10, 2021. A copy of the Supreme Court's Order is attached hereto as **Exhibit B**.

10. All litigation by Myers against Attorney Chivers ended with the final disposition of this case before the Pennsylvania Supreme Court in 2011.

11. The dismissal of the 2004 action against Attorney Chivers with prejudice operates as *res judicata* against Myers. See, Mintz v. The Carlton House Partners, Ltd., 595 A.2d 1240 (Pa. Super. 1991); Swift v. Radnor Twp., 983 A.2d 227 (Pa. Commw. 2009) (res judicata "prohibits parties involved in a prior litigation from asserting claims in a subsequent action that were raised, or could have been raised, in the prior action").

12. Moreover, the entry of the judgment of *non pros* in favor of Attorney Chivers against Myers in the 2019 action still stands today by virtue of Myers having failed to timely file a petition to open or strike the judgment, whereby Myers then waived on appeal any challenge to

the judgment. See, Sahutsky v. H.H. Knoebel Sons, 782 A.2d 996, 1000 (Pa. 2001); Koral v. Mixon, 2013 WL 11253542 at \*7 (Pa. Super. 2013) (applying Sahutsky to legal malpractice action).<sup>1</sup>

13. Finally, Pennsylvania Rule of Civil Procedure 233.1 governs “Frivolous Litigation” by a “Pro Se Plaintiff” who repetitively brings the same or related claims against the same or related defendants, which is the precise scenario presently before this Court.

14. Rules 233.1 (a)(1) and (2) permit a defendant’s filing of a Motion to Dismiss in any action brought by a *pro se* plaintiff and the imposition of a stay of the action pursuant to Pa.R.C.P. 233.1 (b) pending the Motion’s disposition.

15. Should the Motion be granted and this action be dismissed as frivolous litigation under Rule 233.1 (c), the Court may bar additional litigation by the *pro se* plaintiff, asserting the same or related claims against the same or related defendants, without being granted leave of court. If such Court Order is violated, this Court may *sua sponte* dismiss any further litigation by the *pro se* plaintiff in violation of such Court Order pursuant to Rule 233.1 (d).

16. For the reasons above, Attorney Chivers requests the entry of an Order dismissing with prejudice all claims made against him by Myers in his Amended Complaint and the granting of other ancillary relief as permitted by Rule 233.1, as further detailed in the proposed Order appended to this Motion, including the entry of an immediate stay of this action pending this Court’s consideration and ruling on the instant Motion.

WHEREFORE, for each of the foregoing reasons, defendant Joseph H. Chivers requests the granting of an immediate stay of this action, the granting of this Motion and the dismissal with

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<sup>1</sup> While the application of Rule 233.1 does not require earlier litigation progress to a final judgment on the merits as required by the doctrines of *res judicata* and collateral estoppel (See, Gray v. Buonopane, 53 A. 3d 829, 835 (Pa. Super. 2012)), the dismissal of the 2004 action *with prejudice* equates to a final judgment.

prejudice of all claims asserted by plaintiff Joe Myers against Attorney Chivers and the granting of ancillary relief as detailed in the proposed Order appended to this Motion so as to preclude any further attempts by plaintiff Joe Myers to perpetuate additional frivolous litigation in the future.

LEECH TISHMAN



DENNIS J. ROMAN, ESQUIRE

PA ID #36904

525 William Penn Place, 28<sup>th</sup> Floor

Pittsburgh, PA 15219

*Attorneys for defendant,*

*Joseph H. Chivers*

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

JOE MYERS,

Appellant

v.

TIMOTHY F. MCCUNE, JOSEPH H. CHIVERS, JOHN/JACK W. MURTAGH JR., GRAYDON BREWER, CARL V. NANNI, JACK LEWIS, JIM GALLAGHER, HANK LEYLAND, GREG LOVERICK, EDWARD TASSEY, AK STEEL ET AL, UAW (FORMERLY BUTLER ARMCO INDEPENDENT UNION).

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 1892 WDA 2019

Appeal from the Order Entered November 21, 2019  
In the Court of Common Pleas of Butler County Civil Division at No(s):  
A.D. No. 19-10516

BEFORE: BENDER, P.J.E., DUBOW, J., and NICHOLS, J.

JUDGMENT ORDER BY DUBOW, J.:

**FILED JUNE 25, 2020**

Appellant, Joe Myers, appeals *pro se* from the November 21, 2019 Order entered in the Butler County Court of Common Pleas sustaining the Preliminary Objections filed by all defendants, and dismissing Appellant's Complaint with prejudice. We affirm.

On May 29, 2019, Appellant filed *pro se* a Complaint against the defendants arising from his April 10, 2001 termination by his prior employer



AK Steel.<sup>1, 2</sup> The defendants filed Preliminary Objections, and, on October 22, 2019, the trial court held oral argument on them. Following oral argument, on November 21, 2019, the trial court sustained the Preliminary Objections and dismissed the case with prejudice.

On January 7, 2020, the trial court issued an Order directing Appellant to file a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) within 20 days of entry of the Order. The Order stated that "the failure of [Appellant] to timely file a concise statement means that he has not preserved any issues for appellate review."<sup>3</sup> Order 1/7/20. Accordingly, the trial court's order required Appellant to file his Rule 1925(b) statement by January 27, 2020.

On February 4, 2020, the trial court issued its Rule 1925(a) Opinion indicating that Appellant had failed to file a Rule 1925(b) Statement and had,

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<sup>1</sup> In its November 21, 2019 Opinion in support of its Order sustaining the defendants' Preliminary Objections, the trial court characterized Appellant's Complaints as "largely indecipherable in terms of presenting a factual or legal basis for a claim against any of the [d]efendants." Opinion, 11/21/19, at 1.

<sup>2</sup> In 2004, Appellant unsuccessfully pursued claims arising from his termination in both the state and federal courts.

<sup>3</sup> The trial court docket indicates that the trial court's Rule 1925 Order was dated January 2, 2020, filed on January 6, 2020, and served on January 7, 2020.

thus, failed to preserve any issues for appellate review. Two days later, on February 6, 2020, Appellant filed an untimely Rule 1925(b) Statement.<sup>4</sup>

We conclude that Appellant waived any issues on appeal when he failed to file a timely Rule 1925(b) Statement. **See, e.g., Greater Erie Indus. Devel. Corp. v. Presque Isle Downs, Inc.**, 88 A.3d 222, 227 (Pa. Super. 2014) (*en banc*) (finding appellate issues waived were appellant failed to file timely Rule 1925(b) statement).

Order affirmed.<sup>5</sup>

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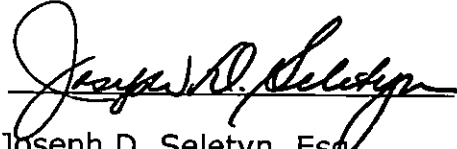
<sup>4</sup> Appellant's sprawling 55-page Rule 1925(b) Statement is an inarticulate reiteration of the claims he advanced in his prior pleadings.

<sup>5</sup> In light of our disposition, we deny Appellant's June 10, 2020 "Application for Relief" requesting that this Court reschedule oral arguments and "Appellant's Demur of Recent Orders."



J-A18025-20

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/25/2020

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

JOE MYERS,

Petitioner

v.

TIMOTHY F. MCCUNE, JOSEPH H.  
CHIVERS, JOHN/JACK W. MURTAGH JR.,  
GRAYDON BREWER, CARL V. NANNI,  
JACK LEWIS, JIM GALLAGHER, HANK  
LEYLAND, GREG LOVERICK, EDWARD  
TASSEY, AK STEEL ET AL, UAW  
(FORMERLY BUTLER ARMCO  
INDEPENDENT UNION),

Respondents

: No. 283 WAL 2020

:  
: Petition for Allowance of Appeal  
: from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 10th day of March, 2021, the Petition for Allowance of Appeal and the Notice of Appeal Addendum are DENIED.

A True Copy Patricia Nicola  
As Of 03/10/2021

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania



**CERTIFICATES OF COMPLIANCE AND SERVICE**

I, the undersigned, hereby certify that on this 23rd day of February, 2024, a true and correct copy of the foregoing **MOTION TO DISMISS *PRO SE* PLAINTIFF'S AMENDED COMPLAINT (STYLED AS "COMMON LAW CLAIM OF TRESPASS")** PURSUANT TO **Pa.R.C.P. 233.1**, which document 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, was served upon the following parties and counsel of record via U.S. first-class mail, postage pre-paid:

Joe Myers  
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***(Pro Se Plaintiff)***

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*Joseph H. Chivers*

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

JOE MYERS,

CIVIL DIVISION

Plaintiff,

Case No. 19-10516

v.

TIMOTHY MCCUNE, et al.

Defendants.

**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2024, upon consideration of the foregoing Motion to Dismiss *Pro Se* Plaintiff's Amended Complaint (Styled as "Common Law Claim of Trespass") Pursuant to Pa.R.C.P. 233.1 ("Motion") filed on behalf of defendant Joseph H. Chivers, it is hereby ORDERED as follows:

1. the Motion is granted for each of the reasons set forth in the Motion and all claims set forth in plaintiff Joe Myers' Amended Complaint are dismissed with prejudice as to defendant Joseph H. Chivers;
2. plaintiff Joe Myers is further barred from pursuing additional *pro se* litigation against defendant Joseph H. Chivers raising the same or related claims without first seeking and being granted leave of court pursuant to Court Order; *and*
3. to the extent further litigation is filed by plaintiff Joe Myers in violation of this Order, such litigation shall be subject to dismissal *sua sponte* by this Court at that time, to include an award of attorneys' fees and costs against plaintiff Joe Myers in an amount as this Court shall later determine.

BY THE COURT:

\_\_\_\_\_.J.