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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

JOE MYERS,

CIVIL DIVISION

Plaintiff,

CASE NO. 19-10516

vs.

TYPE OF PLEADING:

TIMOTHY F. MCCUNE, ET AL.

DEFENDANTS CLEVELAND-CLIFFS, INC.'S, LOURENCO GONCALVES'S, AND EDWARD TASSEY'S BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFF'S AMENDED COMPLAINT AND MOTION TO DISMISS FRIVOLOUS COMPLAINT IN ACCORDANCE WITH PA.R.C.P. NO. 233.1

Defendants.

Filed on behalf of:

Defendants Cleveland-Cliffs, Inc., Lourenco Goncalves, and Edward Tassey

Counsel of Record for these Parties:

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Defendants Cleveland-Cliffs, Inc. ("Cleveland-Cliffs"), Lourenco Goncalves ("Mr. Goncalves") and Edward Tassej ("Mr. Tassej") (collectively "Defendants"), by and through the undersigned counsel and pursuant to Pennsylvania Rules of Civil Procedure 1.028(a)(1), 1.028(a)(3), 1.028(a)(4), and 233.1, respectfully move this Honorable Court for an order dismissing Plaintiff Joe Myers's frivolous Amended Complaint in its entirety. In support thereof, Defendants state as follows:

I. INTRODUCTION

Pro se litigant and Plaintiff Joe Myers ("Plaintiff") has spent the last two decades pursuing untimely, specious claims that are routinely rejected and dismissed by courts across the country, including this Court. Despite repeated failure, Plaintiff continues to advance frivolous litigation.

Indeed, on January 8, 2024, Plaintiff once again filed an incoherent “Amended Complaint”¹ in this Court against Defendants wherein Plaintiff re-asserts the same dismissed claims related to the termination of his employment from AK Steel Corporation over *twenty years ago*. This Court previously dismissed Plaintiff’s Complaint *with prejudice* and should do so again. *See Myers v. McCune, et al.*, No. AD. 19-10516 *9 (Pa.Com.Pl. November 21, 2019) (holding that “the record is clear that the Plaintiff has not and *cannot by amendment* establish a legal claim against any of the Defendants discussed herein.”).

Plaintiff’s Amended Complaint was filed in direct contradiction to this Court’s prior Order and again fails to identify any cognizable legal cause of action against Defendants or any underlying factual support for any such claim. Rather, Plaintiff’s Amended Complaint impermissibly seeks to re-litigate the same dismissed claims that are admittedly decades old. Indeed, this Court along with the Superior Court of Pennsylvania, the Supreme Court of Pennsylvania, the United States District Court for the Western District of Pennsylvania, the United States Court of Appeals for the Third Circuit, and, most recently, the Circuit Court of the Fourth Judicial Circuit for Duval County, Florida all previously rejected Plaintiff’s meritless Complaints. Plaintiff’s latest “filing” is no different and, therefore, should be dismissed entirely.

Here, Plaintiff’s *pro se* Complaint is subject to dismissal in accordance with Pennsylvania Rule of Civil Procedure 233.1 as it involves the same claims and parties that were previously raised and rejected by multiple courts. Plaintiff’s litigious history of raising the same issues again and again as a *pro se* litigant should be ended by this Court. Further, there is no jurisdiction over

¹ It is entirely unclear what Plaintiff was attempting to file. Plaintiff’s “type of filing” in the case caption refers to an “Amended Complaint” and that he will “press this claim in a Court of Law that is secured by the Constitution and the unconstitutional statute of limitations and unconstitutional legal rules of procedure are null and void...” *See* Amend. Compl. at pg. 1. As addressed in detail, Defendants dispute that Plaintiff properly filed a valid Amended Complaint. However, for purposes of this Motion to Dismiss, Defendants will refer to Plaintiff’s January 8, 2024 filing as the “Amended Complaint.”

Defendants because Plaintiff failed to obtain proper service of process in accordance with Pennsylvania law. Regardless, even if proper service were obtained, the Amended Complaint is legally insufficient because it fails to state any claim(s) against Defendants. And even if Plaintiff identified a valid claim, it would be barred by any potentially applicable statute of limitations and the doctrine of collateral estoppel. For these reasons, and those set forth below, Defendants respectfully requests that their Motion to Dismiss be granted in its entirety with prejudice.

II. PROCEDURAL HISTORY AND RELEVANT BACKGROUND

A. Plaintiff's Prior Dismissed Litigation.

Plaintiff's frivolous litigation spans the course of nearly two decades. Starting in 2004, Plaintiff filed a Complaint in the Butler County Court of Common Pleas against AK Steel Corporation and Butler Armco Independent Union, U.A.W. related to the termination of his employment in 2001 for insubordination. The case was subsequently removed by the defendants to the federal district court and docketed as Civil Action No. 04-674 in the United States District Court for the Western District of Pennsylvania ("Pennsylvania Federal Litigation"). The District Court subsequently dismissed Plaintiff's Complaint for failure to state a claim for which relief can be granted, which was affirmed by the Third Circuit Court of Appeals. *See Myers v. AK Steel Corp.*, 156 F. App'x 528, 529 (3d Cir. 2005) (holding "because he filed his claims nearly two and a half years after the conclusion of the arbitration proceedings, Myers' claims are time barred. The order of the District Court will be affirmed.").

Fourteen years later in 2019, Plaintiff filed a duplicative Complaint in this Court naming additional defendants, including Mr. Tassej ("Pennsylvania State Litigation"). In addressing Plaintiff's allegations, this Court noted that the Complaint was "[l]argely indecipherable in terms of presenting a factual or legal basis for a claim against any of the Defendants. To the extent a factual picture can be ascertained from Plaintiff's rambling references to his constitutional rights

it appears the Plaintiff was terminated from his employment with AK Steel on April 10, 2001.” See *Myers v. McCune, et al.*, No. AD. 19-10516 *1 (Pa.Com.Pl. November 21, 2019). Accordingly, this Court dismissed Plaintiff’s Complaint with prejudice holding that “the record is clear that the Plaintiff has not and cannot by amendment establish a legal claim against any of the Defendants discussed herein.” *Id.* The Superior Court of Pennsylvania affirmed this Court’s Order (*Myers v. McCune*, 237 A.3d 1083 (Pa. Super. Ct. 2020)) and the Supreme Court denied Plaintiff’s petition for appeal. See *Myers v. McCune*, 250 A.3d 473 (Pa. 2021) (“the Petition for Allowance of Appeal and the Notice of Appeal Addendum are DENIED.”).

Four year later in 2023, Plaintiff filed a Complaint in the Fourth Judicial Circuit for Duval County, Florida asserting the same underlying factual allegations against Defendant Goncalves and Thomas M. Conway (the former President of the Steelworkers International Union) (“Florida State Litigation”). Both defendants successfully moved to dismiss Plaintiff’s frivolous Complaint. There, the court dismissed Plaintiff’s Complaint holding that “(1) Plaintiff failed to obtain proper service of process of Defendants in accordance with Florida law; (2) Plaintiff’s filings failed to state a claim upon which relief can be granted; and (3) Plaintiff’s claims are barred by any potentially applicable statute of limitations.” See *Joe Meyers v. Lourenco Goncalves, et al.*, No. 16-2023-CA-009613-XXXX-MA (Fl. Cir. Court October 12, 2023). Plaintiff did not appeal the judgment in Florida and instead proceeded to file this Amended Complaint.

B. Plaintiff’s Current Duplicative Litigation.

On January 8, 2024, Plaintiff filed an Amended Complaint in this Court recycling the same allegations that were dismissed years ago. Plaintiff impermissibly added additional Defendants, including Cleveland-Cliffs and Mr. Goncalves. Mr. Goncalves is the current Chairman, President and Chief Executive Officer of Co-Defendant Cleveland-Cliffs, which is North America’s largest flat rolled steel producer and manufacturer of iron ore pellets. In March 2020, decades after the

alleged termination of Plaintiff's employment, Cleveland-Cliffs acquired AK Steel Corporation. All claims against Defendants have previously been resolved. As addressed in detail below, Plaintiff's Amended Complaint is nothing more than a recycled iteration of his formally dismissed complaints.

III. LAW AND ARGUMENT

A. This Court Should Exercise Its Authority Under Rule 233.1 And Dismiss Plaintiff's Complaint.

Pennsylvania Rule of Civil Procedure 233.1 bars Plaintiff from alleging the same or related claims that were previously raised in his multiple dismissed actions. *See* Pa.R.C.P. No. 233.1. Plaintiff's continued frivolous *pro se* litigation has wasted significant judicial resources and has forced Defendants to continuously defend against meritless claims. In accordance with Rule 233.1 Plaintiff's Amended Complaint should be dismissed and he should be barred from pursuing additional litigation against Defendants.

Rule 233.1 provides that “[u]pon the commencement of any action filed by a *pro se* plaintiff in the court of common pleas, a defendant may file a motion to dismiss the action on the basis that the *pro se* plaintiff is alleging the same or related claims which the *pro se* plaintiff raised in a prior action against the same or related defendants, and these claims have already been resolved pursuant to a written settlement agreement or a court proceeding.” Pa.R.C.P. No. 233.1.

Rule 233.1 merely requires “a rational relationship evident in the claims made and in the defendant’s relationships with one another to inform the trial court’s conclusion that the bar the Rule announces is justly applied.” *Gray v. Buonopane*, 53 A.3d 829, 838 (Pa. Super. 2012). “Rule 233.1 does not require the highly technical prerequisites of *res judicata* or collateral estoppel to allow the trial court to conclude that a *pro se* litigant’s claims are adequately related to those addressed in prior litigation. Nor does it require an identity of parties or the capacities in which

they sued or were sued. Rather, it requires a rational relationship evident in the claims made and in the defendant's relationships with one another to inform the trial court's conclusion that the bar the Rule announces is justly applied." *Gray v. Buonopane*, 53 A.3d 829, 838 (Pa. Super. 2012).

Here, the Rule 233.1 standard for dismissal is met. Indeed, the parties and the claims raised in Plaintiff's current frivolous action are duplicative of the issues raised in the multiple previously dismissed actions. Plaintiff's re-alleged claims all relate to the termination of his employment from AK Steel Corporation over twenty years ago. Similarly, the parties to this current action are the same or related to the parties in the previously decided and dismissed actions. Mr. Tassej was a named defendant in the dismissed Pennsylvania State Litigation. Further, co-defendant, AK Steel Corporation, was acquired by Cleveland-Cliffs nearly two decades after Plaintiff's employment was terminated. Mr. Goncalves, as the current Chairman, President and Chief Executive Officer of Cleveland-Cliffs, is a related party who was individually named as a Defendant in the dismissed Florida State Litigation. There is no dispute that Plaintiff is impermissibly re-pursuing claims that have previously been resolved by multiple courts. As noted, this Court, along with the Western District of Pennsylvania and the Fourth Judicial Circuit for Duval County, Florida, fully disposed of the specious claims that Plaintiff attempts to re-assert against Defendants.

Because the Rule 233.1(a) standard for dismissal is satisfied here, Defendants respectfully request that this Court dismiss with prejudice Plaintiff's Amended Complaint and bar Plaintiff from pursuing additional *pro se* litigation against the same or related defendants raising the same or related claims without leave of court. *See* Pa.R.Civ.P. 233.1(c) ("Upon granting the motion and dismissing the action, the court may bar the pro se plaintiff from pursuing additional pro se litigation against the same or related defendants raising the same or related claims without leave of court."). Defendants also request that this Court stay the action while this Motion is pending so

that Defendants are not forced to undertake additional costs defending Plaintiff's frivolous action. *See* Pa.R.C.P. 233.1(b) ("The court may stay the action while the motion is pending.").

B. PRELIMINARY OBJECTION 1028(a)(1)—Plaintiff's Attempted Service Of Original Process Was—And Remains Improper And Defective.

The Court should dismiss Plaintiff's Amended Complaint in accordance with Pa.R.Civ.P. 233.1 and end its analysis. However, in addition to Pa.R.Civ.P. 233.1 there are multiple additional grounds supporting dismissal. Specifically, Defendants were not properly served in accordance with Pennsylvania law and therefore this Court lacks jurisdiction over Defendants.

First, Plaintiff's Amended Complaint was improperly filed and therefore is defective from the start. Indeed, this Court previously dismissed with prejudice Plaintiff's Complaint which was subsequently affirmed by the Superior Court of Pennsylvania. *See Myers v. McCune*, 237 A.3d 1083 (2020) (affirming trial's courts dismissal with prejudice). Plaintiff proceeded to file this Amended Complaint as a miscellaneous filing under the same previously dismissed case number. Further, Plaintiff did not request or issue a Summons for the newly added Defendants. Accordingly, Plaintiff has not commenced a valid action that could have been served on Defendants.

Second, with respect to Defendants Cleveland-Cliffs and Mr. Goncalves, Plaintiff failed to request and obtain a return receipt with the Amended Complaint, which renders service inoperable. Plaintiff did not attempt personal service by process server. Consequently, Plaintiff had the option of serving the out-of-state Defendants "by mail in the manner provided by Rule 403" or "in the manner provided by the law of the jurisdiction in which the service is made for service in an action in any of its courts of general jurisdiction." *See* Pa. R. Civ. P. 404(2) and (3). It is well-settled in Pennsylvania that procedural rules governing service of process must be strictly followed. *See Cintas Corp. v. Lee's Cleaning Services, Inc.*, 700 A.2d 915, 917-18 (Pa. 1997). To the extent that

Plaintiff attempted to serve Defendant Cleveland-Cliffs and Mr. Goncalves by mail, he was required to do so “by any form of mail *requiring a receipt signed by the defendant* or his authorized agent.” Pa. R. Civ. P. 403 (emphasis added). Similarly, Plaintiff impermissibly served Defendant Tasse, a Pennsylvania resident, by regular U.S. Mail.

Here, Plaintiff’s “certificate of service” accompanying the Amended Complaint states that service was completed via “U.S. Mail, First Class.” *See* Amend. Compl. at pg. 98. As a result of Plaintiff’s failure to require and obtain a return receipt, service on Defendants Cleveland-Cliffs and Mr. Goncalves is defective and ineffective. *See Bancorp Bank v. Mancini*, 2013 WL 2300884, at *4 (Phila. Com. Pl.) (holding that failure to serve original process in a form that required a return receipt violates Rule 403 and constitutes an “incurable defect” of service, stating that “[f]irst class mail, electronic filing and/or U.S. Mail do not require a return receipt; therefore Appellant failed to serve original process...”); *see also Hatchigian v. Ford Motor Company*, 2012 WL 1948521 (Phila. Com. Pl.) (dismissing complaint for lack of service where plaintiff “did not serve the original process by any form of mail requiring a receipt signed by Ford or Ford’s authorized agent, as exhibited by the Plaintiffs’ Certificate of Service” but instead was mailed by “first-class United States mail, postage pre-paid”). Similarly, Plaintiff’s service on Defendant Tasse is defective and ineffective because he failed to have service completed by the sheriff’s department in accordance with Pennsylvania law.

Third, with respect to Defendant Goncalves, Plaintiff’s attempted service fails for the additional reason that Plaintiff mailed the Amended Complaint to his place of employment. *See* Amend. Compl. at pg. 98. The Rules of Civil Procedure in Pennsylvania do not contemplate or allow service by mail at a defendant’s place of employment. *See Barrett v. City of Allentown*, 152 F.R.D. 46, 49-50 (E.D. Pa. 1993) (“[N]either the Federal Rules nor Pennsylvania state law permit

service of process to be made by mail at one's place of employment"). For this additional reason, Plaintiff failed to properly serve Defendant Goncalves with the Amended Complaint.

For these reasons, Plaintiff's attempts at service of the Amended Complaint are defective, and therefore this Court lacks jurisdiction over Defendants.

C. PRELIMINARY OBJECTION 1028(a)(4)—Plaintiff's Amended Complaint Is Legally Insufficient.

Even assuming *arguendo* that Plaintiff properly served Defendants in this action—although he did not—Plaintiff's Amended 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). Dismissal of a Complaint on the basis of demurrer is appropriate where, on the facts stated in the Complaint, accepted as true, preclude the possibility of recovery. Demurrer is appropriate where recovery is impossible even under a better statement of facts which might be inferred by the facts pled. *See Lobolito, Inc. v. North Pocono School District*, 562 Pa. 380 (2000).

Plaintiff's Amended Complaint is again legally insufficient and subject to dismissal because it fails to state any claims against Defendants. And even if Plaintiff identified a valid claim, it would be barred by any potentially applicable statute of limitations and the doctrine of collateral estoppel. Each of these bases is independently fatal to the legal sufficiency of Plaintiff's claim.

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

Plaintiff's Amended Complaint failed to identify any possible factual or legal basis upon which he could possibly be entitled to relief. Indeed, the Amended Complaint again lacks any identifiable claim against Defendants and does not plead sufficient facts identifying any basis for

a cause of action. As a result, Defendants cannot possibly determine from the face of the Amended Complaint what legal claim Plaintiff might be attempting to raise against them.

As previously held by this Court, “the Plaintiff’s *pro se* Complaint, filed on May 29, 2019, is largely indecipherable in terms of presenting a factual or legal basis for a claim against any of the Defendants.” *See Myers v. McCune, et al.*, No. AD. 19-10516 *1 (Pa.Com.Pl. November 21, 2019). Based on such findings, this Court concluded that “[i]t is clear as a matter of law that the Plaintiff has not set forth, nor can he establish by any amended Complaint, a viable cause of action against any of these Defendants.” *Id.* Nothing in Plaintiff’s Amended Complaint changes this prior holding.

Plaintiff’s Amended Complaint again entirely fails to allege the respective elements for any claim and completely fails to allege any supporting facts for such claim. Indeed, there are no specific allegations or facts directed at Defendants that give rise to any claim. As a result, Defendants cannot clearly determine what is being alleged. Accordingly, Plaintiff’s Amended Complaint should be dismissed in its entirety with prejudice.

2. *Plaintiff’s Amended 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. Plaintiff’s own filing admittedly confirms that the underlying basis for any potential claim arose over two decades ago. Further, Plaintiff’s Exhibit AA (Mr. Goncalves’s Biography) and GG (Cleveland-Cliffs March 13, 2020 Press Release) confirm that Cleveland-Cliffs did not acquire AK Steel Corporation until March 2020, over twenty years after Plaintiff’s employment termination and complained-of conduct.

Defendants are unaware of a single civil claim under state or federal law with a statute of limitations exceeding twenty-five years. Rather, any potentially applicable statute of limitation

under Pennsylvania law expired years ago. Further, Plaintiff has not pled, and cannot plead, any facts or circumstances which would toll the statute of limitations for over two decades. As noted, Plaintiff's similar specious claims were previously rejected and dismissed by multiple other courts, including this Court, as untimely. *See Joe Meyers v. Lourenco Goncalves, et al.*, No. 16-2023-CA-009613-XXXX-MA (FL. Cir. Court October 12, 2023) (holding "Plaintiff's claims are barred by any potentially applicable statute of limitations."); *Myers v. AK Steel Corp.*, 156 Fed.Appx. 528 (3rd Cir. 2005) (affirming the district court's dismissal of Plaintiff's untimely claims); *Myers v. McCune*, 237 A.3d 1083 (Pa. Super. Ct. 2020) (affirming trial court's dismissal of Plaintiff's Complaint where Plaintiff waited over eighteen years to commence suit). Indeed, this Court previously held that "The Plaintiff waited for over eighteen years to file the current lawsuit against these Defendants. To let this lawsuit proceed and force the Defendants to incur additional expenses, as well as the unnecessary use of judicial resources, is unjust when this case can be resolved as a matter of law." *See Myers v. McCune, et al.*, No. AD. 19-10516 * (Pa.Com.Pl. November 21, 2019). Now, nearly five years from this Court's final order, Plaintiff is pursuing the same frivolous, time-barred claims. Here, this Court should again reach the same conclusion and dismiss Plaintiff's untimely and improper Amended Complaint in its entirety.

Plaintiff cannot possibly state a claim that complies with any potentially applicable statute of limitation. As such, Plaintiff's Amended Complaint is legally insufficient and subject to dismissal. For this reason alone, Plaintiff's entire Amended Complaint should be dismissed with prejudice.

3. ***Plaintiff's Amended Complaint Is Barred By The Doctrine Of Collateral Estoppel***

Additionally, multiple courts have fully and finally disposed of the claims that Plaintiff is attempting to reassert against Defendants. As such, Plaintiff's Amended Complaint is barred by collateral estoppel. The Superior Court of Pennsylvania has held that:

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.

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

Plaintiff's latest filing is a mere recitation of his previous failed filings in multiple courts. The elements of collateral estoppel are met in this action because there was a final judgment on the merits dismissing Plaintiff's case in the Pennsylvania State and Federal Litigations. Further, Plaintiff's action was dismissed in the Florida State Litigation and Plaintiff did not appeal the judgment. Plaintiff had a full and fair opportunity to litigate the issues in the prior proceedings. Any claims related to Plaintiff's terminated employment have been fully litigated and resolved. As such, Plaintiff's Amended Complaint is legally insufficient and subject to dismissal. For this reason alone, Plaintiff's entire Amended Complaint should be dismissed with prejudice.

D. PRELIMINARY OBJECTION 1028(a)(3)— Plaintiff's Complaint Lacks Specificity.

Additionally, Plaintiff's Complaint is subject to dismissal because it lacks the requisite specificity required for Defendants to 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). As addressed, Plaintiff has not properly pled any basis for recovery against Defendants. There is no discernible basis for recovery against Defendants. As such, Defendants cannot prepare a defense. The Complaint's lack of specificity warrants dismissal.

IV. PLAINTIFF'S AMENDED COMPLAINT IS BROUGHT IN BAD FAITH—42 PA.C.S. 2503(9).

Finally, Plaintiff is well aware that he has previously brought multiple failed actions in various courts on the same facts and circumstances that he now pleads yet again in this instant action. Plaintiff is undoubtably aware of the outcome of the Pennsylvania Federal Litigation in 2005, this Pennsylvania State Litigation in 2019, and the Florida State Litigation recently decided in 2023. Plaintiff's continued attempt to re-litigate previously decided claims in different forums over nearly two decades is the epitome of bad faith. Defendants have incurred significant cost and time responding to Plaintiff's frivolous filings. As such, sanctions in the form of attorneys' fees should be ordered against Plaintiff.

V. CONCLUSION

Based on the foregoing, Defendants Cleveland-Cliffs, Inc., Lourenco Goncalves and Edward Tassej respectfully request that this Honorable Court grant their Motion and dismiss Plaintiff Joe Myers's Amended Complaint in its entirety, *with prejudice* and award Defendants their attorneys' fees pursuant to 42 PA.C.S. 2503(9).

Respectfully submitted,

s/ 

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