

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN FREMPONG-ATUAHENE, et al. : CIVIL ACTION  
: :  
v. : :  
: :  
TRANSAMERICA FINANCIAL CONSUMER : :  
DISCOUNT CO., et al. : NO. 99-0965

**MEMORANDUM AND ORDER**

HUTTON, J.

January 13, 2000

Presently before the Court are Defendants Transamerica Financial Consumer Discount Company, First National Mortgage, Joan P. Brodsky, Leslie E. Puida, Frank Federman, "Phelan," Federman and Phelan, and John and Jane Does (collectively, "Transamerica, et al.") Motion to Dismiss Plaintiff's Complaint (Docket No. 3), Defendant the City of Philadelphia's (the "City") Motion to Dismiss Plaintiff's Complaint (Docket No. 5), Plaintiff Stephen Frempong-Atuahene's ("Plaintiff") Motion for the Enlargement of Time to Respond to Defendant's Motion to Dismiss (Docket No. 9), Plaintiff's Amended Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 12), Transamerica, et al.'s response to Plaintiff's Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 13), and the City's Response to Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 14). For the reasons stated below, Transamerica, at al.'s Motion to Dismiss is GRANTED,

the City's Motion to Dismiss is granted, and all other outstanding motions are DENIED with prejudice.

### I. DISCUSSION

On February 11, 1999, Plaintiff, a pro se litigant,<sup>1</sup> filed the instant lawsuit against the above named Defendants. Plaintiff's Complaint states eleven causes of action under federal and Pennsylvania law.

Transamerica, et al. filed a Motion to Dismiss on July 20, 1999. On August 3, 1999, Plaintiff motioned the Court for an enlargement of time to respond to Defendants' Motion (the "First Enlargement Motion"). On August 6, 1999, the City filed a Motion to Dismiss. On August 12, 1999, the Court granted as unopposed, inter alia, Plaintiff's First Enlargement Motion, allowing him until August 26, 1999 to file a response. On August 20, 1999, Plaintiff filed a Motion or Enlargement of Time to Respond to defendants' various motions to dismiss (the "Second Enlargement Motion"). On August 30, 1999, Plaintiff filed yet another Motion for Enlargement of Time to Respond to the Motions to Dismiss (the

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<sup>1/</sup> While Plaintiff is proceeding pro se, he is a frequent litigant in the Eastern District of Pennsylvania and before the courts of the Commonwealth of Pennsylvania. For example, Plaintiff initiated the following lawsuits in the Eastern District of Pennsylvania: 98-704; 98-865; 98-930; 98-1359; 98-1729; 97-659; 97-660; 97-662; 97-4520; 97-5459; 96-1248; 90-5947. He also initiated many other lawsuits in the Commonwealth's courts. While the Court is mindful that it must be comparatively lenient when considering a pro se litigant's filings, see Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 (1972) (stating that pro se plaintiff's complaints should be construed liberally), the Court tempers this call for leniency with by inferring that because Plaintiff has litigated frequently before the Court, he has a sufficient knowledge of the Federal Rules of Civil Procedure.

"Third Enlargement Motion"). The City responded to Plaintiff's Second Enlargement Motion on August 30, 1999. On September 8, 1999, the Court granted as unopposed Plaintiff's Third Enlargement Motion, granting Plaintiff until September 23, 1999 to file his responses.

Plaintiff filed yet another Motion--an Amended Motion for Leave of Court to Amend and/or Supplement Original Pleadings (the "Motion to Amend")--on September 21, 1999, only two days shy of the date he was to file his responses to defendants' various motions to dismiss. Transamerica, et al., filed a response to Plaintiff's Motion to Amend on October 25, 1999. One day later, on October 26, 1999, the City also filed a response to Plaintiff's Motion to Amend.

The Court received a letter from defense counsel on or about August 24, 1999, which informed the Court that Plaintiff's First Enlargement Motion, which the Court granted as unopposed, was unopposed only because defendants never received a copy of Plaintiff's First Enlargement Motion. The letter states as follows:

[This letter is] to inform the Court that the reason why the Defendants failed to respond [to Plaintiff's First Enlargement Motion] is that the Defendants were never served with a copy of Plaintiff's Motion. As his is usual practice, [Plaintiff] filed this Motion, and probably filed a Certification of Service at the same time, but failed to serve the Motion on Defendant's [sic] counsel even though he is well aware of counsel's identity and address. I merely want to inform the Court that Defendants' failure to respond to Plaintiff's Motion for Enlargement of Time was not the result of a

conscious choice, but rather a lack of knowledge that a Motion had been filed in the first place.

(Ltr. of Lisa D. Blankenburg, defense counsel, dated Aug. 23, 1999). Counsel's letter to the Court indicates that Plaintiff was forwarded a copy of said letter. Plaintiff neither responded to the allegations contained therein nor provided an explanation for his failure to serve defense counsel with a copy of his First Enlargement Motion

Rule 5(a) of the Federal Rules of Civil Procedure states that "every pleading subsequent to the original complaint . . . shall be served upon each of the parties." Fed. R. Civ. P. 5(a). Plaintiff clearly violate Rule 5(a)'s express requirement that all parties be served with every pleading. It is important to note that the rules of civil procedure serve important functions and, in appropriate circumstances, failure to abide by them can result in dismissal. See Kushner v. Winterthur Swiss Ins. Co., 620 F.2d 404 (3d Cir. 1980); Thomsen v. Sun Co. Inc., 498 F. Supp. 1109, 1111 (E.D. Pa. 1980). In view of the entire record in this action, however, the Court will not dismiss Plaintiff's lawsuit solely on the grounds that he failed to serve defense counsel with a copy of his First Enlargement Motion.

What the Court finds more exasperating is that Plaintiff represented to this Court that he made the appropriate service upon defense counsel. It was upon this representation that the Court granted Plaintiff's First Enlargement Motion. Indeed, the Court

expressly stated that it granted Plaintiff's Motion because it was unopposed by defendants.

It is axiomatic that nul prendra advantage de son tort demense or that no one shall take advantage of his own wrong. In this circumstance, to consider the pleadings filed by Plaintiff after he misrepresented himself to the Court would serve no purpose other than allowing him to reap the benefits of his duplicity. Indeed, it would allow Plaintiff the undeserved chance to benefit from a procedural morass of his unethical and underhanded making. Therefore, the Court considers the record as it existed on August 12, 1999, the date of entry of the Court's Order granting as unopposed Plaintiff's First Enlargement Motion.

As of August 12, 1999, Transamerica, et al. and the City had filed motions to dismiss. Plaintiff not only failed to respond to those motions by August 12, Plaintiff has not to date responded to those motions. Local Rule of Civil procedure 7.1(c) states in pertinent part that "[i]n the absence of a timely response, [a] motion may be granted as uncontested except that a summary judgment motion . . . will be governed by Fed. R. Civ. P. 56(c)." E.D. Pa. R. Civ. P. 7.1(c). Local Rule 7.1(c) is applicable in this circumstance as Plaintiff failed to file a responsive pleading to the defendants' various motions to dismiss. Therefore, the motions to dismiss of Transamerica, et al. and the City are each granted as unopposed. This holding thereby effectively acts as a dismissal of

Plaintiff's Complaint and renders moot all other outstanding motions.

It must finally be noted that "[a]ccess to the courts is a fundamental tenet of our judicial system [and] legitimate claims should receive a full and fair hearing no matter how litigious the plaintiff may be." In re Oliver, 682 F.2d 443, 446 (3d. Cir. 1982). Moreover, courts traditionally have shown pro se litigants a leniency not extended to those with legal representation. In re McDonald, 489 U.S. 180, 184, 109 S. Ct. 993, 996 (1989); Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596 (1972), reh'g denied 405 U.S. 948 (1972). This leniency does not, however, grant pro se litigants a license to abuse with impunity the judicial process. Wexler v. Citibank, No. CIV.A. 94-4172, 1994 WL 580191, at \*6, (E.D. Pa. Oct. 21, 1994).

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN FREMPONG-ATUAHENE, et al. : CIVIL ACTION  
: :  
v. : :  
: :  
REDEVELOPMENT AUTHORITY OF THE : :  
CITY OF PHILADELPHIA, et al. : NO. 99-0704

**O R D E R**

AND NOW, this 13<sup>th</sup> day of January, 2000, upon consideration of Defendants Transamerica Financial Consumer Discount Company, First National Mortgage, Joan P. Brodsky, Leslie E. Puida, Frank Federman, "Phelan," Federman and Phelan, and John and Jane Does' (collectively, "Transamerica, et al.") Motion to Dismiss Plaintiff's Complaint (Docket No. 3), Defendant the City of Philadelphia's (the "City") Motion to Dismiss Plaintiff's Complaint (Docket No. 5), Plaintiff Stephen Frempong-Atuahene's ("Plaintiff") Motion for the Enlargement of Time to Respond to Defendant's Motion to Dismiss (Docket No. 9), Plaintiff's Amended Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 12), Transamerica, at al.'s response to Plaintiff's Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 13), and the City's Response to Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 14), IT IS HEREBY ORDERED that:

1) Defendants Transamerica. et al.'s Motion to Dismiss Plaintiff's Complaint (Docket No. 3) is **GRANTED**;

(2) Defendant the City of Philadelphia's (the "City") Motion to Dismiss Plaintiff's Complaint (Docket No. 5) is **GRANTED;**

(3) Plaintiff's Motion for the Enlargement of Time to Respond to Defendant's Motion to Dismiss (Docket No. 9) is **DENIED as moot;**

(4) Plaintiff's Amended Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 12) is **DENIED as moot;**

(5) Transamerica, at al.'s response to Plaintiff's Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 13) is **DENIED as moot;** and

(6) the City's Response to Motion for Leave of Court to Amend and/or Supplement Original Pleadings (Docket No. 14) is **DENIED as moot.**

IT IS FURTHER ORDERED that the Clerk of Court is to mark this case as **CLOSED.**

BY THE COURT:

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HERBERT J. HUTTON, J.