

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

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HARMON LTD.,	:	January Term, 2000
Plaintiff	:	
v.	:	No. 2023
CMC EQUIPMENT RENTAL, INC., et al.,	:	Commerce Case Program
Defendants	:	Control No. 101404

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**MEMORANDUM OPINION**

Plaintiff Harmon Ltd. (“Harmon”) has filed a motion for jury trial nunc pro tunc (“Motion”). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order granting the motion.

**BACKGROUND**

Harmon initiated this action by filing a complaint (“Complaint”) against CMC Equipment Rental, Inc. (“CMC”) on January 12, 2000. On May 9, counsel for Harmon informed Mary McGovern, Manager of the Complex Litigation Center, of his intent to file a praecipe for a jury trial (“Praecipe”) and prepared the Praecipe later that day. However, the Praecipe was never filed, an oversight that Harmon attributes to clerical error.

CMC filed an answer to the Complaint (“Answer”) on June 6, joining B.T.K. and the Trustees of the University of Pennsylvania (“Trustees”) as additional defendants. The Trustees were served on June 23, although B.T.K. has not been served. Throughout this time, Harmon was under the mistaken impression that it had requested and perfected a demand for a jury trial.

During a recent routine check of the docket, Harmon discovered that this matter was listed as a non-jury case.<sup>1</sup> Harmon demanded a jury trial on October 13 and filed the Motion on October 18. No response to the Motion has been filed by CMC, the Trustees or B.T.K.

### **DISCUSSION**

Under Pennsylvania Rule of Civil Procedure 1007.1 (“Rule 1007.1”), the right to demand a jury trial is “waived unless a party files and serves a written demand for a jury trial not later than twenty days after service of the last permissible pleading.” Rule 1007.1(a). However, Rule 1007.1 does not “explicitly bar a trial court from allowing an untimely jury demand.” Dauphin Deposit Bank & Trust Co. v. Pifer, 383 Pa. Super. 275, 279, 556 A.2d 904, 906 (1989).<sup>2</sup> See also Hawley Bank v. Santini, 256 Pa. Super. 203, 207, 389 A.2d 671, 673 (1978) (“[s]ince the right involved is a constitutional right, it can be expected that the courts will be flexible in permitting delayed demands for jury trial”).

There is “no inherent prejudice in proceeding to trial by jury as opposed to trial before a judge.” Dauphin Deposit Bank & Trust Co. v. Pifer, 383 Pa. Super. at 280, 556 A.2d at 907 (quoting Commonwealth v. Morales, 508 Pa. 51, 65, 494 A.2d 367, 374 (1985)). Consequently, “lack of prejudice to either side is not a factor in determining a waiver,” and a court’s decision to allow an untimely request for a jury trial will not be reversed without “good reason.” Id., 383 Pa. Super. at 281, 556 A.2d at 907.

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<sup>1</sup> The Motion does not state when Harmon made this realization. However, it is implied that the realization came sometime after August 17.

<sup>2</sup> In reaching its conclusion, the Dauphin Deposit Bank & Trust Co. court relied on Pennsylvania Rule of Civil Procedure 126, which requires that the Pennsylvania Rules of Civil Procedure be “liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding.”

Here, the Motion asserts that Harmon believed it had perfected a jury trial. Motion at ¶¶ 6, 14. In addition, Harmon has attempted to correct its mistake by demanding a jury trial and filing the Motion. No response contesting Harmon's assertions has been filed.<sup>3</sup> Accordingly, it is appropriate to allow Harmon to demand a jury trial and the Motion is hereby granted.<sup>4</sup>

BY THE COURT:

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JOHN W. HERRON, J.

Dated: December 14, 2000

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<sup>3</sup> The Court recognizes that service has not been made on B.T.K. However, as noted supra, prejudice to a party is irrelevant in determining whether to permit a late demand for a jury trial. As a result, B.T.K. would be limited to challenging the veracity of the assertions in the Motion, a challenge that the Court believes would be difficult to mount successfully.

<sup>4</sup> There is no need to address Harmon's argument that the last permissible pleading in this matter has not been served.

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**ORDER**

AND NOW, this 14th day of December, 2000, upon consideration of Plaintiff Harmon Ltd.'s Motion for Jury Trial Nunc Pro Tunc, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Motion is GRANTED.

BY THE COURT:

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JOHN W. HERRON, J.