

Legal Ghostbusting: Pennsylvania's Involuntary Plaintiff Rule

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Ever find yourself being sued by a ghost in Pennsylvania? The opening question lends itself to intrigue for sure, but in reality, Pennsylvania Rules of Civil Procedure relating to involuntary plaintiffs are no less of a phantasm to the majority of even the most experienced practitioners.

To begin, Pennsylvania Rule of Civil Procedure 2227(b) provides as follows:

"If a person who must be joined as a plaintiff refuses to join, he or she shall, in a proper case, be made a defendant or an involuntary plaintiff when the substantive law permits such involuntary joinder."

Most practitioners will rarely, if ever, come across this rule in their practice, but all should be aware of it not only as a sword but if they should find their client in a defensive position fighting a plaintiff who had nothing to do with being brought into the lawsuit and may not even be aware of its existence. There are four general situations in which a person may be made an involuntary plaintiff in Pennsylvania.

1. The action is in rem.
2. The unwilling person can be regarded as estopped by his conduct from objecting to the prosecution of the suit without his consent.
3. The willing plaintiff and the unwilling person are joint tenants or tenants by the entirety and the action is brought to preserve or recover the jointly owned property for injury to such property.
4. The action is equitable in nature and no recovery of money damages is sought.

Courts have commented that the law permitting involuntary joinder as a plaintiff is "surpassingly narrow."

So, where does the illusory nature of the involuntary plaintiff come in? Well, in the writer's experience, it is unclear what a willing plaintiff must do prior to determining whether the joined party can be joined on an involuntary basis. The rule seems to require that a party may be joined only after the party has refused to join. See Pa. R.C.P. 2227(b). Such language would imply that the willing plaintiff must make an attempt of sorts to request that the involuntary party join in the lawsuit prior to simply adding them as a named plaintiff. Further difficulty arises when the whereabouts of the involuntary plaintiff are unknown. Under this scenario, the defendant finds themselves being sued by a party who had no intention to prosecute the lawsuit, and whose whereabouts and even existence may be unknown.

However, practitioners should be aware that under the four limited circumstances above, one may find oneself defending against a "ghost" plaintiff.

For additional information contact Kevin Hall.