

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

CHARLES P. KUHAR, ET AL.	:	August Term 2022
	:	
v.	:	No. 1916
	:	
CITY OF PHILADELPHIA, ET AL.	:	Control No. 22102107, 22102108
	:	
	:	

ORDER

AND NOW, this 4th day of November, 2022, upon consideration of the Preliminary Objections to the Third Amended Complaint filed by the City of Philadelphia and the Abortion Liberation Fund of Pennsylvania, and Plaintiffs having failed to file a responsive pleading within the time allowed pursuant to Rule 1026(a), the Court states as follows:

1. The Preliminary Objections are endorsed with a proper Notice to Plead.
2. Plaintiffs had 20 days in which to file a responsive pleading; no agreement to extend the time was brought to the Court's attention.
3. Although Plaintiffs did not file a timely responsive pleading, Plaintiffs filed a Motion to Defer Trial Court Proceedings Pursuant to Pa. R. App. P. 1701, which is in essence a second attempt by Plaintiffs to seek a stay.
4. This Court previously denied Plaintiffs' Motion for Supersedeas.

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5. The pending appeal to the Commonwealth Court on this Court's denial of Plaintiffs' Motion for Preliminary Injunction did not relieve Plaintiffs from complying with the applicable pleading rules.

6. The standards for the granting or denying of a Preliminary Injunction, and the sustaining or overruling of Preliminary Objections are distinct, with different procedures and substantive burdens. Thus, Pa. R. App. P. 1701 does not operate as a stay of the entire case.

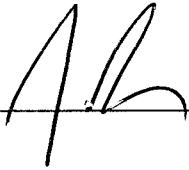
7. While the Court, at oral argument, acknowledged that the arguments on the claims and defenses pertinent to the Motion for Preliminary Injunction overlapped with the issues raised in the Preliminary Objections, the oral advocacy is no substitute for the necessary clarity and narrowing of issues resolved through compliance with the pleading requirements set forth in the rules.

8. Plaintiffs could have, but apparently chose not to, both file a responsive pleading and file the Motion to Defer so as to preserve any claim or defense that necessarily would have been raised in a responsive pleading.

9. Even though Plaintiffs have not filed a responsive pleading, the Court has (a) applied the appropriate Preliminary Objection standard; and (b) considered, to the extent applicable and appropriate, Plaintiffs' oral responses, during the Preliminary Injunction oral argument, to the defenses set forth in the Preliminary Objections.

Therefore, for the reasons set forth above, and as supplemented by the Court's Memorandum Opinion, it is **ORDERED** that the (i) the City of Philadelphia's Preliminary Objections to Count I of the Third Amended Complaint are **SUSTAINED**; (ii) the Abortion Liberation Fund of Pennsylvania's Preliminary Objections to Count I of the Third Amended Complaint are **SUSTAINED**; and (iii) the Third Amended Complaint is **DISMISSED**.

BY THE COURT:

J.  _____