

¹ As discussed *infra*, Il Fiolo D'Olio, LLC was improperly designated in the Frescatore's complaint as La Voglia, La Voglia Group, and La Voglia Italian Restaurant. However, it appears the complaint and caption were never amended to correct the designation. Further, as explained herein, John Doe A through Z are not legal parties to this action.

We glean the following pertinent background from our examination of the record. On December 4, 2023, the Frescatore filed a complaint sounding in negligence against Loria Joint Venture, John Doe A through Z, La Voglia, La Voglia Group, La Voglia Italian Restaurant, Giuseppe Loria, Michael Loria, Ermir Madani, Dave Marques, and Arber Mullai, after Mrs. Frescatore slipped and fell on snow or ice while walking to her husband's car upon leaving La Voglia Italian Restaurant on December 20, 2021.

On February 7, 2024, Loria Joint Venture, Giuseppe Loria, and Michael Loria (collectively "Loria Appellees") filed an answer with new matter and cross-claim against all other defendants.^{2, 3} On February 12, 2024, the Frescatore filed a reply to the Loria Appellees' new matter.

On May 1, 2024, the Loria Appellees filed a motion to compel against the Frescatore. The Loria Appellees alleged they served the Frescatore with requests for interrogatories and production of documents on February 7, 2024. According to the Loria Appellees, the Frescatore should have responded by no later than March 7, 2024, but failed to do so. On March 19, 2024, the Loria Appellees advised the Frescatore their discovery responses

² The record indicates some of the Loria Appellees are the commercial landlords for the property where La Voglia Italian Restaurant is located. **See, e.g.,** Madani Appellees' Answer, 5/17/24, at ¶¶ 57-67; Loria Appellees' Response, 5/28/24, at ¶ 59; Madani Appellees' Stipulation of Facts, 7/30/25, at ¶ 6.

³ In the Loria Appellees' cross-claim, they alleged — if the Frescatore's allegations are proven — the other defendants are solely liable, jointly or severally liable along with them, and/or liable over them for indemnity and/or contribution pursuant to common law and contract.

were overdue, but said they received no response. Consequently, the Loria Appellees asked the trial court to direct the Frescatores to provide discovery responses within twenty days. On May 6, 2024, the trial court issued a notice that the Loria Appellees' motion to compel was not being acted upon by the court due to certain deficiencies with the motion.

On May 17, 2024, Ermir Madani, Dave Marques, Arber Mullai, and Il Fiolo D'Olio, LLC (collectively "Madani Appellees") filed an answer with new matter and cross-claims.⁴ Therein, *inter alia*, they indicated Il Fiolo D'Olio, LLC was incorrectly identified as La Voglia, La Voglia Italian Restaurant, and La Voglia Group. **See** Madani Appellees' Answer, 5/17/24, at 2 (stating Il Fiolo D'Olio, LLC was incorrectly identified as La Voglia and La Voglia Italian Restaurant); *id.* at ¶¶ 5-7 (denying La Voglia and La Voglia Italian Restaurant are jural entities, and denying the Frescatores' allegations identifying La Voglia Group); **see also** Madani Appellees' Praecipe to Attach Exhibit A, 5/23/24, at 2 (indicating Il Fiolo D'Olio, LLC was incorrectly identified as La Voglia, La Voglia Italian Restaurant, and La Voglia Group).⁵

⁴ The record indicates the Madani Appellees operate La Voglia Italian Restaurant and are the commercial tenants of the Loria Appellees. **See, e.g.,** Madani Appellees' Answer, 5/17/24, at ¶¶ 57-67; Loria Appellees' Response, 5/28/24, at ¶ 59; Madani Appellees' Stipulation of Facts, 7/30/25, at ¶ 6.

⁵ In the Madani Appellees' cross-claims, they claimed that — if they are found liable for the Frescatores' injuries — the Frescatores' injuries were caused by the acts and/or omissions of the other defendants, such that the other defendants are solely liable or liable over the Madani Appellees by way of contribution and/or indemnity. The Madani Appellees additionally asserted, (*Footnote Continued Next Page*)

On May 23, 2024, the Frescatorees filed a reply to the new matter raised by the Madani Appellees. On May 28, 2024, the Loria Appellees filed a response to the cross-claims of the Madani Appellees.

On May 29, 2024, the Loria Appellees re-filed their motion to compel, indicating they still had not received discovery responses from the Frescatorees. On June 3, 2024, the trial court issued an order, directing the Frescatorees to provide responses to the Loria Appellees' discovery requests within twenty days or warning they may suffer sanctions upon further application. In the alternative, the trial court stated the Frescatorees may file for a hearing within ten days.

On December 26, 2024, the Madani Appellees filed a motion to compel, claiming they served the Frescatorees with discovery on June 5, 2024. After the Frescatorees failed to respond, the Madani Appellees said their counsel e-mailed the Frescatorees' counsel, who asked for a thirty-day extension on July 16, 2024. When the Frescatorees again failed to answer discovery, the Madani Appellees' counsel said they e-mailed the Frescatorees' counsel and requested the overdue discovery by December 13, 2024. According to the Madani Appellees, the Frescatorees failed to comply.

On January 1, 2025, the trial court issued a case management order, stating the court administrator would consider the matter as ready for

pursuant to their commercial lease with the Loria Appellees, the Loria Appellees were responsible for common area maintenance and owe the Madani Appellees defense and indemnity.

arbitration or trial on June 4, 2025. On February 6, 2025, the Madani Appellees re-filed their motion to compel. On February 18, 2025, the trial court granted the Madani Appellees' motion to compel, ordering the Frescatores to respond to the Madani Appellees' discovery requests within twenty days or risk sanctions upon further application.

On March 13, 2025, the Madani Appellees filed another motion to compel. They relayed that, in violation of the trial court's February 18, 2025 order, the Frescatores did not respond to their discovery requests. On March 21, 2025, the trial court directed the Frescatores to provide responses to the Madani Appellees' discovery within twenty days. It warned "[f]ailure to comply shall result in [the Frescatores'] preclusion from presenting evidence." Order, 3/21/25.

On April 14, 2025, the Madani Appellees moved for sanctions, stating the Frescatores still had not provided responses to their discovery requests and asking the court to preclude the Frescatores from offering any evidence, witnesses, and testimony at arbitration and trial. On April 25, 2025, the trial court granted the Madani Appellees' request for sanctions, and ordered that the Frescatores were precluded from offering evidence, witnesses, and testimony at arbitration and trial.

On May 7, 2025, the Frescatores filed a motion for reconsideration. They stated the suit was filed on December 4, 2023, and "[i]n the initial weeks and months[,] several attorneys at counsels [*sic*] law firm left to form a new firm, [and] there was some confusion about which files about which files [*sic*]

were going to the new firm and which were remaining.” Frescatores’ Motion for Reconsideration, 5/7/25, at ¶ 3. They contended, “[a]s a result of this confusion, [the Frescatores’] counsel was unable to reach [them] to answer the discovery in a timely manner, yet it was being answered *du [sic]* to the intital [*sic*] discovery motion.” ***Id.*** at ¶ 4. They said, upon receiving the order for sanctions, they served their discovery responses on “Defendants”; however, based on the exhibit attached in support, the Frescatores answered the Loria Appellees’ discovery requests, instead of the Madani Appellees’ discovery requests. ***Id.*** at ¶ 6; ***see also id.*** at Exhibit C (attaching discovery responses to the Loria Appellees’ discovery requests, not the Madani Appellees’ discovery requests, and showing they were served on the Loria Appellees’ counsel, not the Madani Appellees’ counsel). The Frescatores, thus, sought reconsideration of the trial court’s order issuing sanctions.

The Madani Appellees filed a reply in opposition to the Frescatores’ motion for reconsideration. Among other things, they pointed out the Frescatores still had not provided responses to their discovery requests.

On June 6, 2025, the trial court denied the Frescatores’ motion for reconsideration. On June 17, 2025, the Frescatores filed a motion to modify the trial court’s April 25, 2025 order. Therein, among other things, they argued their late discovery responses have not caused prejudice, and that attorneys’ fees would have been a sufficient sanction under the circumstances. They requested oral argument, asserting no oral argument had been granted to date on these matters.

On July 1, 2025, the trial court scheduled the matter for trial in the August trial term. On July 2, 2025, the Loria Appellees filed a reply to the Frescatore's motion for modification. Among other things, they argued the motion for modification should not be considered and/or should be denied, as it represents an improper second attempt to seek reconsideration. They also denied they were not prejudiced, stating they received no discovery responses until five days after the preclusion order. On July 3, 2025, the Madani Appellees likewise filed a reply in opposition to the Frescatore's motion for modification. They maintained, among other things, that the Frescatore's modification motion was nothing more than a second motion for reconsideration, and that the Frescatore still had not answered the Madani Appellees' discovery requests. They also asserted the Frescatore's refusal to cooperate in discovery stalled the discovery process, and prevented the Madani Appellees from fully investigating Appellees' claims, conducting depositions, and evaluating the case to determine the need for expert witnesses.

On July 3, 2025, the Loria Appellees filed a motion for summary judgment. They argued there is no evidence the Loria Appellees were negligent and, additionally, that the Frescatore are precluded from introducing any evidence at trial. On July 7, 2025, the Madani Appellees also filed a motion for summary judgment, in which they argued the Frescatore cannot establish a *prima facie* case against them due to the trial court's order

precluding them from offering evidence, witnesses, and testimony at arbitration and trial.

On July 22, 2025, the Loria Appellees moved to continue the trial, explaining all parties seek a sixty-day continuance of the trial in order to obtain a ruling on the pending summary judgment motions as well as the Frescatore's motion for modification. On July 28, 2025, the trial court granted the Loria Appellees' motion for summary judgment. On July 30, 2025, the Frescatore's filed responses to the Loria Appellees' and Madani Appellees' motions for summary judgment. In their accompanying memoranda, they argued, among other things, the summary judgment motions were premature, given that their motion for modification remained pending before the trial court.⁶

On July 30, 2025, the trial court struck the case from the August 2025 trial list, and scheduled oral argument for September 17, 2025. On August 5, 2025, the Frescatore's filed another motion for reconsideration. This time, they sought reconsideration of the trial court's July 28, 2025 order granting summary judgment in favor of the Loria Appellees, arguing it was prematurely entered as the trial court entered the order before the Frescatore's response to the summary judgment motion was due. The Loria Appellees filed a reply to the motion for reconsideration.

⁶ In the Frescatore's memorandum of law in response to the Madani Appellees' motion for summary judgment, they acknowledged La Voglia Italian Restaurant "is owned by the Il Fiolo D'Olio, LLC and its related defendants." Frescatore's Memorandum of Law, 7/30/25, at 2.

At oral argument on September 17, 2025, when given the opportunity to explain why the discovery requests were not timely answered, the Frescatore's counsel claimed there was "an issue going on at the office that until there was a sanctions [o]rder[,] it didn't make it to my immediate attention as an emergency. We had already been working on those answers to get them in timely. They just weren't finalized at that time." N.T., 9/17/25, at 5.

Following oral argument, the trial court entered several orders. First, on September 26, 2025, it granted the Frescatore's motion for reconsideration relating to the Loria Appellees' motion for summary judgment, and vacated its July 28, 2025 order granting the Loria Appellees' motion for summary judgment. Second, on September 30, 2025, it denied the Frescatore's motion for modification of the trial court's April 25, 2025 order. Finally, on September 30, 2025, in separate orders, it granted the Loria Appellees' and Madani Appellees' motions for summary judgment, citing its April 25, 2025 order precluding the Frescatore from introducing evidence.⁷ The Frescatore timely

⁷ Throughout the litigation below, the Madani Appellees and the trial court consistently indicated Il Fiolo D'Olio, LLC was incorrectly designated as La Voglia, La Voglia Italian Restaurant, and La Voglia Group. We counted at least **fifteen** times that filings in the record by the Madani Appellees and trial court noted this incorrect designation, yet to date, the pleadings and caption have not been amended. We further note neither the Frescatore nor the Loria Appellees objected to the filings made below by Il Fiolo D'Olio, LLC.

appealed.⁸ The trial court ordered the Frescatores to file a concise statement pursuant to Pa.R.A.P. 1925(b), and they did so.⁹ The trial court then issued a Rule 1925(a) opinion.

⁸ Generally, appeals may be taken as of right from any final order. Pa.R.A.P. 341(a). We consider the trial court's September 30, 2025 order entering summary judgment in favor of the Madani Appellees to be a final order, as it disposed of all claims and of all parties. Pa.R.A.P. 341(b)(1) (providing an order is final where it disposes of all claims and of all parties). To the extent the claims against John Doe A through Z were not resolved, we note John Doe A through Z were never identified, never served, and had never entered an appearance in the action. Accordingly, the John Doe defendants were not legal parties to the action, and their presence in the pleadings does not preclude the September 30, 2025 order from being a final order. **Hollinger v. Dietrich**, --- A.3d ----, 2026 WL 1800499, at *4 n.3 (Pa. Super. filed June 23, 2026). Further, insofar as La Voglia, La Voglia Italian Restaurant, and La Voglia Group were named in the pleadings instead of Il Fiolo D'Olio, LLC, the record indicates that the parties and the trial court understood this was simply an incorrect designation, as nobody challenged Il Fiolo D'Olio, LLC's participation in the case and/or La Voglia, La Voglia Italian Restaurant, and La Voglia Group's lack of participation in the case.

We also note, while the appeal was pending, the Frescatores say they filed a praecipe in the trial court on February 4, 2026, to dismiss from the action all remaining defendants not subject to the motions for summary judgment or this appeal, *i.e.*, the John Doe defendants and La Voglia, La Voglia Italian Restaurant, and La Voglia Group. Response to Rule to Show Cause, 2/6/26, at ¶¶ 15-17. We discuss this purported dismissal further *infra*.

⁹ Problematically, the trial court's Rule 1925(b) order does not comply with the requirements of Rule 1925(b)(3). **See** Pa.R.A.P. 1925(b)(3) (setting forth the required contents of the judge's Rule 1925(b) order). As a result, we are unable to find waiver based on any deficiencies in the Frescatores' Rule 1925(b) statement. **See Greater Erie Indus. Dev. Corp. v. Presque Isle Downs, Inc.**, 88 A.3d 222, 225 (Pa. Super. 2014) (*en banc*) ("[I]n determining whether an appellant has waived his issues on appeal based on non-compliance with Pa.R.A.P. 1925, it is the trial court's order that triggers an appellant's obligation[. T]herefore, we look first to the language of that order.") (citations omitted). Inasmuch as the trial court uses a form Rule 1925(b) order, we respectfully encourage the trial court to revise its order to
(Footnote Continued Next Page)

On appeal, the Frescatorees raise the following issues for our review:

[1]. Did the trial court err as a matter of law and abuse its discretion in precluding the Frescatorees from offering evidence, witnesses, and testimony at trial against Defendants-Appellees Loria Joint Ventures, Giuseppe Loria, Michael Loria, Emir Madani, Arber Mullai, Dave Marques, and Il Fiolo D'Olio, LLC and eventually granting summary judgment in favor of Defendants-Appellees Loria Joint Ventures, Giuseppe Loria, Michael Loria, Emir Madani, Arber Mullai, Dave Marques, and Il Fiolo D'Olio, LLC where the Frescatorees' discovery violation did not meet the most extreme circumstances warranting the severe sanction of dismissal?

[2]. Did the trial court abuse its discretion in imposing a discovery sanction precluding the Frescatorees from offering evidence, witnesses, and testimony at trial against Defendant-Appellees Loria Joint Ventures, Giuseppe Loria, Michael Loria, Emir Madani, Arber Mullai, Dave Marques, and Il Fiolo D'Olio, LLC without scheduling a sanctions hearing, pursuant to Bucks County Local Rule 4019(g)(1)*(a)-(b)?

[3]. Did the trial court err as a matter of law and abuse its discretion in precluding the Frescatorees from offering evidence, witnesses, and testimony at trial against Defendants-Appellees Loria Joint Ventures, Giuseppe Loria, and Michael Loria and eventually granting summary judgment in favor of Defendant-Appellees Loria Joint Ventures, Giuseppe Loria, and Michael Loria where Defendants-Appellees Loria Joint Ventures, Giuseppe Loria, and Michael Loria failed to move for sanctions?

Frescatorees' Brief at 2-4 (some capitalization modified).¹⁰

In the Frescatorees' first issue, they argue the discovery sanction resulting in summary judgment was inappropriate when compared to the

strictly adhere to the mandates of Rule 1925(b)(3). ***See Imbrenda v. Imbrenda***, 350 A.3d 1061, 1067-70 (Pa. Super. 2026) (discussing the importance of strictly complying with Rule 1925(b)(3)).

¹⁰ We have re-ordered the Frescatorees' issues for ease of disposition.

discovery violation. ***Id.*** at 16.¹¹ They claim dismissal is the most severe sanction and is highly disfavored absent extreme circumstances, ***id.***, and that the trial court attempted to justify the inappropriate sanction after the fact in its Rule 1925(a) opinion through an erroneous application of the relevant factors courts must consider. ***Id.*** at 18.

We recognize, “in reviewing a trial court’s imposition of sanctions due to a party’s failure to comply with a discovery order, the imposition and degree of the sanction is within the discretion of the trial court. Accordingly, this Court will not disturb such a sanction absent an abuse of discretion.” ***Nat’l Brokers of America, Inc. v. Jordan***, 307 A.3d 1206, 1219 (Pa. Super. 2023) (cleaned up). Pennsylvania Rule of Civil Procedure 4019(a)(1) states the court may, on motion, make an appropriate sanctions order if a party fails to respond to discovery requests or obey an order of court respecting discovery. ***See generally*** Pa.R.Civ.P. 4019(a)(1). Our Supreme Court has recognized, “[g]enerally, courts are afforded great discretion in fashioning remedies or sanctions for violations of discovery rules and orders.” ***City of Phila. v. Fraternal Order of Police Lodge No. 5 (Breary)***, 985 A.2d 1259, 1269 (Pa. 2009) (citations and footnote omitted). However, the Court noted it “highly disfavor[s] dismissal of an action, whether express or constructive, as a sanction for discovery violations absent the most extreme of circumstances.”

¹¹ As the Madani Appellees were the only defendants that moved for sanctions, we consider the Frescatorese’s first issue with respect to the Madani Appellees only, and not the Loria Appellees. We address the Loria Appellees in the Frescatorese’s third issue *infra*.

Id. at 1270 (citations omitted). In imposing a discovery sanction, our High Court instructed courts should examine the following four factors before determining the general severity and vitality of a discovery sanction:

(1) the prejudice, if any, endured by the non-offending party and the ability of the opposing party to cure any prejudice; (2) the noncomplying party's willfulness or bad faith in failing to provide the requested discovery materials; (3) the importance of the excluded evidence in light of the failure to provide the discovery; and (4) the number of discovery violations by the offending party.

Id. (citations omitted). Further, the Court explained "greater emphasis" should be placed on "the first two factors: (1) the prejudice to the non-offending party and the ability to cure that prejudice; and (2) the willfulness of the offending party's conduct." **Id.** at 1271.

We, thus, consider these factors. First, we examine what prejudice, if any, the Madani Appellees suffered due to the Frescatore's non-compliance and the Frescatore's ability to cure that prejudice. "[P]rejudice for purposes of [a] discovery violation is said to result any time there is a substantial diminution of a party's ability to properly present its case." **Hoss Land Co. v. Thorson**, 324 A.3d 508, 513 (Pa. Super. 2024) (citation omitted). Here, the trial court weighed that the case was set to go to trial in the court's August 2025 term, and yet the Frescatore made no attempt to respond to the Madani Appellees' discovery requests. Trial Court Opinion ("TCO"), 12/5/25, at 6. Without basic pieces of information from the Frescatore, the trial court determined the Madani Appellees could not mount their defense. **Id.** It also observed the record does not show that the Frescatore ever provided

responses to the Madani Appellees' discovery requests, instead only answering the Loria Appellees' requests. ***Id.***

The Frescatores, in turn, argue it was highly unlikely that the case was going to go to trial in August 2025, as the trial court imposed the sanction in April 2025. Frescatores' Brief at 19. While they concede they did not respond to the Madani Appellees' discovery, they claim their responses to the Loria Appellees' discovery "provided *all Appellees* with information adequate to mount a defense." ***Id.*** (emphasis in original).

We conclude the record supports that prejudice has resulted from the Frescatores' discovery violations. If not for the issues with the Frescatores' not responding to discovery, the Frescatores provide no reason as to why the case would not have proceeded to trial in August 2025. As a result of the Frescatores' failure to timely answer discovery, the Madani Appellees say they "were unable to obtain basic information necessary to evaluate liability, causation, and damages; could not depose [the Frescatores]; could not assess the need for expert testimony; and were forced to repeatedly seek court intervention, incurring unnecessary expense and delay." Madani Appellees' Brief at 26-27. Further, the Madani Appellees first served discovery on the Frescatores on June 5, 2024, and the Madani Appellees still have not received responses to their requests. To the extent the Frescatores claim their responses to the Loria Appellees' discovery requests sufficiently responded to the Madani Appellees' discovery requests, they point to no authority to support the proposition that answering one defendant's discovery requests relieves

the plaintiff of responding to another defendant's separate discovery requests. Thus, the record supports the Madani Appellees were prejudiced by the Frescatore's continued failure to answer their discovery requests, and the prejudice has not been cured.

Second, we consider whether the Frescatore's willfully, or in bad faith, failed to respond to the discovery requests. The trial court conveyed, given the length of time that passed and the numerous opportunities for the Frescatore's counsel to address their noncompliance, the record clearly supports the Frescatore's willfully failed to respond to the discovery requests. **See** TCO at 7. The Frescatore's argue, however, they "consented" to the trial court's "initial" discovery order, and say they provided a legitimate reason for the delay, stating "several attorneys left [the Frescatore's] counsel's law firm to form a new firm, leading to confusion regarding which files would remain with [the Frescatore's] counsel, and which files belonged to the newly formed firm." Frescatore's Brief at 21-22 (citations omitted).

To begin, it is unclear to us what the Frescatore's mean when they say they "consented" to the trial court's "initial" discovery order. Further, they do not provide a legitimate excuse for their non-responsiveness. Even if transitions occurred with attorneys at the Frescatore's counsel's firm, that does not justify wholly ignoring their discovery obligations for nearly a year. They also still have not served responses to the Madani Appellees' discovery. Accordingly, we conclude the record supports the trial court's finding the Frescatore's willfully failed to respond to the discovery requests.

Third, we analyze the importance of the excluded evidence in light of the failure to provide the discovery. The trial court stated the Frescatores failed to provide the Madani Appellees with basic information about the case by not responding to their discovery requests. **See** TCO at 6. The Frescatores concede the Madani Appellees have a right to receive responses to their discovery requests, but say the Madani Appellees suffered minimal prejudice and any alleged prejudice has been cured, such that the sanction of dismissal is unwarranted. **See** Frescatores' Brief at 22-23. We have already rejected the Frescatores' arguments that the prejudice was minimal and has been cured. While we recognize precluding the Frescatores from offering evidence, witnesses, and testimony at arbitration and trial constructively dismisses their case, it is not unwarranted where the Frescatores failed to provide the Madani Appellees with any answers to their discovery requests. As the Madani Appellees advance, the Frescatores "should not be allowed to ignore their discovery obligations, ... and then be allowed to put forth a surprise case with witnesses, experts[,] and exhibits at arbitration or trial, whilst not participating in moving the case forward towards resolution." Madani Appellees' Brief at 28.

Fourth and finally, we look at the number of discovery violations by the Frescatores. The trial court said the Frescatores failed to comply with two court orders compelling them to respond to the Madani Appellees' discovery requests. **See** TCO at 7. In response, the Frescatores claim their discovery violations were minimal and do not warrant dismissal. Frescatores' Brief at

23-24. We disagree with the Frescatores. On top of the trial court's two orders compelling the Frescatores to respond to the Madani Appellees' discovery, the Frescatores still have not answered the Madani Appellees' discovery requests that were originally served on June 5, 2024, despite the trial court's sanctions order and multiple notices from the Madani Appellees. Thus, the record supports the Frescatores' discovery violations were prolonged and not isolated occurrences. No relief is due on the Frescatores' first issue.

In the Frescatores' second issue, they argue the trial court erred by failing to schedule a sanctions hearing pursuant to Bucks County Local Rule 4019(g)(1)*(a)-(b). Frescatores' Brief at 24. This rule states:

*(a) Any party moving to compel compliance with this chapter shall submit with its motion a form of order directing compliance within a fixed period of time, and allowing the alternative of filing a motion for hearing within 10 days of service of said order.

*(b) A subsequent motion seeking sanctions for failure to comply with an order entered under subsection *(a) of this rule shall include an order directing that the non-complying party appear for a hearing at which sanctions will be imposed. Notice of such hearing shall be given at least 10 days prior to the hearing to all counsel by regular mail and to the party against whom sanctions are to be imposed by regular mail and certified mail, return receipt requested.

Bucks Cty. R.Civ.P. 4019(g)(1)*(a)-(b). The Frescatores also complain the Madani Appellees, in contravention of the rule, failed to submit a form of order allowing the alternative of filing a motion for hearing within ten days of service, ostensibly pursuant to subsection (a), and never provided notice of the hearing by regular mail to the Frescatores, seemingly under subsection (b). Frescatores' Brief at 25.

Again, no relief is due. Initially, to the extent the Frescatores contend the Madani Appellees failed to submit a form of order with their motions to compel allowing the alternative of filing a motion for hearing within ten days of service, and that the Madani Appellees never provided notice of the sanctions hearing by regular mail to the Frescatores, the Frescatores do not direct us to where they raised these issues in the trial court and our review of the record does not demonstrate they did so. Accordingly, we deem these issues waived. **See** Pa.R.A.P. 302(a) (“Issues not raised in the trial court are waived and cannot be raised for the first time on appeal.”); Pa.R.A.P. 2119(e) (requiring the appellant’s brief to include a statement of place of raising or preservation of issues); **see also *Steiner v. Markel***, 968 A.2d 1253, 1257 (Pa. 2009) (“Because issues not raised in the lower court are waived and cannot be raised for the first time on appeal, a 1925(b) statement can therefore never be used to raise a claim in the first instance.”) (cleaned up).¹²

Further, the Frescatores’ claim that the trial court erred by not holding a sanctions hearing also does not merit relief. In their initial May 7, 2025 motion for reconsideration of the trial court’s preclusion order, the Frescatores did not argue a sanctions hearing should be held. In their June 17, 2025

¹² Nevertheless, with respect to the latter argument about the Madani Appellees’ not providing notice of the sanctions hearing by regular mail to the Frescatores, the Madani Appellees say they did serve the Frescatores “directly via U.S. Certified Mail, return receipt requested.... Notably, [Mrs.] Frescatore personally signed the certified mail receipt for the Motion for Sanctions and Notice of Presentation, yet still failed to appear at the scheduled hearing.” Madani Appellees’ Brief at 9-10 (citations omitted).

motion for modification of the preclusion order, they “request[ed] oral argument on this [m]otion as no oral argument had been granted to date allowing [the Frescatore]s to be heard on these matters.” Motion for Modification, 6/17/25, at ¶ 10. The trial court pointed out that, five months after imposing sanctions, it held oral argument on September 17, 2025, where the trial court considered the Frescatore]s’ motion for modification and the Frescatore]s were able to explain why they had not responded to the discovery requests. **See** TCO at 9. The trial court said it nevertheless denied the Frescatore]s’ motion to modify the sanctions order. **Id.** We also note the transcript from the September 17, 2025 argument does not show the Frescatore]s attempted, or requested, to introduce any evidence relating to the sanctions issue. Given that the Frescatore]s had an opportunity to be heard at the September 17, 2025 argument regarding the sanctions, and did not seek to introduce any further evidence there, no relief is due on this ground.

In the Frescatore]s’ last issue, they argue the “[t]rial court improperly granted summary judgment in favor of the Loria ... Appellees (after precluding the Frescatore]s from eliciting any evidence or testimony at trial as a discovery sanction) because the Loria ... Appellees are non-moving parties.” Frescatore]s’ Brief at 15. They contend, while the Madani Appellees filed a motion for sanctions, the Loria Appellees did not. **Id.** They argue the trial court erred when it *sua sponte* imposed sanctions in favor of the Loria Appellees, and state non-moving parties are not entitled to discovery sanctions. **Id.** at 15-16; **see also id.** at 13-15.

The Frescatores do not point us to where they preserved this issue before the trial court, and our review of the record does not show the Frescatores raised this issue below. **See** Pa.R.A.P. 302(a), *supra*; Pa.R.A.P. 2119(e), *supra*; **Steiner, supra**.¹³ Further, while the Loria Appellees

¹³ Among other cases, the Frescatores cite to **Smith v. Phila. Gas Works**, 740 A.2d 1200 (Pa. Cmwlth. 1999), and **DeMarco v. Borough of East McKeesport**, 556 A.2d 977 (Pa. Cmwlth. 1989), to support their argument that sanctions cannot be imposed in favor of non-moving parties. While not specifically discussed by the Frescatores, we observe **Smith** and **DeMarco** can be read to suggest a party cannot waive the issue of whether a trial court exceeded its authority by *sua sponte* imposing a sanction in favor of a party who did not file a motion for sanctions. To the extent these cases imply this issue cannot be waived, we respectfully disagree with our sister court. Initially, we recognize we are not bound to follow decisions of the Commonwealth Court. **Brader v. Allegheny Health Network**, 349 A.3d 210, 228 n.22 (Pa. Super. 2025) (acknowledging decisions of the Commonwealth Court are not binding upon this Court, but may serve as persuasive authority) (citation omitted). Moreover, this Court has explained “[j]udicial authority or power ... means the ability of a decision-making body to order or effect a certain result. A litigant **can** waive a challenge to a trial court or administrative body’s power to issue an order or decree.” **Grimm v. Grimm**, 149 A.3d 77, 83 (Pa. Super. 2016), *disapproved on other grounds by Marion v. Bryn Mawr Trust Co.*, 288 A.3d 76 (Pa. 2023) (emphasis added; cleaned up); **see also Riedel v. Human Relations Com’n of City of Reading**, 739 A.2d 121, 124 (Pa. 1999) (“Jurisdiction and power are not interchangeable although judges and lawyers often confuse them.... Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. Power, on the other hand, means the ability of a decision-making body to order or effect a certain result.”) (cleaned up); **cf. Grimm**, 149 A.3d at 83 (explaining, in comparison to judicial authority or power, that subject matter jurisdiction “relates to the competency of the individual court, administrative body, or other tribunal to determine controversies of the general class to which a particular case belongs. Subject matter jurisdiction is not susceptible to waiver.”) (cleaned up); **id.** at 85 (“An action is only null and void for purposes of appellate review if a court lacks subject matter jurisdiction. If a party lacks standing, or the

(Footnote Continued Next Page)

specifically sought summary judgment in their favor due to the preclusion order, the Frescatores did not argue in response that the Loria Appellees — as a non-moving party — are not entitled to discovery sanctions. **Rohrer v. Pope**, 918 A.2d 122, 128 (Pa. Super. 2007) (“[A]rguments not raised initially before the trial court in opposition to summary judgment cannot be raised for

court lacks personal jurisdiction or power, the issue can be waived and thus *ipso facto* is not null and void if not properly preserved.”) (footnote omitted). We also reiterate the Frescatores do not address how this issue has been preserved for our review, or why it cannot be waived.

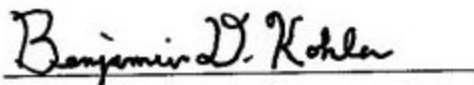
Moreover, to the extent the Frescatores suggest the Loria Appellees failed to address their status as non-moving parties in their appellate brief, thereby waiving the issue, **see** Frescatores’ Reply Brief at 2, we point out an appellee does not bear the burden of issue preservation. **See, e.g., Heim v. Med. Care. Avail. & Reduc. of Error Fund**, 23 A.3d 506, 511 (Pa. 2011) (recognizing an appellee does not bear the burden of issue preservation and an appellate court may affirm a valid judgment based on any reason appearing as of record, regardless of whether it is raised by the appellee); **Riverview Carpet & Flooring, Inc. v. Presbyterian SeniorCare**, 299 A.3d 937, 957 n.14 (Pa. Super. 2023) (“[I]t is a well-settled doctrine in this Commonwealth that a trial court can be affirmed on any valid basis appearing of record. The precept may be applied even though the reason for sustaining the judgment was not raised in the trial court, relied on by that court in reaching its decision, or brought to the attention of the appellate courts.”) (cleaned up). To the extent the Loria Appellees did not argue this issue was waived, we also observe we may find an appellant’s issue waived even though the appellee did not advocate for waiver. **See Com. v. Triplett**, 381 A.2d 877, 881 n.10 (Pa. 1977) (“Although the issue of waiver as to [the] appellant’s second contention has not been addressed by either party, we may raise the issue of waiver *sua sponte*.”) (citations omitted); **Tecce v. Hally**, 106 A.3d 728, 732 (Pa. Super. 2014) (“We are bound by our precedents to invoke waiver *sua sponte* in this case.”); **see also Wirth v. Com.**, 95 A.3d 822, 837 (Pa. 2014) (“[B]ecause the burden rests with the appealing party to develop the argument sufficiently, an appellee’s failure to advocate for waiver is of no moment.”) (citation omitted).

the first time on appeal.”) (citation omitted). Therefore, we find this claim waived.

As none of the Frescatore’s issues warrant relief, we affirm the trial court’s order. However, the record continues to reflect the improper designation of Il Fiolo D’Olio, LLC.¹⁴ Thus, we direct the parties and trial court to amend the pleadings and caption to correct the name of La Voglia, La Voglia Group, and La Voglia Italian Restaurant to Il Fiolo D’Olio, LLC. **See** Pa.R.Civ.P. 1033(a) (“A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading.”).

Order affirmed. Parties and trial court directed to amend pleadings and caption to fix incorrect designation. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/23/2026

¹⁴ Although the Frescatore’s purport they dismissed La Voglia, La Voglia Group, and La Voglia Italian Restaurant while this appeal was pending, **see** footnote 8, **supra**, it is well-established, after an appeal is taken, the trial court may no longer proceed further in the matter. Pa.R.A.P. 1701(a).