

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

YOLISWA BARBER  
Plaintiff

vs.

SRD BREWERYTOWN, LLC,  
ALDI, INC., and  
ALDI, INC. (PENNSYLVANIA)  
Defendants

vs.

ASSOCIATED PAVING CONTRACTORS, INC.  
Additional Defendant

vs.

SOLOFF REALTY & DEVELOPMENT, INC.  
Additional Defendant

APRIL TERM, 2017

NO. 0664

DOCKETED  
JAN 31 2019  
N. ERICKSON  
DAY FORWARD

Barber Vs Srd Breweytow-ORDER



17040066400089

ORDER

And Now, this *31<sup>st</sup>* day of January, 2019, after consideration of the Motion to Dismiss Joinder Complaint naming Soloff Realty & Development, Inc., and, the Motion to Dismiss Amended Crossclaim naming SRD Brewerytown, LLC, and, the Responses thereto of Additional/Joining Defendant Associated Paving Contractors, Inc., and, for the reasons set forth in the Findings of Fact and Conclusions of Law filed this date,

It is hereby **ORDERED** that the Motion to Dismiss Joinder Complaint naming Soloff Realty & Development, Inc., is **GRANTED** and that Joinder Complaint is **Dismissed With Prejudice**; and,

It is further **ORDERED** that the Motion to Dismiss Amended Crossclaim naming SRD Brewerytown, LLC, is **GRANTED** and that Amended Crossclaim is **Dismissed With Prejudice**.

BY THE COURT:

*Frederica A. Massiah-Jackson*  
FREDERICA A. MASSIAH-JACKSON, J.

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YOLISWA BARBER	:	
<b>Plaintiff</b>	:	
	:	APRIL TERM, 2017
vs.	:	
	:	NO. 0664
SRD BREWERYTOWN, LLC,	:	
ALDI, INC., and	:	
ALDI, INC. (PENNSYLVANIA)	:	
<b>Defendants</b>	:	
	:	
vs.	:	
ASSOCIATED PAVING CONTRACTORS, INC.	:	
<b>Additional Defendant</b>	:	
	:	
vs.	:	
SOLOFF REALTY & DEVELOPMENT, INC.	:	
<b>Additional Defendant</b>	:	

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**DOCKETED**  
JAN 31 2019  
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**FINDINGS OF FACT and CONCLUSIONS OF LAW in SUPPORT OF  
ORDER DISMISSING ALL CLAIMS FOR DEFENSE COSTS and FEES**

**MASSIAH-JACKSON, J.**

Barber Vs Srd Breweytown Lic Etal-FACTS



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January 31<sup>ST</sup>, 2019

## FINDINGS OF FACT

1. 3101 Girard Avenue, Philadelphia, Pa. is a shopping center owned by Defendant-SRD Brewerytown, LLC (“SRD”). The principal retail tenant is Aldi, Inc.
2. Richard Soloff owns 50% of SRD and he is the managing partner.
3. On October 11, 2016, Richard Soloff, on behalf of Soloff Realty & Development, Inc. (“Soloff Realty”), executed a snow removal contract with Associated Paving Contractors, Inc. (“Associated Paving”).
4. Associated Paving agreed to provide snow removal services at the 3101 Girard Avenue parking lot, e.g. plowing, ice control, and snow blower.
5. On March 17, 2017, Ms. Yoliswa Barber slipped and fell on the snow/ice at the shopping center parking lot and sustained a fractured fibula with complaints of left ankle pain.
6. In April, 2017, Ms. Barber initiated a civil action against SRD.
7. In May, 2017, SRD filed a Joinder Complaint against Associated Paving.
8. In June, 2017, Associated Paving filed a Cross-claim against SRD. The Cross-claim was Amended in November, 2017.
9. In August, 2017, Associated Paving filed a Joinder Complaint against Soloff Realty as an Additional Defendant.

10. Associated Paving's Amended Cross-claims against SRD and Joinder Claims against Soloff Realty for attorney's fees and costs of defense were grounded on common law indemnification, contractual indemnification, and, contribution.

### **CONCLUSIONS OF LAW**

1. On November 26, 2018, Plaintiff-Barber entered into a global settlement with all Defendants and Additional Defendants.
2. With agreement of the Court, the Defendants and Additional Defendants coordinated a briefing schedule for the Court to determine whether or not Associated Paving is entitled to indemnification or contribution for the attorney's fees and costs incurred in the litigation.
3. The dockets reflect that Associated Paving did vigorously engage in defending its position. This Additional Defendant asserted Cross-claims, filed a Joinder Complaint, filed a Motion for Summary Judgment, attended Discovery Hearings, and submitted Proposed Voir Dire and Jury Instructions.
4. In addition, Associated Paving actively engaged in pre-trial discovery, prepared several Pre-Trial Memoranda, identified witnesses and documents, attended JPT conferences, and met with the Team Leader and Trial Judge to coordinate trial logistics.
5. Initially, this Court concludes that while there was no written contract between SRD and Associated Paving, SRD was the intended third party beneficiary of the snow removal

contract between Soloff Realty and Associated Paving. e.g. Restatement (Second) of Contracts §302; Guy v. Liderbach, 459 A.2d 744, 751 (Pa. 1983); Kirschner v. K & L Gates, LLP, 46 A.3d 737, 762 (Pa. Superior Ct. 2012).

6. Both parties to the contract expressed an intention to benefit SRD. The snow removal services were to take place at the SRD property at 3101 Girard Avenue.

7. The Superior Court in Chester Upland School District v. Edward J. Melony, Inc., 901 A.2d 1055 (Pa. Superior Ct. 2006) provides guidance as we review the indemnification clause of the document, at 901 A.2d 1059:

“ ‘The fundamental rule in interpreting the meaning of a contract is to ascertain and give effect to the intent of the contracting parties.’ *Murphy v. Duquesne Univ. of the Holy Ghost*, 565 Pa. 571, 777 A.2d 418, 429 (2001). ‘Indemnity agreements are to be narrowly interpreted in light of the parties’ intentions as evidenced by the entire contract.’ *Consolidated Rail Corp. v. Delaware River Port Auth.*, 880 A.2d 628, 632 (Pa.Super.2005). ‘In interpreting the scope of an indemnification clause, the court must consider the four corners of the document and its surrounding circumstances.’ *Widmer Engineering, Inc. v. Dufalla*, 837 A.2d 459, 472 (Pa.Super.2003) (citations and quotation marks omitted).”

8. In the case at bar, the contract provides at Paragraph 4:

“4) Further, we agree to indemnify and hold harmless said Associated Paving Contractors, Inc. from any claims of any third party arising from the aforesaid snow removal.”

9. The snow removal contract does not mention costs for defense. Nor does the contract indemnify Associated Paving for its own negligence. Compare cases wherein the

contract expressly includes an agreement to “defend”. Mace v. Atlantic Refining & Marketing Corp., 785 A.2d 491 (Pa. 2001); County of Delaware v. J.P. Mascaro & Sons, Inc., 830 A.2d 587 (Pa. Superior Ct. 2003).

10. Neither Soloff Realty nor SRD has a contractual duty to defend or pay attorney’s fees and costs to Associated Paving.

11. Next, joint tortfeasors who enter into a settlement with the original Plaintiff have a valid claim for contribution if: **a.** One joint tortfeasor discharges the common liability, **and**, **b.** The liability of the other joint tortfeasors to the injured person has been extinguished by the settlement. Kovalesky v. Giant Rug Market, 618 A.2d 1044, 1046 (Pa. Superior Ct. 1993) citing Swartz v. Sunderland, 169 A.2d 289 (Pa. 1961).

12. In this case, although the settling defendants did secure a general release from Plaintiff-Barber on behalf of all defendants, Associated Paving did not pay funds towards the settlement. It would be inequitable under the Uniform Contribution Among Tortfeasors Act to permit Associated Paving to seek or obtain contribution from the other tortfeasors. 1 Summ. Pa. Jur.2d Torts §8:12; Svetz v. Land Tool Co., 513 A.2d 403 (Pa. Superior Ct. 1986).

13. Finally, common law indemnity is available to parties who are secondarily or vicariously liable -- not those who may be primarily liable. See, e.g. Sirianni v. Nugent Bros., Inc., 506 A.2d 868, 871 (Pa. 1986) where there are concurrent or joint tortfeasors,

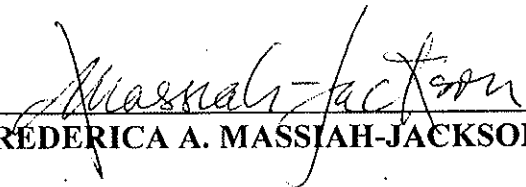
each owing the same duty to an injured party, there is no right of indemnity on behalf of either against the others, relying on Builders Supply Co. v. McCabe, 77 A.2d 386 (Pa. 1951).

14. Under the circumstances present here Associated Paving is not entitled to common law indemnity from Soloff Realty or SRD. Svetz v. Land Tool Co., *supra*, 513 A.2d at 409-410.

**CONCLUSION**

For all of the reasons set forth above this Court concludes that Associated Paving does not have viable claims for contractual indemnification or common law indemnification or contribution for the attorney's fees and costs of defense.

**BY THE COURT:**

  
FRÉDERICA A. MASSIAH-JACKSON, J.