

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

|                                       |   |                    |
|---------------------------------------|---|--------------------|
| FLORENCE FURMAN and LEROY<br>FURMAN   | : | AUGUST TERM 2004   |
|                                       | : |                    |
| v.                                    | : | NO: 3229           |
|                                       | : |                    |
| GLENFIELD CAPITAL CORPORATION         | : | CONTROL NO: 090395 |
|                                       | : |                    |
| <hr/>                                 |   |                    |
| GLENFIELD CAPITAL CORPORATION         | : | OCTOBER TERM 2004  |
|                                       | : |                    |
| v.                                    | : | NO: 3064           |
|                                       | : |                    |
| LATANYA FURMAN and FLORENCE<br>FURMAN | : | CONTROL NO: 090395 |
|                                       | : |                    |

**ORDER**

**AND NOW**, this 12<sup>th</sup> day of January 2006, upon consideration of Florence Furman, Leroy Furman, and Latanya Furman's Motion for Summary Judgment, the response in opposition, the respective memoranda, all matters of record, and following oral argument of the parties, it hereby is **ORDERED** and **DECREED** that said Motion is **DENIED**.

**BY THE COURT,**

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**HOWLAND W. ABRAMSON, J.**

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**OPINION**

Before the Court is the Motion for Summary Judgment of Florence Furman, Leroy Furman and Latanya Furman (hereinafter, the “Furmans”). For the reasons set forth below, said Motion is denied.

**Background**

This case involves two consolidated actions. The first action is captioned as Florence Furman and Leroy Furman v. Glenfield Capital Corporation, August Term 2004, No. 3229. This Quiet Title action arises out of an October 5, 2001 loan transaction between Florence Furman and Leroy Furman, who are husband and wife, and Stratford Capital Corporation (hereinafter, “Stratford”), in which the Furmans borrowed \$139,000 from Stratford. See Florence Furman and Leroy Furman v. Glenfield Capital Corporation Complaint, at ¶ 5. To secure the loan, the Furmans executed a mortgage on several properties that they owned, namely the properties located at 3901, 3903, and 3905

Lancaster Avenue and 3900 Spring Garden Street in Philadelphia, Pennsylvania (the “subject properties”). Id. at ¶¶ 7, 8. The Furmans also executed a “Deed in Lieu of Foreclosure” at the time of the transaction. Id. at ¶ 11; attached to Complaint as Exh. B. The Furmans contend that they were informed by Stratford that the Deed in Lieu of Foreclosure was necessary so that Stratford could foreclose on the subject properties in the event of a default. Id. at ¶ 13. The Furmans assert that this document was partially blank when they signed it; specifically, they allege that it named the Furmans as the Grantors and listed the subject properties, but did not name a Grantee or give property descriptions. Id.

Stratford contends that on October 5, 2001, it assigned and transferred all rights, title, and interest under the Furmans’ loan to Glenfield Capital Corporation (hereinafter, “Glenfield”). See Florence Furman and Leroy Furman v. Glenfield Capital Corporation Counterclaim at ¶ 6. Despite the Furmans’ assertions to the contrary, Glenfield alleges that the Furmans were in default of their loan obligations in July 2004. See Florence Furman and Leroy Furman v. Glenfield Capital Corporation Amended Answer, at ¶ 33. On July 30, 2004, Glenfield caused the Deed in Lieu of Foreclosure to be recorded in the Recorder of Deeds. See Florence Furman and Leroy Furman v. Glenfield Capital Corporation Complaint, at ¶ 24; attached to Complaint as Exh. E. The Furmans allege that at some time on or before July 30, 2004, Glenfield caused the original Deed in Lieu of Foreclosure to be filled in to show the Grantee as “Glenfield Capital Corp.” and to append a legal description of the subject properties. Id. at ¶ 22; attached to Complaint as Exh. D. Glenfield, however, contends that the original Deed in Lieu of Foreclosure was executed in full and completely filled out at the time of the closing of the loan

transaction. See Florence Furman and Leroy Furman v. Glenfield Capital Corporation Amended Answer, at ¶ 22.

The Furmans brought this Quiet Title action against Glenfield alleging that Glenfield is barred from asserting any right or interest on the subject properties on the basis that the Deed in Lieu of Foreclosure was fraudulently obtained. See Florence Furman and Leroy Furman v. Glenfield Capital Corporation Complaint, at ¶ 35.

Subsequently, Glenfield brought a three-count Counterclaim against the Furmans. The first count, Breach of Contract, alleges that the Furmans are liable to Glenfield for monetary damages in the amount of \$45,017.60, together with interest and late charges, as a result of their default under the loan. See Florence Furman and Leroy Furman v. Glenfield Capital Corporation Counterclaim, at ¶ 17. The second and third count, Quiet Title and Possession, respectively, allege that Glenfield is entitled to exclusive title and possession of the subject properties on the basis of the Deed in Lieu of Foreclosure. Id., at ¶¶ 20, 24.

The second action is captioned as Glenfield Capital Corporation v. Latanya Furman and Florence Furman, October Term 2004, No. 3064. In this landlord-tenant action, Glenfield filed a Complaint in Ejectment in Municipal Court against Latanya Furman and Florence Furman. Glenfield alleged that Latanya Furman leased the property located at 3901 Lancaster Avenue, one of the subject properties, from Glenfield. See Capital Corporation v. Latanya Furman and Florence Furman Amended Complaint, at ¶ 2. Glenfield alleged that the lease was terminable by Glenfield as a result of Glenfield obtaining title to the property pursuant to the Deed in Lieu of Foreclosure. Id. at ¶ 3. Glenfield sued Latanya Furman and Florence Furman for possession of the

property, and for unpaid rentals, bills, real estate taxes, and legal fees. Id. at ¶¶ 5, 10-13. On October 14, 2004, the Municipal Court entered judgment for possession of the property in favor of Glenfield. See Municipal Court Docket, Number LT-04-09-01-0092. Latanya Furman thereafter appealed the decision of the Municipal Court to the Philadelphia Court of Common Pleas.

The two cases were consolidated by Order of the Court on January 21, 2005. The Furmans now move for summary judgment. Per its Order of August 25, 2005, the Court ordered that the motion for summary judgment “be limited to the issue of the corporate status of Glenfield Capital Corp.” See Court’s Order of August 25, 2005.

### **Summary Judgment Standard**

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, a party may move for summary judgment in whole or in part as a matter of law:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2. Summary judgment is granted when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact. See Merriweather v. Philadelphia Newspapers, Inc., 453 Pa. Super. 464, 471, 684 A.2d 137, 140 (1996). Summary judgment may be entered only in those cases where the record clearly demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. See

Dean v. Commonwealth of Pennsylvania, 561 Pa. 503, 507, 751 A.2d 1130, 1132 (2000).

The record must be viewed in the light most favorable to the opposing party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Id.

## **Discussion**

### **I.**

Before the Court addresses the merits of the motion for summary judgment, it must address Glenfield's argument that the issue of its corporate existence has already been decided by an earlier ruling by the Court in this case. Glenfield argues that the discrete issue of the corporate status of Glenfield at the time of the October 5, 2001 transaction was previously addressed and litigated at the preliminary objections stage in this lawsuit.

Glenfield points out that the Furmans specifically raised the issue of Glenfield's corporate existence at the time of loan transaction in their preliminary objections to Glenfield's Counterclaim. See Furmans' Motion to Determine Preliminary Objections, at p. 3-4. Glenfield then specifically responded to this issue in its answer to the preliminary objections. See Glenfield's Response to Motion to Determine Preliminary Objections, at p. 3-5. On February 28, 2005, the Honorable Gene D. Cohen overruled the preliminary objections, without opinion, and ordered the Furmans to file an answer to Glenfield's counterclaim within twenty (20) days of the Order. See Court's Order of February 28, 2005. Therefore, Glenfield contends that since the specific issue of Glenfield's corporate status has already been decided by the Court and there has not been any new evidence

produced,<sup>1</sup> the coordinate jurisdiction rule and/or the law of the case doctrine should apply.

After a careful analysis, the Court finds that it is not precluded by the earlier decision by Judge Cohen from ruling on the present summary judgment motion. It is true that, under the coordinate jurisdiction rule, judges of coordinate jurisdiction sitting in the same case should not overrule each other's decisions. See Riccio v. American Republic Ins. Co., 550 Pa. 254, 260, 705 A.2d 422, 425 (1997), citing Commonwealth v. Starr, 541 Pa. 564, 573, 664 A.2d 1326, 1331 (1995). However,

Where the motions differ in kind, as preliminary objections differ from motions for judgment on the pleadings, which differ from motions for summary judgment, a judge ruling on a later motion is not precluded from granting relief although another judge has denied an earlier motion. However, a later motion should not be entertained or granted when a motion of the same kind has previously been denied, unless intervening changes in the facts or the law clearly warrant a new look at the question.

Id., quoting Goldey v. Trustees of the Univ. of Pennsylvania, 544 Pa. 150, 155-56, 675 A.2d 264, 267 (1996). Thus, when determining whether the coordinate jurisdiction rule applies, the Court “looks to where the rulings occurred in the context of the procedural posture of the case.” Id.

Importantly, the coordinate jurisdiction rule is not intended to preclude granting summary judgment following the denial of preliminary objections. See Salerno v. Philadelphia Newspapers, Inc., 377 Pa. Super. 83, 87, 546 A.2d 1168, 1170 (1988);

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<sup>1</sup> The Furmans note that the Articles of Incorporation, which were produced by Glenfield in discovery, were not in the record at the time Judge Cohen ruled on the preliminary objections. See Memorandum of Law in Support of Motion for Summary Judgment, at p. 5-6. The Articles of Incorporation show that they were filed with the Department of State on December 7, 2001. See Articles of Incorporation attached as Exh. C to Motion for Summary Judgment.

Petrongola v. Comcast-Spectacor, L.P., 2001 Pa. Super. 33, \*26, 789 A.2d 204, 214 (2001); D'Errico v. DeFazio, 2000 Pa. Super. 354, \*28, 763 A.2d 424, 435 (2000). As the Salerno Court noted, “The failure to present a cause of action upon which relief can be granted may be raised at any time. A motion for summary judgment is based not only upon the averments of the pleadings but may also consider discovery depositions, answers to interrogatories, admissions and affidavits.” Salerno, 377 Pa. Super. at 87, 546 A.2d at 1170. The Salerno Court continued, “We can discern no reason for prohibiting the consideration and granting of a summary judgment if the record as it then stands warrants such action. This is particularly true when the preliminary objections were denied without an opinion.” Id at 87-88, 1170.

In the case at bar, the earlier ruling occurred in the preliminary objections stage of the case, where discovery had not yet taken place. Furthermore, the preliminary objections were overruled without an opinion. While this fact alone is not controlling, See D'Errico, 2000 Pa. Super. at \*29, 763 A.2d at 435-36, citing Goldey, 544 Pa. at 155-56, 675 A.2d at 266-67, the Court notes that Judge Cohen did not have the Articles of Incorporation (which showed that Glenfield was formally incorporated on December 7, 2001) in the record when the preliminary objections were decided. Therefore, the fact that the Furmans’ preliminary objections were overruled does not preclude the Court from considering the motion for summary judgment.

## **II.**

As stated above, the summary judgment motion and response thereto were limited to the issue of the corporate status of Glenfield. The Furmans argue that, as matter of

law, Glenfield did not exist as a corporation until December 7, 2001, the date that the Articles of Incorporation were filed, and therefore, Glenfield could not validly take a deed or assignment before it became incorporated. See Motion for Summary Judgment, at ¶¶ 2, 3. Thus, they contend that the deed and assignment are nullities. See Memorandum of Law in Support of Motion for Summary Judgment, at 7. In support of their argument, they cite 15 Pa. C.S. § 1309(a) (“Effect of filing of articles of incorporation”), which states:

(a) CORPORATE EXISTENCE.-- Upon the filing of the articles of incorporation in the Department of State or upon the effective date specified in the articles of incorporation, whichever is later, the corporate existence shall begin.

As further support for their claim, the Furmans also cite Borough of Elizabeth v. Aim Sher Corp., 316 Pa. Super. 97, 462 A.2d 811 (1983). In Borough of Elizabeth, the Court found that a deed conveying a tract of land to a corporation was invalid because the corporation did not come into formal existence until its articles of incorporation were filed more than one year after the deed was transferred. Id. at 99, 812-13. The Court held that “a deed that purports to convey real estate to a nonexistent corporation has no effect.” Id. at 99, 812.

Glenfield agrees with the Furmans that Glenfield was not formally incorporated until after October 5, 2001, the date of the transaction; however, it contends that Glenfield was an entity that existed and did business at the time of the transaction. See Florence Furman and Leroy Furman v. Glenfield Capital Corporation Amended Answer, at ¶ 26. Specifically, Glenfield argues that it existed as a de facto corporation.<sup>2</sup> See

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<sup>2</sup> There are three necessary requirements for an organization to be classified as a de facto corporation: “First, there must be a law or charter under which an organization might be effected. Second, there must be

Response to Motion for Summary Judgment, at p. 4.

The Court finds that, as a matter of law, summary judgment can not be granted on this issue. It is true, and it is uncontested, that Glenfield did not file its Articles of Incorporation until December 7, 2001. Therefore, it was not legally incorporated until that time. However, there is a genuine issue of material fact as to whether Glenfield existed as a de facto corporation prior December 7, 2001. Fairly recent Pennsylvania case law suggests that the courts will entertain the issue of whether an entity can enjoy de facto corporation status, despite not being formally incorporated. For example, in Borough of Elizabeth, the case that the Furmans cite in support of their position, the Court noted that:

Nothing in the record suggests that appellant enjoyed *de facto* existence before the commencement of its formal existence... We thus have no occasion to consider whether a de facto corporation is capable of receiving a conveyance of realty.

Id., 316 Pa. Super. at 99, 462 A.2d at 812-13. This statement by the Pennsylvania Superior Court reveals that the Court examined the record in that case to consider whether the entity existed as a de facto corporation.

Additionally, in MM Properties, Inc. v. Coolawalla Enterprises, Inc., 1997 U.S. Dist. LEXIS 5204 (1997), the Eastern District of Pennsylvania concluded, after a bench trial, that the plaintiff in that case did not qualify as a de facto corporation. The Court stated:

[Plaintiff] was not lawfully incorporated until March 14,

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an attempt to organize which falls so far short of the requirements of the law or charter as to be ineffectual. Third, there must be an assumption and exercise of corporate powers, notwithstanding the failure to comply with the law or charter.” Appeal of Riviera Country Club, 196 Pa. Super. 636, 640-41, 176 A.2d 704, 706 (1961), citing Re Gibbs's Estate. Hallstead's Appeal, 157 Pa. 59, 27 A. 383 (1893).

1994, nearly ten weeks after [plaintiff] allegedly received its loan commitment from [defendant]. Contrary to plaintiff's assertions, [plaintiff] did not qualify as a de facto corporation because there was no attempt to incorporate [plaintiff] until the first attempt on March 14, 1994.

Id., 1997 U.S. Dist. LEXIS at \*32. Again, this Court considered the issue of whether the entity was a de facto corporation.

The Eastern District of Pennsylvania also considered the issue of a de facto corporation in Tan-Line Studios, Inc. v. Bradley, 1986 U.S. Dist. LEXIS 27754, 1 U.S.P.Q.2D (BNA) 2032 (1986). In Tan-Line Studios, CSF Financial Corporation was a business entity that was never formally incorporated. Id., 1986 U.S. Dist. LEXIS at \*3. The individuals that formed CSF Financial Corporation (the defendants) claimed that they were insulated from personal liability on the grounds that the entity was a de facto corporation. Id. at \*32. After a bench trial, the Court found that the defendants had “failed to establish a de facto corporation because there is no proof of ‘[a]n effort in good faith to incorporate . . .’, which is an essential element of that concept.” Id. at \*33, quoting Fletcher Cyc. Corp. § 3777 (Perm Ed. 1982). Therefore, the Court found that the defendants were personally liable. Id. at \*34.

Although it appears that no recent Pennsylvania case has found that an entity has qualified as a de facto corporation, the de facto corporation doctrine still seems to remain a viable concept based on the above case law. Therefore, Glenfield’s defense of de facto status raises issues of material fact sufficient to warrant the denial of summary judgment.<sup>3</sup>

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<sup>3</sup> The Court notes that Glenfield has not moved for summary judgment on this issue. Therefore, the Court need not determine whether Glenfield has sufficiently shown that it qualifies as a de facto corporation.

## **CONCLUSION**

For all the foregoing reasons, the Furmans' Motion for Summary Judgment is denied. The Court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT,**

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**HOWLAND W. ABRAMSON, J.**