

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

FEDERAL INSURANCE COMPANY,	:	
as subrogee of CENTRAL SALVAGE	:	APRIL TERM, 2010
COMPANY, INC., GREAT NORTHERN	:	
INSURANCE COMPANY, as subrogee of	:	NO. 2909
CARL S. MASON and VIGILANT	:	
INSURANCE COMPANY	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
ADAMS 1300, L.P., as successor in interest to	:	
1300 ADAMS AVENUE ASSOCIATES, LLC	:	
Defendant	:	

ORDER

And Now, this ^{15th} day of May, 2012, after consideration of the Motion for Summary Judgment filed by Adams 1300, L.P., and Plaintiffs' Response thereto, and after Oral Argument, held May 4, 2012, and for the reasons set forth in the Memorandum filed this date, it is hereby ORDERED that the Motion for Summary Judgment is **DENIED in its Entirety.**

BY THE COURT:

DOCKETED
MAY 15 2012
R. POSTELL
DAY FORWARD

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

Federal Insurance Co Et-ORDER



I. FACTUAL BACKGROUND and LEGAL DISCUSSION

In this Motion for Summary Judgment, **Adams 1300, L.P.** seeks this Court's ruling that as a matter of law it was sued five months after the expiration of the statute of limitations. The record does not support this conclusion.

Rule 1035.2 of the Rules of Civil Procedure provides:

“After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any 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.”

It is clear from the Memoranda submitted by the parties and after Oral Argument, held May 4, 2012, that there are genuine issues of fact which preclude the grant of summary judgment. In this case, the Plaintiffs are the adverse parties who will bear the burden of proof at trial. These plaintiffs have met their prima facie burden to produce evidence essential to be submitted to a jury, as per Rule 1035.2(2). See also, Pulli v. Ustin, 24 A.3d 421 (Pa. Superior Ct. 2011); Diaz v. Schultz, 841 A.2d 546 (Pa. Superior Ct. 2004).

In Jones v. Harleysville Mutual Ins. Co., 900 A.2d 855 (Pa. Superior Ct. 2006), the Appellate Court noted that it is a plaintiff's burden to demonstrate that a cause of action is not barred. In this case, the Plaintiffs-Insurance Companies have demonstrated that Adams 1300, LP, itself claimed to be the Landlord and "successor-in-interest to 1300 Adams Avenue Associates, LLC", since at least December, 2005. Only after litigation has Adams 1300, LP, now asserted itself to not be a successor entity. See, Lamborn v. Allen Kirkpatrick & Co., 288 Pa. 114 (1927) holding that where a party relies on one basis for conduct, then after litigation commences the party cannot take a different position. "Although this principle was first adopted by the Pennsylvania Supreme Court in 1911, it has never been overturned and remains good law today. Rock-Epstein v. Allstate Ins. Co., 2008 U.S. Dist. Ct. Motions, LEXIS 26859 (E.D. Pa. July 24, 2008).

Generally, a successor corporation does not acquire liabilities of its predecessor, unless one of several exceptions exist. e.g. Sehl v. Vista Linen Rental Service, Inc., 763 A.2d 858 (Pa. Superior Ct. 2000). Here, when Adams 1300, LP accepted the "Assignment and Assumption of Leases and Security Deposits" from 1300 Adams Avenue Associates, LLC, by document dated September 2, 2004, and, in December 1, 2005, identified itself as the "successor-in-interest", there is sufficient evidentiary foundation for a jury to consider, inter alia, whether Exception No. 1 is applicable: "(1) The purchaser expressly or impliedly agrees to assume such obligation." 763 A.2d at 863.

Rule 1033 of the Pennsylvania Rules of Civil Procedure provides that liberal amendment of the pleadings may be permitted in order to secure a proper determination of the merits. This Motions Court is unable to conclude as a matter of law that these plaintiffs added a new and unrelated party after the statute of limitations.

Next, Adams 1300, LP, asserts that the Exculpatory Clause of the Lease Agreement with Central Salvage Company insulates it from liability, as the claims relate to Federal Insurance Company only. Boyd v. Smith, 94 A.2d 44 (Pa. 1953) and Warren City Lines, Inc. v. United Refining Co., 287 A.2d 149 (Pa. Superior Ct. 1971) are on point. Our Appellate Courts hold that Regulations, Fire Codes, Statutes grounded in public policy, public interest or public safety can not be waived by an individual or denied effect by the courts.

At the very least, it became clear at Oral Argument, held May 4, 2012, that there are issues of fact relating to the Fire Marshall's Report. Were the sprinklers working at the time of the fire? It is not up to this Court to decide facts. Rather Rule 1035.2 directs that when there are material facts in dispute, Summary Judgment must be Denied.

II. CONCLUSION

For all of the reasons set forth above, the Motion for Summary Judgment filed by Adams 1300, LP, is **DENIED in its Entirety**.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.