

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

HEBREW SCHOOL CONDOMINIUM	:	MAY TERM, 2004
ASSOCIATION, CRAIG MARTIN, DON	:	
FOSTER, WILLIAM HARRIS, PATRICE	:	No. 01886
RAMES, DAVIT MESULAM & LISA	:	
FITZGERALD, JIM BAUTZ & JIM LEMMA,	:	COMMERCE PROGRAM
CYNTHIA BROWN, ALBERT ZEPP &	:	
NATALIE ZEPP, h/w, LAURA DERIGGI,	:	Control No. 062325
MIGHUEL RODRIGUEZ & EMILY PARKER,	:	
THOMAS SOKOL, and GRACE LABOUCHERE,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
	:	
ENRIQUE DISTEFANO a/k/a "RICK	:	
DISTEFANO" & HOLLY FARLEY h/w, and	:	
REPUBLIC-FRANKLIN INSURANCE	:	
COMPANY,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 11<sup>th</sup> day of December, 2005, upon consideration of defendant, Republic-Franklin Insurance Company's ("RFIC") Motion for Partial Summary Judgment, plaintiffs' response thereto, the briefs in support and opposition, and all other matters of record, it is hereby **ORDERED** that said Motion is **GRANTED**, and the individual plaintiffs' claims for breach of contract in Counts II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII of the First<sup>1</sup> Cause of Action are **DISMISSED**.

**BY THE COURT:**

\_\_\_\_\_  
**HOWLAND W. ABRAMSON, J.**

<sup>1</sup> The individual plaintiffs' claims for bad faith in Counts II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII of the Second Cause of Action were previously dismissed.

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

HEBREW SCHOOL CONDOMINIUM	:	MAY TERM, 2004
ASSOCIATION, CRAIG MARTIN, DON	:	
FOSTER, WILLIAM HARRIS, PATRICE	:	No. 01886
RAMES, DAVIT MESULAM & LISA	:	
FITZGERALD, JIM BAUTZ & JIM LEMMA,	:	COMMERCE PROGRAM
CYNTHIA BROWN, ALBERT ZEPP &	:	
NATALIE ZEPP, h/w, LAURA DERIGGI,	:	Control No. 062325
MIGHUEL RODRIGUEZ & EMILY PARKER,	:	
THOMAS SOKOL, and GRACE LABOUCHERE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
ENRIQUE DISTEFANO a/k/a "RICK	:	
DISTEFANO" & HOLLY FARLEY h/w, and	:	
REPUBLIC-FRANKLIN INSURANCE	:	
COMPANY,	:	
Defendants.	:	

**OPINION**

This action arises out of a fire at the Hebrew School Condominium (the "Condominium"). The fire damaged the common elements of the Condominium and the units owned by each of the individual plaintiffs (the "Unit Owners") in the Condominium. Plaintiff Hebrew School Condominium Association ("HSCA") is a Pennsylvania unincorporated association created pursuant to the Uniform Condominium Act, 68 Pa. C.S. § 3301, *et seq.* HSCA owns the common elements of the Condominium. The Unit Owners are all members of HSCA.

Defendant Republic-Franklin Insurance Company ("RFIC") issued a property insurance policy to HSCA covering the Condominium from loss by fire and other peril (the "Policy"). In

this action, HSCA and the Unit Owners claim that they are entitled, under the Policy, to payment for damages to the units and the common elements caused by the fire.

The Declarations page<sup>2</sup> of the Policy provides as follows:

Named Insured: Hebrew School Condominium Association

\* \* \*

Coverage is provided for one condominium building of jointed masonry construction containing fourteen residential units.

\* \* \*

Coverage [for] Specified Property on Premises:  
Units and Private Storage Areas:

X Original Specifications Guaranteed Replacement Cost \$5,000 Deductible

The Property Coverage Part<sup>3</sup> of the Policy provides as follows:

Coverage is provided for the following property on or within 1,000 feet of the 'premises' unless specifically stated otherwise.

\* \* \*

Units and Private Storage Areas

Coverage for units and private storage areas is provided only when a limit is shown in the Declarations for . . . the following:

Original Specifications

Any property included in units and private storage areas which was initially installed in accordance with your condominium's original plans and specifications or a replacement of like kind and quality of such property.

\* \* \*

Coverage includes the following property within the unfinished interior surfaces of the perimeter walls, floors and ceilings of units or private storage areas:

- (a) Fixtures, additions and interior, nonstructural partitions or walls comprising a permanent part of the building;
- (b) Finishes, coatings and coverings of walls, floors and ceilings;
- (c) Permanently installed appliances;
- (d) Heating, ventilating and air conditioning systems;
- (e) Cooking ranges, microwave ovens, dishwashers, clothes dryers, clothes washers, and refrigerators; and
- (f) Fire protection and security systems.

The Unit Owners claim that they are third party beneficiaries of the Policy and, as such, they assert claims for breach of contract against RFIC. Specifically, they allege that:

---

<sup>2</sup> Amended Complaint, Ex. A, pp. i, iii.

<sup>3</sup> *Id.*, Ex. A, pp. 1-2.

As a result of the failure of [RFIC] to pay benefits due and owing under the policy of insurance issued to [HSCA, each Unit Owner] has suffered losses and damages for additional living expenses, diminution in the value of [his/her] Unit, loss of use and enjoyment of [his/her] Unit, has suffered an inability to refinance at a lower interest rate; incurred costs for storage of personal property; has suffered loss and damage to the common elements of [his/her] individual Unit and the contents thereof; and has been subject, or will be subject to assessment for costs of repair to the common elements of [his/her] individual Unit and/or common elements of the Condominium not reimbursed or indemnified by insurance coverage.<sup>4</sup>

In order to have standing to bring claims as third party beneficiaries of the Policy between RFIC and HSCA, the Unit Owners must establish that they meet the requirements of the Restatement (Second) of Contracts.<sup>5</sup> Under the Restatement, “[a] promise in [the Policy between RFIC and HSCA] creates a duty in [RFIC] to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty.”<sup>6</sup>

In order to determine whether the Unit Owners are “intended beneficiaries” of the Policy between RFIC and HSCA, the Restatement requires the Unit Owners to pass the following test:

Unless otherwise agreed between [RFIC] and [HSCA], [each Unit Owner] is an intended beneficiary if recognition of a right to performance in [the Unit Owner] is appropriate to effectuate the intention of [RFIC and HSCA] and either

(a) the performance of the promise will satisfy an obligation of [HSCA] to pay money to [the Unit Owners]; or

(b) the circumstances indicate that [HSCA] intends to give the [Unit Owners] the benefit of the promised performance.<sup>7</sup>

---

<sup>4</sup> *Id.*, ¶ 30. Most of the consequential damages demanded by the Unit Owners are not likely to be recoverable, as they could have been avoided through mitigation, *e.g.*, by the Unit Owners paying for the repairs of the units themselves and then seeking reimbursement from RFIC, and/or they are damages that could have been recovered under the Unit Owners’ personal homeowner’s policies.

<sup>5</sup> *See, e.g., Chen v. Chen*, 586 Pa. 297, 300, 893 A.2d 87, 89 (2006); *Scarpitti v. Weborg*, 530 Pa. 366, 371, 609 A.2d 147, 149 (1992).

<sup>6</sup> Restatement (Second) of Contracts, § 304 (1981).

<sup>7</sup> *Id.*, § 302(1).

The Unit Owners have failed to produce evidence sufficient to satisfy the Restatement's test. In order to continue with their third party beneficiary claim, the Unit Owners must establish that "recognition of a right to performance in [the Unit Owners] is appropriate to effectuate the intention of [RFIC and HSCA]" in entering into the Policy.<sup>8</sup> The Unit Owners have not proffered any evidence to show that HSCA and RFIC intended to give the Unit Owners the right to demand payment of insurance proceeds directly from RFIC. Instead, it appears that the parties' intentions when entering into the Policy were to satisfy the statutory obligations imposed upon HSCA under the Uniform Condominium Act. Specifically, the Uniform Condominium Act<sup>9</sup> provides that:

(a) **INSURANCE TO BE CARRIED BY ASSOCIATION.**-- Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements and units exclusive of improvements and betterments installed in units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property exclusive of land, excavations, foundations and other items normally excluded from property policies.

(d) **PROCEEDS FROM PROPERTY INSURANCE.**-- Any loss covered by the property policy under subsection (a)(1) shall be adjusted with the association but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose or otherwise to the association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of subsection (g), the proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units and **unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is**

---

<sup>8</sup> See Scarpitti, 530 Pa. at 371, 609 A.2d at 149 ("The first part of the [Restatement's] test sets forth a standing requirement which leaves discretion with the court to determine whether recognition of third party beneficiary status would be appropriate. The second part defines the two types of claimants who may be intended as third party beneficiaries. If a party satisfies both parts of the test, a claim may be asserted under the contract.")

<sup>9</sup> 68 Pa. C.S. § 3312 (emphasis added).

**a surplus of proceeds after the common elements and units have been completely repaired or restored or the condominium is terminated.**

(g) DISPOSITION OF INSURANCE PROCEEDS.--

(1) Any portion of the condominium damaged or destroyed shall be repaired or replaced promptly **by the association** unless:

(i) the condominium is terminated;

(ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or

(iii) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

Although HSCA is statutorily obliged to obtain insurance for the “units exclusive of improvements and betterments installed in units,” it is not obliged to pay such insurance monies over to the Unit Owners, other than in exceptional circumstances which no one claims exist here.

The Condominium’s By-Laws<sup>10</sup> track the language of the statute and require that:

Commencing not later than the time of the first conveyance of a unit to a person other than a declarant [HSCA] shall maintain for the benefit of the Council, the Unit Owners and their mortgagees as their interest may appear,<sup>11</sup> to the extent reasonable[y] available: (a) Property Insurance on the Common Elements and Units exclusive of the improvements and betterments installed in Units by Unit Owners insuring against all risks of direct physical loss commonly insured against. . . .

---

<sup>10</sup> Plaintiffs’ Response to Motion for Summary Judgment, Ex. C, By-Laws, p. 18.

<sup>11</sup> The mere fact that the By-Laws require HSCA to obtain insurance for “the benefit of the Unit Owners” does not make them third party beneficiaries of the Policy. The Unit Owners clearly “benefit” under the statutory scheme, to the extent of their interests in the common elements and the units as originally specified, because the statute requires HSCA to obtain insurance for the common elements and the units as originally specified, and it also requires HSCA to use any proceeds to repair or restore the common elements and the units. Benefiting from a contract does not, alone, make one a third party beneficiary with the right to enforce the contract. *See Chen*, 586 Pa. at 311, 893 A.2d at 96 (child was not a third party beneficiary of parents’ child support agreement where agreement provided that child support payments be made to custodial payment for the benefit of the child, not directly to the child.)

Neither the statute, nor the Policy, nor the By-Laws, nor anything else in evidence indicates that the parties intended to give the Unit Owners the right to claim the insurance proceeds directly from RFIC. Therefore, the Unit Owners have failed to establish that they are third party beneficiaries of the Policy, and their claims against RFIC for breach of the Policy must be dismissed. However, HSCA may clearly continue to prosecute, on the Unit Owners' behalf, a breach of contract claim against RFIC for damage to the Unit Owners' "units and private storage areas as initially installed in accordance with the Condominium's original plans and specifications," as well as a claim for damages to the common areas of the Condominium.

### **CONCLUSION**

For all the foregoing reasons, RFIC's Motion for Partial Summary Judgment is granted, and the Unit Owners' claims for breach of contract against RFIC are dismissed.

**BY THE COURT,**

---

**HOWLAND W. ABRAMSON, J.**