

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

STAR INSURANCE COMPANY	: AUGUST TERM, 2004
Plaintiff,	
	: No. 3554
v.	
	: (Commerce Program)
HARRY E. LIVINGSTON	
Defendant.	: Control No. 060085

ORDER

AND NOW, this 25th day of July 2005, upon consideration of plaintiff's Motion for Summary Judgment, the response in opposition, the respective briefs, all other matters of record, and in accord with the Opinion being filed contemporaneously with this Order, it is **ORDERED** that the Motion is **GRANTED**.

It is further **ORDERED** that judgment be entered in favor of plaintiff Star Insurance Company and against defendant Harry E. Livingston. A hearing is scheduled for Tuesday, August 16, 2005, at 11:00 a.m. in Courtroom 513, City Hall to assess damages, including the fairness and reasonableness of attorney's fees and other costs incurred by Star Insurance in connection with the guardian and surcharge proceeding and the enforcement of the Indemnity Agreement.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.

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OPINION

Albert W. Sheppard, Jr., J. July 25, 2005

Before the court is the Motion for Summary Judgment of plaintiff Star Insurance Company (“Star Insurance”). For the reasons discussed, the Motion is **granted**.

BACKGROUND

This action arises out of a guardianship surety bond (the “Bond”) issued by Star Insurance, as surety, to defendant Harry E. Livingston (“Livingston”), as principal, on behalf of the State of Florida as obligee. The Bond was required by the State of Florida to guarantee defendant’s lawful performance of his guardianship duties on behalf of defendant’s ward, his elderly father. In consideration for Star Insurance’s issuance of the Bond, defendant signed an Indemnity Agreement, which provides:

In consideration of the surety issuing a bond as requested, the indemnitor...agree[s]...To indemnify and hold harmless the surety from all loss and expense of whatever kind,

including , but not limited to, cost of investigation, court costs and attorney’s fees (Loss) resulting from the issuance by the surety of a bond or the enforcement of this Agreement.

Compl. Exh. A at 2, ¶ 2.

The State of Florida, through the Circuit Court for St. Lucie County, Florida (the “Florida Court”) made a demand under the bond after it determined that defendant failed to perform his guardianship duties faithfully and according to law. Def. Mtn. Exh. 8. After Star Insurance settled and satisfied its obligation, it sought indemnity from the defendant under the Indemnity Agreement. Defendant refused. This lawsuit ensued. Star Insurance filed this Motion seeking summary judgment on its claim for breach of contract against defendant in connection with its claim under the Indemnity Agreement.¹

DISCUSSION

“Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Pa.R.C.P. 1035.2; Horne v. Haladay, 1999 Pa. Super. 64, 728 A.2d 954 (1999). This burden rests with the moving party and the court is required to examine the entire record in a light most favorable to the non-moving party. First Wisconsin Trust Co. v. Strausser, 439 Pa. Super. 192, 198, 653 A.2d 688, 691 (1995). Once the moving party has met its burden, the adverse party may not rest upon the mere allegations or denials of his pleading, but his response must set forth specific facts showing that there is a genuine issue for trial. Pa.R.C.P. 1035.2(2); *see also* Fennell v. Nationwide Mut. Fire Ins. Co., 412 Pa. Super. 534, 540, 603 A.2d 1064, 1067 (1992).

¹ In its Complaint, Star Insurance pled two alternative causes of action: breach of contract and reimbursement. Since these claims were pled in the alternative, the granting of summary judgment with respect to Count I (breach of contract) renders Count II moot.

Here there are no factual issues in dispute, only contract interpretation. Thus, this matter may appropriately be decided by summary judgment.

In support of its Motion, Star Insurance maintains that the Indemnity Agreement expressly requires defendant to reimburse Star Insurance for all attorney's fees and other costs incurred by Star Insurance in connection with the guardian and surcharge proceeding and the enforcement of the Indemnity Agreement. As a result, Star Insurance urges that it is entitled to judgment as a matter of law. Defendant, on the other hand, argues that the language of the Indemnity Agreement is ambiguous and that summary judgment is improper. This court disagrees with defendant.. The court finds the Indemnity Agreement to be clear and unambiguous.

Express indemnity agreements are enforced according to general contract law principals. Ratti v. Wheeling Pittsburgh Steel Corp., 2000 Pa. Super. 239, 758 A.2d 695 (2000). Interpretation of an insurance contract is a matter of law and is to be performed by the court. Hutchinson v. Sunbeam Coal Corp., 513 Pa. 192, 519 A.2d 385 (1986); Osiel v. Cook, 2002 Pa. Super. 214, 803 A.2d 209, (2002). It is settled that "the intent of the parties to a written contract is contained in the writing itself." Tuthill v. Tuthill, 763 A.2d 417, 2000 Pa. Super. 35, 420 (2000). As a threshold inquiry, the Court must determine whether the language of the contract is ambiguous. Hutchison, 513 Pa. at 200-01, 519 A.2d at 390. A contract is ambiguous when the contract language is indefinite and reasonably susceptible to more than one meaning. Commonwealth v. Brozzetti, 684 A.2d 658, 663, 1996 Pa. Commw. LEXIS 444 (1996).

This court finds no such ambiguities exist with respect to either the Indemnity Agreement or the Bond itself. *See* Compl. Exh. B. Accordingly, this court finds that defendant's obligations under the Indemnity Agreement are clear and that, in consideration for the issuance of the Bond,

the defendant agreed to "...hold harmless the surety from all loss and expense of whatever kind, including , but not limited to, cost of investigation, court costs and attorney's fees...resulting from the issuance by the surety of a bond..." Compl. Exh. A at 2, ¶ 2. Thus, Summary Judgment is granted in favor of Star Insurance.

CONCLUSION

For the reasons discussed, this court grants the Motion for Summary Judgment and enters judgment in favor of Star Insurance and against Defendant Harry E. Livingston. A hearing is hereby scheduled for Tuesday, August 16, 2005, at 11:00 a.m. in Courtroom 513, City Hall regarding damages, including the fairness and reasonableness of the attorney's fees and other costs incurred by Star Insurance in connection with the guardian and surcharge proceeding and the enforcement of the Indemnity Agreement.

This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J