

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

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|-------------------------------|---|---------------------|
| UNITED NATIONAL SPECIALTY | : | DECEMBER TERM, 2004 |
| INSURANCE CO., | : | |
| | : | NO. 03045 |
| Plaintiff, | : | |
| | : | COMMERCE PROGRAM |
| v. | : | |
| | : | |
| GUNBOAT, INC. t/a GUNBOAT BAR | : | |
| AND GRILL, and EDWARD | : | |
| ANDERSON, JR., | : | |
| | : | |
| Defendants. | : | |

OPINION

Nominal defendant, Edward Anderson, Jr., has taken a second appeal from this court’s entry of judgment in favor of plaintiff, United National Specialty Insurance Co. (“UNSIIC”). For the reasons that follow, Anderson’s appeal is improper.

UNSIIC brought this action to determine whether it must indemnify defendant Gunboat, Inc. (“Gunboat”) under a Liquor Liability Policy (the “Policy”) for the personal injury jury verdict obtained by Anderson against Gunboat.¹ On January 27, 2006, this court granted partial summary judgment in favor of UNSIIC and dismissed Anderson’s estoppel claim. After a bench trial, the court entered judgment for UNSIIC on May 10, 2006.² The court held that UNSIIC has no duty to indemnify Gunboat or Keough for the verdict in the underlying case, which means that Anderson does not receive any money under the Policy.

¹ In the underlying action brought by Anderson against Gunboat and Derek Keough for injuries sustained in a bar brawl, the jury found in favor of Anderson and awarded him damages in the amount of \$210,000 against Gunboat and Keough, who was acting as Gunboat’s employee.

² The Order directing that Judgment be entered was signed by the court on May 8, 2006. Both the Order and the Judgment were docketed on May 10, 2006. Anderson and the Superior Court refer to it as the May 8th Order, however, since it did not become appealable until it was docketed, this court will refer to it as the “May 10th Judgment.” See Pa. R. App. P. 301(a), (c).

On May 30, 2006, Anderson filed his first appeal from the May 10th Judgment, as well as from the January 27th Summary Judgment Order. On June 28, 2006, this court issued an appeal Opinion in support of its decisions.³ On July 10, 2006, Anderson filed an untimely Post-Trial Motion with this court, which the court denied on July 18, 2006.

On July 26, 2006, the Superior Court quashed Anderson's first appeal. On August 7, 2006, Anderson improperly praeciped this court to enter judgment in favor of UNSIC. The next day, Anderson filed his second appeal from the May 10th Judgment, as well as from the July 18th denial of his Post-Trial Motions and from the Judgment he entered on August 7th. This second appeal is untimely and improperly filed.

The May 10th Judgment was a final order from which appeal could be taken because it disposed of all remaining claims and parties in this action.⁴ It was docketed on May 10th. Anderson had until June 9th to file his Notice of Appeal with this court.⁵ He filed his first Notice of Appeal on May 30th, but the Superior Court quashed it. His second Notice of Appeal, filed August 9, 2006, was two months late and is, therefore, untimely.

Likewise, Anderson's Post-Trial Motion was untimely filed. Post-trial motions must be filed within ten days after "the filing of the decision in the case of a trial without a jury."⁶ The decision in this case was the May 10th Judgment. Anderson's Post-Trial Motion had to be filed by May 20, 2006. Anderson filed his Post-Trial Motion on July 10, 2006, over a month and a half late. The court properly denied it.

³ A copy of that Opinion is attached hereto and made a part hereof in the event that the Superior Court opts to entertain Anderson's second appeal on substantive grounds.

⁴ Pa. R. App. P. 341(b)(1).

⁵ Pa. R. App. P. 903.

⁶ Pa. R. Civ. P. 227.1(c).

Anderson then praeciped to have judgment entered a second time. This was duplicative. The prothonotary had docketed judgment on May 10th. The Rules of Civil Procedure provide that a party may praecipe for entry of judgment after a bench trial if: 1) no timely post-trial motion is filed; 2) the court does not act on a timely post-trial motion within 120 days; or 3) the court does not enter judgment itself.⁷ In this case no timely motion for post-trial relief was filed, but a praecipe for entry of judgment was improper since judgment had already been entered.

Anderson cannot revive his expired appellate rights as to the May 10th Judgment by causing a second judgment to be entered. Nor may he resurrect any appellate rights by filing an untimely Post-Trial Motion and then appealing from its dismissal. For the above stated reasons, Anderson's appeal filed on August 8, 2006 was improperly filed.

Dated: November 20, 2006

MARK I. BERNSTEIN, J.

⁷ Pa. R. Civ. P. 227.4