

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

GUARANTEE TITLE & TRUST CO.,	:	
Plaintiff,	:	
v.	:	MAY TERM 2007
	:	
SECURITY SEARCH & ABSTRACT CO.,	:	No. 1345
Defendant,	:	
v.	:	COMMERCE PROGRAM
	:	
SAMUEL A. JOHNSON, JR., et al.,	:	Control No: 012126
Additional Defendants:	:	

ORDER

AND NOW, this 4th day of August, 2008, upon consideration of the Motion for Summary Judgment of Plaintiff Guarantee Title & Trust Co. as to Additional Defendant Samuel A. Johnson, and the response thereto, it hereby is **ORDERED** that said Motion is **DENIED**.

BY THE COURT:

MARK I. BERNSTEIN, J.

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	:	
SAMUEL A. JOHNSON, JR., et al.,	:	Control No: 012126
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OPINION

Presently before the Court is the Motion for Summary Judgment of Plaintiff Guarantee Title & Trust Co. as to Additional Defendant Samuel A. Johnson. For the reasons set forth below, the Motion is denied.

Background

Plaintiff commenced this action against defendant Security Search & Abstract Co. (“Security”) on May 16, 2007. In its Complaint, plaintiff stated that it is in the business of issuing policies of title insurance in connection with real estate transactions and that it conducts some of its business through policy issuing agents. Plaintiff alleged that it had entered into an agency agreement (the “Agreement”) with Security whereby Security was appointed as a non-exclusive policy issuing agent for plaintiff. Pursuant to the Agreement, Security was required to indemnify plaintiff for all losses, costs, or damages incurred by plaintiff as a result of Security’s failure to comply with the terms of the Agreement.

Plaintiff alleges that Security breached the terms of the Agreement when it wrongfully issued a title insurance policy in a certain real estate transaction. Specifically,

plaintiff's Complaint alleges the following: In 1979, the real property located at 1818 N. Willington Street, Philadelphia, Pennsylvania (the "Property") was owned by Samuel A. Johnson, Sr. ("Johnson, Sr.") and his wife, Scena Johnson. Johnson Sr. and Scena Johnson had two sons, Samuel A. Johnson, Jr. ("Samuel") and Sidney S. Johnson ("Sidney"), (collectively, the "Johnson brothers"). Scena Johnson passed away on May 5, 1979, resulting in title to the Property vesting in Johnson Sr. solely. Johnson, Sr. then married Dorothy Lee Johnson ("Dorothy"). In 1980, Johnson, Sr. executed a deed transferring title to the Property from himself individually to himself and Dorothy as tenants by the entireties. Johnson, Sr. passed away in 1985. As a result of his death, title to the Property vested solely in Dorothy. Dorothy passed away on May 25, 2002. Dorothy was survived by her daughter, Thelma Campbell ("Campbell"), and two grandchildren. An estate was raised for her and letters of administration were issued by the Philadelphia Register of Wills to Campbell.

Plaintiff alleges that despite that fact that they were not the sons of Johnson, Sr. and Dorothy, the Johnson brothers executed a fraudulent deed in which they claimed to be the sole surviving heirs of Dorothy and by which they conveyed title to the Property to themselves. Further, on June 28, 2005, the Johnson brothers purported to convey title to the Property to Exile Properties, LLC ("Exile"). In connection with this transaction, Security issued a title insurance commitment to Exile in which it listed as exceptions to coverage various matters relating to the estates of Johnson, Sr. and Dorothy. At settlement, Security removed the exceptions in the title commitment relating to the estates and then issued plaintiff's policy of title insurance to Exile insuring that Exile had good and marketable title to the Property, free and clear of exceptions. Plaintiff contends

that Security was obligated to investigate the estates of Johnson, Sr. and Dorothy before removing the exceptions from the title commitment. Plaintiff argues that had Security made a reasonable investigation, it would have discovered the fraud on the part of the Johnson brothers.

Campbell, Dorothy's daughter, later became aware of the fraudulent deed and the transfer to Exile. When she learned of these facts, she threatened to commence an action to quiet title against Exile to confirm title to the Property in her name. Exile then submitted a claim under its title insurance policy to plaintiff. Plaintiff conducted an investigation and determined that the earlier transaction was fraudulent and that the Johnson brothers did not have legal authority to convey title to the Property to Exile. Plaintiff concluded that if Campbell filed a lawsuit, she would be declared the owner of the Property, which had been insured free and clear of liens and encumbrances. In order to protect its insured's interest in the Property, plaintiff paid \$69,948.00 to Campbell to confirm Exile's title to the Property. Plaintiff then demanded that Security reimburse plaintiff for the losses it sustained pursuant to their Agreement. Security refused. Plaintiff brought suit against Security to recover the amount of \$69,948.00 for breaching their Agreement.

Security filed a Third Party/Joinder Complaint (the "Joinder Complaint") against the Johnson brothers, as additional defendants, on July 23, 2007.¹ In its Joinder Complaint, Security incorporated by reference "plaintiff's Complaint, without admission

¹ Pursuant to Pa. R.C.P. 2252(a), any party may join as an additional defendant any person not a party to the action who may be: "solely liable on the underlying cause of action against the joining party" or "liable to or with the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action against the joining party is based."

or adoption, and reassert[ed] and realleg[ed] the allegations of the Complaint against additional defendants, Samuel A. Johnson, Jr. [and] Sidney S. Johnson...as if they had been named as defendants in plaintiff's Complaint."² Security further stated in its Joinder Complaint that "[i]f liability is found against Security Search on plaintiff's Complaint, which liability is denied, then plaintiff's damages may be attributable, in whole or in part, to the fraudulent conduct of additional defendants, Samuel A. Johnson, Jr., and Sidney S. Johnson, as set forth in Count I of plaintiff's Complaint...and/or the other negligent or otherwise wrongful actions or inactions of the Additional Defendants."³ Security also alleged that "[t]he Additional Defendants are alone liable to the plaintiff in this lawsuit; and/or liable over to Security Search and/or jointly and/or severally liable to the plaintiff in this lawsuit; and/or liable to Security Search on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the plaintiff's cause of action is based."⁴

Plaintiff now moves for summary judgment against only additional defendant Samuel.⁵ Plaintiff contends that it is entitled to summary judgment against Samuel on claims for breach of warranty in the deed, unjust enrichment, and fraud. Since there are no claims for breach of warranty or unjust enrichment pled in the Complaint or Joinder Complaint, the Court will only address the fraud claim.

² See Joinder Complaint, at ¶ 7.

³ Id. at ¶ 9.

⁴ Id. at ¶ 11.

⁵ Pursuant to Pa. R.C.P. 2255(d), where the original defendant has joined an additional defendant, the plaintiff's case may proceed just as if the plaintiff filed those claims directly against the additional defendant. 202 Island Car Wash, L.P. v. Monridge Construction, Inc., 913 A.2d 922, 927 (Pa. Super. 2006).

Discussion

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. The moving party has the burden of proving the non-existence of any genuine issue of fact. The non-moving party must demonstrate that there is a genuine issue for trial and may not rest on averments in its pleadings. The trial court must resolve all doubts against the moving party and examine the record in a light most favorable to the non-moving party. Summary judgment may only be granted in cases where it is clear and free from doubt that the moving party is entitled to judgment as a matter of law.⁶

Plaintiff's Motion for Summary Judgment is primarily based upon Samuel's failure to timely respond to plaintiff's Requests for Admissions.⁷ On November 16, 2007, plaintiff served Requests for Admissions upon Samuel. Samuel did not respond to plaintiff's Requests for Admissions. On January 29, 2008, plaintiff filed a Motion for Summary Judgment against Samuel. Plaintiff contends that all of the factual allegations contained in its Requests for Admissions were deemed admitted under Pa. R.C.P. 4014(b) because Samuel did not answer the Requests. After the Motion for Summary Judgment was filed, Samuel responded to the Requests for Admissions on February 21, 2008, which was over three months after plaintiff's Requests were served. On February 27, 2008, Samuel filed his Response to the Motion for Summary Judgment, in which he

⁶ Merriweather v. Philadelphia Newspapers, Inc., 453 Pa. Super. 464, 471, 684 A.2d 137, 140 (1996).

⁷ In support of its Motion for Summary Judgment, plaintiff also submitted an affidavit by Robert L. Kennedy, Jr., the claims attorney handling the title claim submitted by Exile on the Property. Mr. Kennedy avers that when Exile made a claim to plaintiff, he conducted an investigation and determined that because of the fraudulent nature of the transaction, Samuel and Sidney had no right, title, or interest in the Property and that there would be a complete loss under the title insurance policy.

attached his untimely answer to the Requests for Admissions. Samuel offered no reason for his late response to the Requests for Admissions, nor did he move for withdrawal or amendment of his earlier admissions.

Pa. R.C.P. 4014(b) states, in relevant part:

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by the party's attorney.

Thus, "if the party from whom the admissions were sought fails to respond, by either answering or objecting thereto, within the established time frame, that party runs the risk of having those facts deemed admitted."⁸ Once these matters are admitted pursuant to Rule 4014(b), Rule 4014(d) states that such matters are "*conclusively* established unless the court *on motion* permits withdrawal or amendment of the admission."⁹

Samuel failed to respond to plaintiff's Requests for Admissions within the established time frame under Pa. R.C.P. 4014(b). Therefore, all of the facts contained within plaintiff's Requests for Admissions are deemed admitted. Significantly, Samuel did not move for leave of court to withdraw or amend his admissions; he simply served his answer to the Requests out of time and without the Court's permission. Pursuant to Pa. R.C.P. 1014(d), Samuel's admissions are "conclusively established."

However, Samuel's factual admissions do not in and of itself entitle plaintiff to the relief sought as a matter of law. It is well-established that summary judgment should only be granted in a clear case, and the moving party bears the burden of demonstrating

⁸ Richard T. Byrnes Co. v. Buss Automation, Inc., 415 Pa. Super. 549, 563, 609 A.2d 1360, 1367 (1992).

⁹ Pa. R.C.P. 4014(d) (emphasis added).

that no material issue remains.¹⁰ Here, genuine issues of material fact exist which preclude the entry of summary judgment on plaintiff's fraud claim.

A party alleging fraud must prove, by clear and convincing evidence: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) resulting injury proximately caused by the reliance.¹¹ Whether the party claiming to have been defrauded justifiably relied upon the false representation is generally a question of fact.¹²

Here, there are issues of fact as to the element of justifiable reliance. The admissions by Samuel and the affidavit by Mr. Kennedy do not prove that plaintiff justifiably relied upon the misrepresentations of Samuel. Rather, there are factual questions as to whether plaintiff and/or Security reasonably relied on Samuel's misrepresentations. Thus, plaintiff is not entitled to summary judgment on its fraud claim against Samuel.

CONCLUSION

For the foregoing reasons, plaintiff's motion for summary judgment is denied.

BY THE COURT,

MARK I. BERNSTEIN, J.

¹⁰ Salerno v. LaBarr, 159 Pa. Commw. 99, 102, 632 A.2d 1002, 1004 (1993).

¹¹ Porreco v. Porreco, 571 Pa. 61, 69, 811 A.2d 566, 570 (2002).

¹² Silverman v. Bell Savings & Loan Association, 367 Pa. Super. 464, 472-73, 533 A.2d 110, 114 (1987).

