

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

Certain Underwriters at Lloyd's London, a/s/o	:	
Edward V. Brooks c/o Dorothy L. Brooks	:	
Plaintiffs	:	July Term, 2011
	:	
vs.	:	No. 0926
	:	
Charles Johnson, Paula Johnson, and	:	
Philadelphia, Gas Works	:	
Defendants	:	

Edward Brooks	:	
Plaintiff	:	January Term, 2012
	:	
vs.	:	No. 1844
	:	
Charles Johnson and	:	
Paula Johnson, his wife	:	
Defendants	:	CONSOLIDATED

**FINDINGS OF FACT and CONCLUSIONS OF LAW in
SUPPORT OF JUDGMENT in FAVOR OF JOHNSON DEFENDANTS**

MASSIAH-JACKSON, J.

August 3rd, 2013

On July 30, 2013, the consolidated trials of July Term, 2011, No. 0926 and January Term, 2012, No. 1844, proceeded without a jury. All counsel were well-prepared and strong advocates for their clients. Witnesses and exhibits were presented to the Court. All counsel submitted Memoranda of Law on August 9, 2013. Now, in accordance with Rule 1038 of the Pennsylvania Rules of Civil Procedures these Findings of Fact and Conclusions of Law in Support of the Judgment in Favor of Charles Johnson and Paula Johnson are submitted to the parties.

FINDINGS OF FACT

1. On April 30, 2010, the two story garage behind 125 North 63rd Street, Philadelphia, Pa., collapsed.
2. There was no one inside the small building at the time. The owners, Defendants Charles and Paula Johnson were not at home.
3. Plaintiff Edward Brooks and his wife live at 127 North 63rd Street. Mr. Brooks testified that he heard a loud noise and felt shaking. He ran out the front door onto 63rd Street.
4. The walls and roof of his garage were significantly damaged. Photographs were presented at trial.
5. The Brooks' three story residence was also damaged: windows became loose, the roof had to be replaced, tiles in the bathrooms fell and repairs needed, rear kitchen and bedrooms needed repair, and, the entire exterior was repaired.

6. The deposition testimony of Mary Lorman, who lives at 123 North 63rd Street confirmed that after large rumbling noises and explosion, Mr. Johnson's garage collapsed. Her garage and residence were also damaged.
7. All of the witnesses and residents testified the Philadelphia Gas Works had been digging in the streets on 63rd Street and in the neighborhood in the weeks prior to the explosion and collapse on April 30, 2010.
8. According to Action News Reports "The force of the blast was so strong it shattered the windows of a pizza shop about a block away. No one was injured in this blast, though a number of people around the scene were evacuated from their homes." Chopper 6HD photos were introduced at trial.
9. After an investigation, the Philadelphia Fire Marshall concluded the cause of the building collapse was "Undetermined".
10. The Philadelphia Gas Works fuel line on all the homes of Felton Street and 63rd Street were inspected. PGW made odor meter checks in the three properties involved. They conferred with the Fire Department. PGW Field Services Department concluded that PGW was not responsible for the explosion and building collapse.

CONCLUSIONS OF LAW

1. Plaintiff Edward V. Brooks and Dorothy L. Brooks continue to endure significant damages to their property at 127 North 63rd Street.
2. Their garage structure must be demolished and re-built. Mr. Brooks explained that the roof has caved in since 2010. The costs will be substantial.

3. All Plaintiffs (Brooks and Certain Underwriters at Lloyd's) argue that Defendant-Johnson is responsible for damages because the garage would not have collapsed absent Johnson's negligence.

4. Plaintiffs rely on the rule of evidence known as *res ipsa loquitur* which permits the Court to infer negligence as cause of injury.

5. This circumstantial proof of negligence is set forth in Restatement (Second) of Torts §328D. It was adopted in Pennsylvania in Gilbert v. Korvette, Inc., 327 A.2d 94 (Pa. 1975), and provides:

“(1) It may be inferred that harm suffered by the plaintiff is caused by negligence of the defendant when

(a) the event is of a kind which ordinarily does not occur in the absence of negligence;

(b) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and

(c) the indicated negligence is within the scope of the defendant's duty to the plaintiff.

(2) It is the function of the court to determine whether the inference may reasonably be drawn by the jury, or whether it must necessarily be drawn.

(3) It is the function of the jury to determine whether the inference is to be drawn in any case where different conclusions may reasonably be reached.”

6. Plaintiffs theorize that there are only three possible causes for the collapse: First – a natural gas explosion, or, Second – explosion caused by paint stored in the garage by the Johnsons, or, Third – failure of the Johnsons to maintain the garage building.

7. The Plaintiffs argue that this Court should conclude that because PGW and the Fire Marshall have stated that the cause is “undetermined”, and neither gas nor other combustibles have been identified as the cause of the explosion, then, the only possible cause of harm is Defendants’ negligence.

8. Defendant-Johnson argues that these Plaintiffs failed to eliminate third parties as the cause of harm:

“There is simply insufficient proof to eliminate the possibility of other responsible causes, including PGW, of the explosion At no point did plaintiffs produce any evidence that pointed to the defendants in this case.”

9. This Court concludes:

- a. That other responsible causes have not been sufficiently eliminated, and,
- b. That plaintiffs have not established that the harm was more probably than not caused by the defendant.



In Carney v. Otis Elevator Co., 536 A.2d 804, 806 (Pa. Superior Ct. 1988), the Appellate Court reiterated that a plaintiff must satisfy all three elements of Section 328D(1) before an inference of negligence can be drawn. In this case there does exist an ordinary duty of care between the neighbors that the Johnsons would not harm the Brooks. Next, we will assume *arguendo* that a building would not ordinarily collapse in the absence of negligence. The third element has not been established. The Plaintiffs failed to offer expert

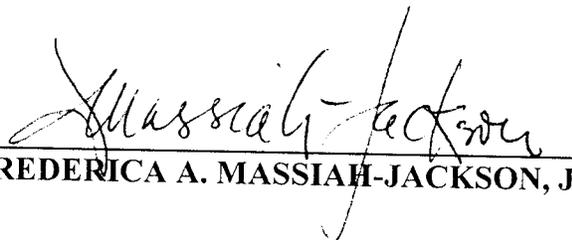
testimony or any other testimony to reasonably rule out other causes of the collapse, namely the vibrations caused by drilling holes in the nearby streets or a gas leak. See, Vasquez v. CHS Professional Practice, 39 A.3d 395 (Pa. Superior Ct. 2012). The Fire Marshall's Report stating that the cause of the collapse was "undetermined" is not a substitute for Section 328D(1)(b), that "other responsible causes . . . are sufficiently eliminated by the evidence".

There is nothing in the evidence to permit a conclusion as a matter of law that the garage collapse was more likely than not caused by an action or omission of Charles and Paula Johnson.

CONCLUSION

For all the reason set forth above this Trial Court finds in favor of Defendants Charles Johnson and Paula Johnson.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.