

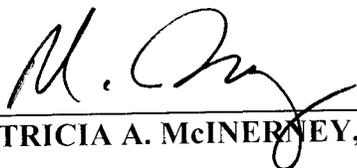
**IN THE COURT OF COMMON PLEAS FOR PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

FAMILY DOLLAR STORES OF PENNSYLVANIA, INC.	:	MAY TERM, 2012
	:	
Plaintiff,	:	NO. 00457
	:	
v.	:	COMMERCE PROGRAM
	:	
DEPAUL MANAGEMENT, D/B/A AND/OR T/A DEPAUL MANAGEMENT COMPANY, D/B/A AND/OR T/A/ THE DEPAUL GROUP D/B/A AND/OR T/A THE DEPAUL REALTY COMPANY, et al.:	:	Control No. 12080511
	:	
Defendants.	:	

ORDER

AND NOW, this 12th day of December, 2012, upon consideration of defendants' Motion for Judgment on the Pleadings, the response thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that said Motion is **GRANTED** in part and the claims against defendants DePaul Management d/b/a and/or t/a DePaul Management Company d/b/a and/or t/a/ The DePaul Group d/b/a and/or t/a the DePaul Realty Company are **DISMISSED**. It is further **ORDERED** that this action shall be **STAYED** pending the outcome of the Underlying Case, which is case number 120102808. The remainder of the motion is **DENIED**.

BY THE COURT:



PATRICIA A. McINERNEY, J.

Family Dollar Stores Of-ORDOP



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Nominal defendant Jermaine Fisher brought a personal injury action against Family Dollar, Astor, and DePaul in which he alleged that he slipped on ice or snow on the sidewalk in front of Family Dollar's store in the Astor Shopping Plaza (the "Underlying Action").³ As a result, Family Dollar brought this declaratory judgment action against Astor and DePaul seeking a determination that they must defend Family Dollar in the Underlying Action under the terms of the Lease. Astor and DePaul have moved for judgment on the pleadings, which motion is presently before the court.

DePaul points out that it is not a signatory to the Lease, so it never assumed the duty to defend and indemnify in that document. DePaul is correct and Family Dollar's claims against DePaul must be dismissed.

Family Dollar argues that Astor must defend and ultimately indemnify Family Dollar in the Underlying Action because Astor agreed to do so in the lease. Astor correctly points out that Astor's agreement to defend and indemnify arises only if Mr. Fisher's "injury [did] not result from the acts or omissions of [Family Dollar], its agents or employees."⁴ Family Dollar argues that Mr. Fisher's injuries cannot be attributed to Family Dollar because it was Astor's duty to keep the sidewalks clear under the Lease, which is true. However, Astor asserts that Family Dollar sometimes undertook such duties itself, despite the Lease terms, which creates a dispute of fact that cannot be resolved at this stage in the proceedings.

Since neither this court nor the court hearing the Underlying Action has yet determined whether Family Dollar's acts or omissions with respect to the sidewalk were the cause of Mr. Fisher's injuries, this court cannot yet say for certain that Astor must or need not defend Family

³ The Underlying Action was filed in Philadelphia County and has a projected trial date of April 1, 2013.

⁴ The phrase "provided that such injury does not result from the acts or omissions of Tenant, its agents or employees" applies to both injuries "occurring outside the demised premises" and injuries "arising out of Landlord's failure to perform its obligations," not to just to the latter as Family Dollar contends.

Dollar. The issue of whether Mr. Fisher's injuries resulted from Family Dollar's acts or omissions is before the court in the Underlying Action. That case is scheduled for trial before this case is. Therefore, the court will stay this action pending the outcome of the Underlying Action, rather than dismiss it as Astor requests.⁵

For all the foregoing reasons, DePaul's and Astor's Motion for Judgment on the Pleadings is granted in part and denied in part.

BY THE COURT:


PATRICIA A. McINERNEY, J.

⁵ It is possible that the Underlying Action will terminate without a clear determination whether Family Dollar's, Astor's, or DePaul's acts or omissions caused Mr. Fisher's injuries. If so, that issue will have to be resolved in this action.