

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

CALDWELL HECKLES & EGAN,
INC.

v.

ENTERPRISE MASONRY
CORPORATION

NOVEMBER TERM, 2012

NO. 02271

COMMERCE PROGRAM

CONTROL NO. 13070726

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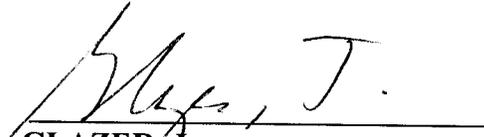
ORDER

AND NOW, this 13th day of August, 2013, upon
consideration of the motion for summary judgment of defendant, Enterprise Masonry
Corporation, and any response thereto, it is hereby

ORDERED

that the said motion is **GRANTED**. Summary Judgment is entered in favor of defendant
Enterprise Masonry Corporation and plaintiff Caldwell Heckles & Egan Inc.'s complaint is
hereby **DISMISSED** with prejudice.

BY THE COURT:


GLAZER, J.

Caldwell Heckles & Egan-ORDOP



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OPINION

GLAZER, J.

August 13, 2013

Before the court is the motion for summary judgment of defendant, Enterprise Masonry Corporation. For the reasons set forth below, defendant’s motion for summary judgment is granted.

FACTS AND PROCEDURAL BACKGROUND

On November 20, 2012, plaintiff, Caldwell Heckles & Egan, Inc. (hereinafter “CHE”), commenced the current action and asserted claims for declaratory judgment and breach of contract. This case arises out of an underlying action for personal injury sustained by Kendell Jones (hereinafter “Jones”). Jones, was an employee of defendant, Enterprise Masonry Corporation (hereinafter “EMC”), and fell approximately 18 feet from a platform on a construction site (hereinafter “the project”) on November 18, 2008. CHE was one of four prime contractors on the project. EMC was a subcontractor on the project.

Jones commenced a personal injury action (hereinafter “underlying action”) in the Philadelphia Court of Common Pleas before the Honorable Gregory E. Smith against both CHE

and EMC, among others, for the injuries he sustained on November 18, 2008. CHE asserted a cross-claim against EMC alleging that pursuant to a subcontract between the parties, EMC was required to indemnify and defend CHE. In CHE's cross-claim in the underlying action, CHE specifically states that "[p]ursuant to its subcontract... [EMC] agreed to indemnify and hold harmless answering defendant Caldwell Heckles & Egan, Inc." See defendant's motion for summary judgment, Exhibit C. Further, the cross-claim in the underlying action states that, "[t]he failure of [d]efendant Enterprise Masonry Corporation and/or their insurers to assume the defense of and indemnify Caldwell Heckles & Egan, Inc. in this matter constitutes a breach of contract." Id.

CHE and EMC subsequently filed cross-motions for summary judgment in the underlying action and requested that the court determine whether, as a matter of law, CHE was entitled to defense and indemnification from EMC. Specifically, CHE sought a determination of, "[w]hether summary judgment should be granted because [p]laintiff's employer, Enterprise Masonry Corporation, has contractual obligation to indemnify and defend Caldwell Heckles & Egan, Inc.?" Id. at Exhibit E. The Honorable Gregory E. Smith denied CHE's motion for summary judgment without explanation. Additionally, EMC sought a determination in the underlying action whether the court should "dismiss any and all claims against Enterprise Masonry Corporation because Enterprise Masonry Corporation was [p]laintiff's employer at the time of the incident," or, in the alternative, whether the court should, "dismiss Enterprise Masonry Corporation because the only party with a cross-claim against Enterprise Masonry Corporation cannot state a claim as a matter of law pursuant to the Pennsylvania Supreme Court's decision of Greer v. The City of Philadelphia, 795 A.2d 376 (Pa. 2002)." Id. at Exhibit F. On September 25, 2012, the court in the underlying action granted summary judgment in

favor of EMC without explanation. Moreover, on November 24, 2012, the Honorable Gregory E. Smith denied the motion of CHE to vacate, reconsider, and/or certify the September 25, 2012 order. The underlying action settled on May 9, 2013. Subsequently, on June 10, 2013, CHE filed an appeal of the September 25, 2012 order granting summary judgment in favor of EMC.

CHE again brought the instant claim against EMC on November 20, 2013 seeking declaratory judgment and breach of contract for failure to defend and indemnify in the underlying action.

DISCUSSION

I. Standard of Review

The court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Pa.R.C.P. 1035.2. A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. See note to Pa.R.C.P. 1035.2. When considering the merits for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Jones v. SEPTA, 565 Pa. 211, 772 A.2d 435, 438 (Pa. 2001). Further, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 589 A.2d 205, 206 (Pa. 1991).

II. Res Judicata

“The doctrine of res judicata will preclude an action where the former and latter suits possess the follow common elements: (1) identity of the issues; (2) identity of the action; (3) identity of the persons and parties to the action; and (4) identity of the capacity of the parties

being sued.” Daley v. A.W. Chesterton, Inc., 614 Pa. 335, 37 A. 3d 1175, 1189-1190 (Pa. 2012). “[R]es judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.” In re Stevenson, 40 A.3d 1212, 1222 (Pa. 2012) (quoting Allen v. McCurry, 449 U.S. 90, 94 (1980)). Moreover, res judicata only precludes a subsequent claim when “the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and assert their rights.” Stevens Painton Corp. v. First State Ins. Co., 746 A.2d 649, 654 (Pa. Super. 2000).

Plaintiff alleges that the doctrine of res judicata does not preclude this instant claims because, “there has been no determination in the underlying action that could be considered ‘on the merits’ because the parties are left to speculate as to the trial court’s reasoning.” See plaintiff’s memorandum of law in opposition to summary judgment, pp. 5. Plaintiff alleges that it may be possible that the summary judgment motion was decided on a procedural defect. Plaintiff supports this claim by citing to McGill v. Southwark Realty Co., 828 A.2d 430 (Pa. Commw. 2003). However, the instant case is clearly distinguishable. In McGill, the court found that, “[a] default judgment lacks the requisite element that it be ‘actually litigated.’” Id. at 435. The underlying action was not disposed of by default judgment. The parties fully litigated the matter in their cross-motions for summary judgment. The Honorable Gregory E. Smith granted the summary judgment motion of EMC as to the cross-claim for breach of contract for failure to indemnify and failure to defend.

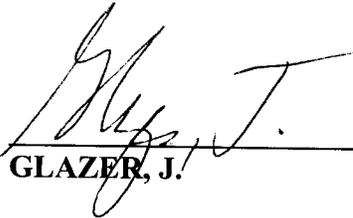
Moreover, plaintiff further argues that even assuming there was a final judgment, res judicata does not bar the action because there is no identity of the issues. Plaintiff asserts that the current action is different because it seeks declaratory judgment and breach of contract while the

cross-claim in the underlying action only sought breach of contract. The court finds this argument meritless. The issue of whether EMC was contractually obligated to indemnify and defend CHE was litigated and therefore the court finds that the instant action is barred by res judicata. Moreover, the issue in the underlying action of whether summary judgment was appropriately granted as to contractual indemnity is currently before the Superior Court and therefore this court finds that the current litigation is a blatant exercise in forum shopping.

CONCLUSION

In light of the evidence presented, summary judgment is entered in favor of Enterprise Masonry Corporation. Moreover, the complaint of plaintiff, Caldwell Heckles & Egan, is dismissed with prejudice.

BY THE COURT:



GLAZER, J.