

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

JOEL HARDEN & 275 PLEASANT VALLEY HOLDINGS CORP.,	:	MAY TERM, 2014
	:	
	:	No. 002044
Plaintiffs,	:	
v.	:	COMMERCE PROGRAM
	:	
CERTAIN UNDERWRITERS AT LLOYD'S LONDON subscribing to Policy Nos. BUP1178 & BUP1211,	:	280 EDA 2017
	:	
Defendants.	:	

OPINION

Plaintiffs, Joel Harden and 275 Pleasant Valley Holdings Corp. ("PVHC"), previously filed an action for breach of insurance contract against their insurer, Certain Underwriters at Lloyd's London ("Lloyds").¹ That action was based on Lloyds' denial of plaintiffs' loss of business income claims arising out of physical damage sustained by two different commercial properties owned by plaintiffs. On May 16, 2014, the prior action was dismissed upon uncontested Motion for Judgment on the Pleadings, which motion raised a contractual two year suit limitation period as a bar to plaintiffs' claims for breach of contract.

Mr. Harden and PVHC by their attorney, Lee M. Herman, then filed this action against Lloyds for bad faith only. The parties litigated this action through discovery until February 16, 2016, when the action was deferred due to Mr. Harden's and PVHC's bankruptcy filings.

¹ Harden v. Lloyds, May Term 2013, No. 02928 (Phila Co.)

Harden Etal Vs Certain Underwriters At Lloyd-OPFLD



14050204400088

Mr. Herman then moved to withdraw as counsel, which Motion was granted on March 14, 2016. No substitute counsel entered his/her appearance for plaintiffs.² Plaintiffs' bankruptcy proceedings terminated on April 22, 2016.

On November 9, 2016, Lloyds filed a Motion for Summary Judgment in this action, to which no response was received. On December 15, 2016, the court granted the Motion as uncontested and entered judgment in favor of Lloyds on plaintiffs' bad faith claims.

On January 13, 2017, attorney Jonathan Wheeler entered his appearance for plaintiffs and filed a Motion for Reconsideration of the December 15th Order. On the next business day and the last day of the appeal period, he filed an appeal from the December 15th Order awarding judgment to defendants. In light of the appeal, this court denied the Motion for Reconsideration as moot and untimely filed.

This court now offers the following opinion in support of its December 15th Order awarding judgment to Lloyds, and respectfully requests that its decision be affirmed on appeal for several reasons.

Firstly, "[s]ummary judgment may be entered against a party who does not respond."³ Plaintiffs here did not respond to the Motion for Summary Judgment, so judgment was entered against them.

² As a corporation, PVHC cannot appear before this court *pro se*. See Walacavage v. Excell 2000, Inc., 331 Pa. Super. 137, 142, 480 A.2d 281, 284 (1984) ("a corporation may appear in court only through an attorney at law admitted to practice before the court. The reasoning behind the rule is that a corporation can do no act except through its agents and that such agents representing the corporation in Court must be attorneys at law who have been admitted to practice, are officers of the court and subject to its control. This rule holds even if the corporation has only one shareholder. . . . [T]he purpose of the rule was not the protection of stockholders but the protection of the courts and the administration of justice . . . [A] person who accepts the advantages of incorporation for his or her business must also bear the burdens, including the need to hire counsel to sue or defend in court.")

³ Pa. R. Civ. P. 1035.3(d). "In certain counties, the failure to respond to a motion may result in the motion being deemed uncontested and the entry of the judgment sought." *Id.*, Note. Philadelphia is such a county, and this court ruled accordingly.

Secondly, by failing to respond to the factual assertions in the Motion for Summary Judgment, plaintiffs admitted them.⁴ Among the facts stated by Lloyds in its Summary Judgment, were the following:

1. The physical damage to plaintiffs' two properties occurred in January and March 2010, respectively, and plaintiffs' adjuster informed Lloyds' adjuster in August and October 2010, respectively, that PVHC and Mr. Harden were making claims for loss of business income.⁵
2. Over the period from August, 2010, through October, 2012, Lloyds made repeated requests for documentation to support plaintiffs' business interruption claims, but plaintiffs did not provide the necessary support for their claims.⁶
3. In December 2012, Lloyds denied the claims because "plaintiffs did not substantiate their claims for business income [loss]."⁷

Similarly, by failing to respond to, and failing specifically to deny the factual allegations in, the Motion for Judgment on the Pleadings filed by Lloyds in the parties' prior action, plaintiffs admitted, *inter alia*, that they did not timely file that action within the two year

⁴ "The response to the motion [for summary judgment] shall be divided into paragraphs, numbered consecutively, corresponding to the numbered paragraphs of the motion for summary judgment. The response shall state whether each of the allegations is admitted or denied. No general denial is acceptable. The factual reasons for the denial or dispute must be specifically stated and the 'record' (as that term is defined in Pa. R. Civ. P. No. 1035.1) supporting the denial or dispute must be attached as an exhibit." Phila. R. Civ. P. 1035.2(a) (4).

⁵ SJM, ¶¶ 4, 5, 28, 48.

⁶ *Id.* ¶¶ 27- 61.

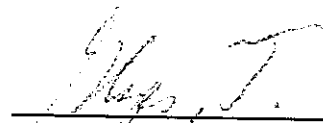
⁷ *Id.* ¶ 62. It is interesting to note that plaintiffs' proposed Response to the Summary Judgment Motion, which was attached to their Motion for Reconsideration, contains numbered responsive paragraphs 1-57, but not 58-62.

limitations period set forth in the parties' insurance contract. Plaintiffs are collaterally estopped from challenging in this action the factual determinations made in the prior action.⁸

Given all these admitted facts, this court properly granted Lloyds' Motion for Summary Judgment in this action and entered judgment in favor of Lloyds on plaintiffs' claims for, *inter alia*: bad faith in delaying the investigation and adjustment of plaintiffs' claims; bad faith in lulling plaintiffs into filing the prior action late; and bad faith in asserting the contractual limitations period as a defense in the prior action.

Given plaintiffs' long history of failing to defend their own alleged claims and interests, both before filing suit and after, the court respectfully requests that the appellate court affirm its December 15, 2016 Order granting Lloyds' Motion for Summary Judgment, which plaintiffs failed to contest.

Dated: February 3, 2017



GLAZER, J.

⁸ See Hebden v. W.C.A.B. (Bethenergy Mines, Inc.), 534 Pa. 327, 330, 632 A.2d 1302, 1304 (1993) ("Collateral estoppel, broad *res judicata* or issue preclusion forecloses re-litigation in a later action, of an issue of fact or law which was actually litigated and which was necessary to the original judgment.")