

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

BISWANGER MANAGEMENT  
CORPORATION and BISWANGER OF  
PENNSYLVANIA INC.,

Plaintiffs,

v.

MATTHEW PAUL SIGEL, WESTFIELD REAL  
ESTATE LLC, AY COMMERCIAL LP, and 300  
BROOKSIDE LLC,

Defendants.

September Term 2020

No. 1327

Commerce Program

Control Number 24070031

~~3629~~ EDA 2024

3269

2025 MAR 17 AM 11:44

MARC POLICARPO,

Plaintiff,

v.

BINSWANGER MANAGEMENT  
CORPORATION and BINSWANGER OF  
PENNSYLVANIA, INC.,

Defendants.

February Term 2021

No. 1567

Commerce Program

Patrick, J.

March 17, 2025

**OPINION**

Defendants Matthew Paul Sigel, Westfield Real Estate, LLC, AY Commercial, LP, and 300 Brookside, LLC (collectively “Defendants”) appeal this Court’s Order dated and docketed November 5, 2024, denying Defendants’ Motion for Attorney Fees. For the reasons discussed below, this appeal should be quashed or in the alternative this Court’s Order should be affirmed.

**BACKGROUND**

Marc Policarpo was employed in the position of Senior Vice President for Binswanger Management Corporation and Binswanger of Pennsylvania, Inc. (collectively “Binswanger”).

OPFLD-Binswanger Management Corporation Etal Vs Sigel Et [VKS]



20090132700185

(*Binswanger et al. v. Sigel et al.*, 2009-1326, Dkt. 6-28-24, Motion Exhibit “A”). On March 22, 2019, Policarpo resigned from his employment with Binswanger and executed a Separation Agreement/Confidentiality Agreement (“Separation Agreement”) bearing the same date. (Id.).

On September 23, 2020, Binswanger filed a complaint against Defendants alleging claims for aiding and abetting breach of fiduciary duty, unjust enrichment, concerted action, civil conspiracy and conspiracy to breach the duty of faithful servant in this Court of Common Pleas. (*Binswanger et al. v. Sigel et al.*, 2009-1326 (“Binswanger Action”). On February 17, 2021, Policarpo filed an action in this Court against Binswanger for breach of the Separation Agreement, violation of the Wage Payment Collection Law and for declaratory relief. (*Policarpo v. Binswanger Management Corporation et al.*, 2102-1567 (“Policarpo Action”)). On May 13, 2021, actions were consolidated. (Binswanger Action, Dkt. 5-13-21, Order).

In November 2023, Policarpo and Defendants filed a consolidated Motion for Summary Judgment. (Id., Dkt. 11-20-24, Motion). On May 20, 2024, this Court granted summary judgment in favor of Policarpo and Defendants on the Binswanger claims. (Id., Dkt. 5-21-24, Order). The Court reasoned that the mutual release provision within the Separation Agreement was valid and enforceable, and that Binswanger’s claims and counterclaims were barred by the Separation Agreement. (Id.). The Court also denied Policarpo’s motion for summary judgment on his claim for breach of the Separation Agreement and violation of the Wage Payment Collection Act. (Id.).

On June 28, 2024, Defendants filed a motion for attorney fees and costs asserting they are the “prevailing parties” under § 8 (c) of the Separation Agreement. (Id., Dkt. 6-28-24, Motion). On November 5, 2024, after the motion was fully briefed, this Court denied the motion for attorney fees. (Id., Dkt. 11-5-24, Order). On December 4, 2024, the Defendants filed a notice of appeal of this Court’s Order dated November 4, 2024, with the Superior Court of Pennsylvania. (Biswanger

Action, Dkt. 12-4-24, Notice of Appeal). On December 9, 2024, this Court ordered the filing of a Statement of Errors Complained of on Appeal in accordance with Pa. R. A. P. 1925 (b). (Id., Dkt. 12-9-24, Order). On December 30, 2025, Defendants filed their Statement of Errors Complained of on Appeal. (Id., Dkt. 12-30-24, Statement of Errors). For the reasons discussed below, this Court's Order should be affirmed.

## **DISCUSSION**

### **1. The Appeal should be quashed because the November 5, 2024 Order is not a final Order.**

This appeal should be quashed because the November 5, 2024 Order is not a final order. Under Pa. R. A. P. 341, a final order in civil action can be one that disposes of all the parties and all the claims or is entered as a final order pursuant to the trial court's determination under Rule 341(c). Pa.R.A.P. 341(b)(1)–(4). While the May 20, 2024 Order granted summary judgment in favor of Defendants and against Binswanger in the Binswanger Action, the case is not over because claims remain to be tried in the consolidated Policarpo Action. The Court denied summary judgment on Policarpo's claims for breach of the Separation Agreement and for violation of Pennsylvania's Wage Payment Collection Law that were filed against Binswanger. (Id., Dkt. 5-20-24, Order). Since the Binswanger Action and the Policarpo Action continue to remain consolidated and since Defendants did not file a motion with the Court to sever the actions or request permission to appeal, this appeal is improper and should be quashed.

### **2. The Trial Court did not abuse its discretion nor commit an error of law when it denied the Motion for Attorney's Fees.**

Under the American Rule, applicable in Pennsylvania, a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception. *See Trizechahn Gateway LLC v. Titus*, 976 A.2d 474,

482–83 (Pa., 2009) citing *Mosaica Charter Sch. v. Commonwealth, Dep't of Educ.*, 813 A.2d 813, 822 (Pa. 2002). The question here is whether Defendants were entitled to an award of attorney fees and costs under the Separation Agreement.

On May 20, 2024, this Court granted summary judgment to Defendants on the claims asserted against them by Binswanger. While Defendants are the “prevailing parties” because of this Court’s Order granting summary judgment in their favor, they are not entitled to an award of attorney fees and costs under § 8(c) of the Separation Agreement because they are not parties to the agreement. It is fundamental contract law that one cannot be liable under a contract that one is not a party to. *Electron Energy Corp. v. Short*, 597 A.2d 175, 178 (Pa. Super. 1991).

Section 8 (c) of the Separation Agreement specifically states,

“In any legal action related to the enforcement of this Agreement by **either party**, the prevailing party in such action shall be entitled to be paid any and all costs including, without limitation, reasonable attorney’s fees, whether suit be brought or not, and whether or not incurred in trial, bankruptcy or appellate proceedings.” (Emphasis added).

By its clear and unambiguous language, the intent of § 8 (c) is that only the parties to the Separation Agreement, Policarpo and Binswanger, are entitled to be paid reasonable attorney fees and costs as prevailing parties. Defendants are not parties to the Separation Agreement nor are they third party beneficiaries. The fact that Binswanger was a party to this Separation Agreement and commenced the Binswanger Action against Defendants does not give Defendants entitlement under § 8 (c) to reasonable attorney fees and costs; they are not parties to the Separation Agreement.

Additionally, Defendants are not third-party beneficiaries of the Separation Agreement.<sup>1</sup> It is well settled under Pennsylvania law that a party becomes an intended third-party beneficiary only “where *both parties to the contract* express an intention to benefit the third party in the contract itself...” *Scarplitti v. Weborg*, 609 A.2d 147, 149 (1992) (emphasis added). Moreover, courts must construe the contract as a whole to determine whether third party beneficiary status was intended. *See Burks v. Fed. Ins. Co.*, 883 A.2d 1086, 1088 (2005).

In this case, the language of the Separation Agreement confirms that Defendants are not third-party beneficiaries of § 8 (c) of the Separation Agreement. Section 8 (c) only refers to the parties to the Separation Agreement as being entitled to reasonable attorney fees and costs. Section 8 (c), unlike § 5 of the Separation Agreement titled “Release”, does not include “affiliates” of the parties to the Separation Agreement. Consequently, Defendants were not intended to be third party beneficiaries of § 8 (c) of the Separation Agreement.

### CONCLUSION

For the foregoing reason, this appeal should be quashed or in the event the appeal is not quashed, this Court’s Order dated November 5, 2024 should be affirmed.

Respectfully Submitted,

BY THE COURT:



PAULA A. PATRICK, J.

---

<sup>1</sup> This argument was not raised by Defendants in their papers filed with the Trial Court and therefore is waived. *See, Commonwealth v. Mason*, 130 A.3d 601, 639 n.47 (Pa. 2015) (“[A] 1925(b) statement can...never be used to raise a claim in the first instance.”); *Stange v. Janssen Pharm., Inc.*, 179 A.3d 45, 63-64 (Pa. Super. 2018) (finding that the issues not raised in motions before the trial court to be waived on appeal).