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

PETER TIBURZIO, Executor of the Estate of : April Term 2025
Peter Tiburzio, deceased and PETER TIBURZIO, :
Executor of the Estate of Adele Tiburzio, deceased, : No. 2882
: :
Plaintiffs, : Commerce Program
: :
v. : Control Number 25083561
: :
YELLOW CAB HOLDINGS PENNSYLVANIA, :
LLC, :
: :
Defendant. :

DOCKETED
SEP 19 2025
R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 19th day of September 2025, upon consideration of the Preliminary Objections filed by Defendant Yellow Cab Holdings Pennsylvania LLC to the Complaint and the Response in Opposition filed by Plaintiff Peter Tiburzio, Executor of the Estate of Peter Tiburzio, deceased and Peter Tiburzio, Executor of the Estate of Adele Tiburzio (“Plaintiff Estates”), and the attached Opinion, it is **ORDERED** that Preliminary Objections are **SUSTAINED** and the Complaint is **Dismissed** without prejudice.

BY THE COURT:



MICHAEL E. ERDOS, J.

ORDRF-Peter Tiburzio, Executor Of The Estate Of Peter Ti [RCP]



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

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| Plaintiffs, | : | Commerce Program |
| | : | |
| v. | : | Control Number 25083561 |
| | : | |
| YELLOW CAB HOLDINGS PENNSYLVANIA, | : | |
| LLC, | : | |
| | : | |
| Defendant. | : | |

OPINION

Erdos, J.

September 19, 2025

Presently before the Court are the preliminary objections of Defendant Yellow Cab Holdings Pennsylvania LLC (“Defendant Yellow Cab”) to the complaint. For the reasons discussed below, the preliminary objection for failure to state a claim is sustained and the complaint is dismissed.¹

¹ Defendant Yellow Cab also asserted a preliminary objection based on failure to join an indispensable party, Dominique Harris. A party is indispensable when their rights are so connected with the claims of the litigants that no decree can be made without impairing those rights. *Sprague v. Casey*, 550 A.2d 184 (Pa. 1988). Here, Harris is not an indispensable party to this action as he is not a party to the Lease. The Lease is the operative document in this action which Plaintiff alleges was breached and for which it seeks a declaration regarding Defendant Yellow Cab’s indemnification obligations. Based on the foregoing, since the Lease is the operative document at issue and since Harris is not a party to the Lease, the objection based on failure to join an indispensable party is overruled.

DISCUSSION

A. The parties and the Lease.

Peter Tiburzio is the Executor of the Estate of Peter Tiburzio, deceased and the Executor of the Estate of Adele Tiburzio, deceased (collectively "Plaintiff Estates"). Through a series of assignment and assumption agreements, Plaintiff Estates assumed a Lease for real property located at 2041 Street Road in Bensalem, PA as the landlord and Defendant Yellow Cab Holdings Pennsylvania LLC ("Defendant Yellow Cab") assumed the Lease as a tenant. (Docket (Dkt.) 4-23-25, Complaint ¶¶ 1, 3,4). At all times relevant here, a Wendy's Old Fashioned Hamburger restaurant operated at the property. (Id. ¶ 3).²

The Lease included an indemnification provision. (Id. ¶¶ 6-7). The provision states:

17. Indemnity By Tenant; Exoneration

- (a) Tenant will indemnify Landlord [Plaintiff Estates] and save Landlord [Plaintiff Estates] harmless from and against any and all claims, actions, damages, liability and expense, including attorney's fees and other professional fees connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by Tenant [Defendant Yellow Cab] of the Premises or any part thereof occasioned wholly or in part by an act or omission of Tenant [Defendant Yellow Cab], its officers, employees, agents or contractors.
- (b) To the maximum extent permitted by law, Tenant [Defendant Yellow Cab] agrees to use and occupy the Premises at Tenant's [Defendant Yellow Cab's] own risk; and Landlord [Plaintiff Estates] shall have no responsibility for any injury to persons, or loss of damage to, property sustained or occurring on or about the sidewalks, parking areas, roads or other appurtenances and facilities used in connection with the Premises arising out of the use or occupancy of the Premises by Tenant [Defendant Yellow Cab], or by any person claiming by, through or under Tenant [Defendant Yellow Cab], on account or based upon the act, omission, fault, negligence or misconduct of any person or persons other than Landlord [Plaintiff Estates] and those for whose conduct Landlord [Plaintiff Estates] is legally responsible...

² The original lease was dated December 10, 2001 between 2041 Street Road, LLC as landlord and Superior Fast Food of Bucks County, Inc. as tenant. (Dkt. 4-23-25, Complaint ¶ 3). Landlord agreed to lease the property to tenant to operate a Wendy's Old Fashion Hamburger Restaurant and related activities. (Id.).

- (d) It is the intention of the parties that the provisions of this Section 17 shall require Tenant [Defendant Yellow Cab] to indemnify and hold Landlord [Plaintiff Estates] harmless with regard to acts, including negligence of Tenant [Defendant Yellow Cab], which result in harm to any employee of Tenant [Defendant Yellow Cab]. (Id. Exhibit A).

B. The Underlying Action

On March 30, 2022, Michael Leroy Pickens (“Decedent”) was an employee of Wendy’s which was operated by Defendant Yellow Cab per the Lease. While Decedent was working, a former coworker, Dominique Harris, who was fired from Wendy’s, attacked and killed the Decedent in the parking lot of the property. (Dkt. 4-23-25, Complaint ¶¶ 10-12).

On March 26, 2023, Diantha Ann Pickens, individually and as the Administratrix of the Estate Michael Leroy Pickens (“Pickens”) commenced a wrongful death and survival action against Plaintiff Estates, Defendant Yellow Cab, Dominique Harris and other defendants in the Court of Common Pleas of Philadelphia County captioned *Pickens v. Wendy’s et al.* 2403-2951. (“Underlying Action”). As to Plaintiff Estates and Defendant Yellow Cab, Pickens alleged claims for premises liability and wrongful death. Specifically, Pickens alleged that Dominique Harris was extremely dangerous and a person who posed a danger to the safety of others, that Plaintiff Estates and Defendant Yellow Cab were aware of the prior incident but failed to implement any safety or security measures to protect decedent. Additionally, Pickens alleged that the Decedent was lulled into a false sense of security which resulted in the Decedent’s willingness to continue returning to the premises to serve the collective interests of the Plaintiff Estates and Defendant Yellow Cab. Pickens also alleged that Plaintiff Estates and Defendant Yellow Cab were negligent for failing to properly police and control the subject premises, failing to conduct a security or crime review of the premises, failing to coordinate safety with the policy and provide a safe environment and failing to provide appropriate security measures. (Id. Exhibit “H”).

On June 26, 2025, the parties stipulated to dismiss all the claims alleged against Plaintiff Estates. (*Pickens v. Wendy's, et al.* 2403-2951, Dkt. 6-26-25, Stipulation). As part of the stipulation, Defendant Yellow Cab acknowledged that it was in possession of the property on the date of the incident giving rise to the action. (*Id.*). The *Pickens v. Wendy's* action is actively being litigated and as of the filing of this Opinion; there has been no finding of liability against Defendant Yellow Cab or any other Defendant in the underlying action. (*Id.*, generally).

C. This Action

On April 23, 2025, Plaintiff Estates filed this action against Defendant Yellow Cab for indemnity and reimbursement of its attorney fees incurred in the underlying action. The Complaint alleges claims for breach of the Lease and subsequent Assignment and Assumption Agreements (Count I) and indemnification and contribution (Count II) and alleges a claim for declaratory judgment seeking a declaration that Defendant Yellow Cab is obligated to indemnify it for the attorney fees incurred (Count III). (Dkt. 4-23-25, Complaint). On July 10, 2025, Defendant Yellow Cab filed a motion to dismiss this Complaint contending that Plaintiff Estates failed to join an indispensable party and that the complaint failed to state a claim. (Dkt. 7-10-25, Motion). In response to the motion to dismiss, Plaintiff Estates filed preliminary objections. (Dkt. 7-30-25, Preliminary Objections).³ In response to the preliminary objections, on August 18, 2025, Defendant Yellow Cab filed these preliminary objections in the form of an amended motion to dismiss. These preliminary objections are now ripe for disposition.

³ The Motion to Dismiss and the Preliminary Objections will be addressed in a separate order.

DISCUSSION

Plaintiff Estates seeks indemnification and reimbursement of attorney fees it incurred to defend itself in the underlying action and relies upon paragraph 17 of the Lease to support its claim for reimbursement. Pursuant to the clear and unambiguous language of paragraph 17, however, Plaintiff Estates' claim for indemnification and reimbursement from Defendant Yellow Cab has not been triggered and consequently, the claim is premature.

To establish a right to indemnification, Plaintiff Estates must establish (1) the scope of the indemnification agreement, (2) the nature of the underlying claim, (3) that the underlying claim fell within the scope of the indemnification agreement, (4) that the attorneys' fees, incurred by it in defending against the underlying claim, were reasonable, and (5) where the underlying cause of action is settled rather than resolved by payment of judgment, the underlying claim was valid against it and the settlement was reasonable. *Sunoco (R&M), LLC v. Pennsylvania National Mutual Casualty Insurance Company*, 322 A.3d 930, 951–52 (Pa. Super.2024).

Here, the scope of the indemnification agreement, that is paragraph 17, does not support Plaintiff Estates' claim for reimbursement of attorney fees. First, paragraph 17 does not include a duty defend. Therefore, there is no obligation for Defendant Estates to pay Plaintiff Estates' defense costs.

Lastly, Paragraph 17 does require Defendant Yellow Cab to indemnify and hold Plaintiff Estates harmless from any claims, actions, damages, liability and expense, including attorney's fees and other professional fees in connection with loss of life. (Dkt. 4-23-25, Complaint, Exhibit A). However, Defendant Yellow Cab's duty to indemnify and hold Plaintiff Estates harmless only arises if Decedent's death was occasioned in whole or in part by any act or omission of Defendant Yellow Cab and its officers, employees, agents or contractors. (Id.). At this time, there has not

been any finding, judgment or verdict, that Decedent's death was caused by Defendant Yellow Cab's act or omission. Consequently, while a duty to indemnify and hold Plaintiff Estates harmless exists in paragraph 17 of the Lease, the duty has yet to be triggered and this action seeking indemnification and reimbursement is premature. A fundamental rule in construing a contract is to ascertain and give effect to the intent of the contracting parties. *Mace v. Atlantic Refining & Marketing Corp.*, 785 A.2d 491, 495 (Pa. 2001). Here, the intent of the parties is clear, Defendant Yellow Cab does not have a duty to reimburse Plaintiff Estates' attorney fees at this time.

CONCLUSION

For the foregoing reasons, the preliminary objections are sustained, and the complaint is dismissed without prejudice.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Michael E. Erdos", written over a horizontal line.

MICHAEL E. ERDOS, J.