

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

PHILADELPHIA LODGE 5,
FRATERNAL ORDER OF POLICE
HEALTH BENEFITS JOINT PROGRAM
TRUST,

Plaintiff,

v.

CITY OF PHILADELPHIA;
ACTING SHERIFF
BARBARA DEELEY,

Defendants.

MARCH 2011

No. 0912

Commerce Program

Control Number 11112856

DOCKETED
FEB 21 2012
CIVIL TRIAL DIVISION

ORDER

AND NOW, this 17th day of February 2012, upon consideration of the Plaintiff's Preliminary Objections to the Defendants' Joinder Complaint, and the Defendants' responses thereto, and in accord with the Opinion entered contemporaneously herewith, it is **ORDERED** that:

1. The Plaintiff's Preliminary Objections to Defendants' Joinder Complaint are **SUSTAINED**. The Joinder Complaint is hereby stricken.

BY THE COURT:

Philadelphia Lodge 5, -ORDOP



11030091200053

ALBERT JOHN SNITE, JR., J.

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

| | | |
|--------------------------------|---|-------------------------|
| PHILADELPHIA LODGE 5, | : | MARCH 2011 |
| FRATERNAL ORDER OF POLICE | : | |
| HEALTH BENEFITS JOINT PROGRAM | : | |
| TRUST, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | No. 0912 |
| | : | |
| CITY OF PHILADELPHIA; | : | |
| ACTING SHERIFF BARBARA DEELEY, | : | Commerce Program |
| | : | |
| | : | Control Number 11112856 |
| | : | |
| | : | |
| Defendants. | : | |

MEMORANDUM OPINION

This matter arises from a dispute regarding payments allegedly owed to the Plaintiff in the underlying action, Philadelphia Lodge 5, Fraternal Order of Police Health Benefits Joint Program Trust (“the Trust”), by the City of Philadelphia and Acting Sheriff Barbara Deeley, defendants in the underlying action (“the City and Sheriff”). The City and Sheriff seek in this Joinder Complaint to join the Fraternal Order of Police Lodge 5 (“FOP”) as a defendant. The Trust has filed preliminary objections to the Joinder Complaint, to which the City and Sheriff filed a response. For the reasons which follow, this court will sustain the Trust’s preliminary objections.

The Trust is a fund that provides health benefits to the employees of the FOP, their beneficiaries and retirees, funded by payments from the City and Sheriff pursuant to a number of Collective Bargaining Agreements (“CBAs”) and arbitration awards. The underlying complaint for breach of contract was brought by the Trust against the City for failure to comply with the

CBAs and arbitration awards by underpaying the Trust. In this Joinder Complaint, the City and Sheriff seek to join as an additional defendant the FOP. They argue that the FOP had exclusive authority under the CBAs to initiate grievances with the Pennsylvania Labor Relations Board (PLRB) on behalf of its members for alleged breaches of the contractual obligations created by the CBAs. They allege that the FOP did so in several cases, which were resolved either through arbitration awards, settlement, withdrawal of the grievance, or failure to pursue the grievance. The City and Sheriff argue that in cases where the FOP settled or withdrew grievances, it thereby accepted the payments made by them as complete satisfaction, and waived the Trust's right to further payments in those cases. Therefore, the City and Sheriff argue that the FOP is a necessary and indispensable party to the litigation and should be jointly and severally liable in this matter.

The Trust filed Preliminary Objections to the Joinder Complaint. It argues that the City and Sheriff's Joinder Complaint is legally insufficient under Pa. R.C.P. 1028(a)(4) because the Trust is not a necessary or indispensable party to the litigation. They argue that the City and Sheriff do not provide any basis for any purported right or interest of the FOP in the underlying litigation, nor could it be exposed to liability in the underlying litigation; and therefore joinder is impermissible under Pa. R.C.P. 2252(a)(4).

The City and Sheriff filed an Answer to the Trust's Objections.

THE TRUST'S PRELIMINARY OBJECTIONS TO THE JOINDER COMPLAINT ARE SUSTAINED.

The City and Sheriff, the defendants in the underlying action, seek to join the FOP as an additional defendant. Joinder of parties is governed by Pa. R.C. P. 2252(a), which states

“any party may join as an additional defendant any person not a party to the action who may be ...solely liable on the underlying cause of action against the joining party, or ...

liable to or with the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action against the joining party is based.”

The Superior Court elaborated:

Our courts have construed the phrase "cause of action", as used in Rule 2252, to mean that the "additional defendant's liability [be] related to the original claim which plaintiff asserts against the original defendant" Rule 2252(a) does not permit joinder where the allegations of the original complaint and the allegations of the joinder complaint "relate to different harms to be proven with different evidence as to different occurrences happening at different times."¹

Further, Pa. R.C. P. 2227 requires joinder of a third party as either a plaintiff or a defendant if they have a joint interest in the subject matter of the action, and states that the person may be made an involuntary plaintiff or defendant if they must be joined and refuse to do so.

Compulsory joinder is available only in very limited circumstances, however: “[i]t is applicable only where the substantive law provides that an interest is joint and the holder of such interest refuses to join. Involuntary joinder is necessary because without such joinder an indispensable party is missing and the action cannot proceed.”²

Here, the City and Sheriff argue that FOP is a necessary and indispensable party because it negotiated with the City and Sheriff regarding payments to the Trust, and because it brought and withdrew complaints of unfair labor practices with the Pennsylvania Labor Relations Board. They argue that by withdrawing these complaints and accepting payments made by the City and Sheriff in satisfaction of arbitration awards and/or agreements, the FOP waived the rights of the Trust.

However, the City and Sheriff have not adequately articulated a reason that the FOP should be joined as a necessary or indispensable party to this litigation. Necessary parties are

¹Olson v. Grutza, 428 Pa. Super. 378, 387, 631 A.2d 191, 195-6 (1993).

²Kelly v. Carborundum Co., 307 Pa. Super. 361, 369, 453 A.2d 624, 628 (1982).

those with rights or an interest in the matter, while a party is indispensable to an action “where his rights are so connected with the claims of the litigants that no decree can be made between them without impairing such rights”³ To determine whether a party is indispensable, the court must inquire “whether justice can be done in the absence of him or her. In undertaking this inquiry, the nature of the claim and the relief sought must be considered.”⁴

Here, the claim in the underlying action is for a sum of money allegedly owed to the Trust by the City and Sheriff. No party alleges that FOP owes any portion of this sum, nor that it has a right to receive any of it – the Trust apparently exists for the purpose of providing health benefits to FOP’s current and retired employees and their beneficiaries, and it has the right to pursue payments owed to it. The City and Sheriff cannot have a right to contribution, which in Pennsylvania is only available for joint tortfeasors,⁵ nor do they have a right to indemnity, in the absence of an express contract for FOP to indemnify the City and Sheriff.⁶

The alleged fact that the FOP purported to waive the rights of the Trust does not make the FOP a necessary or indispensable party to this action. Nothing in the Joinder Complaint indicates that the FOP has any right or interest in the claim, or that the FOP would be exposed to liability to the City and Sheriff. Accordingly, the FOP is not an indispensable party to the litigation.

Essentially, the City and Sheriff argue that the FOP is an agent of the Trust and has the authority to accept or waive obligations to the Trust on its behalf. However, this defense does not constitute a proper joinder complaint, but rather a defense of agency which would be relevant

³ Mechanicsburg Area Sch. Dist. v. Kline, 494 Pa. 476, 483, 431 A.2d 953,957 (1981).

⁴ City of Philadelphia v. Commonwealth, 575 Pa. 542, 567, 838 A.2d 566, 581 (2003).

⁵ Richardson v. John F. Kennedy Memorial Hosp., 838 F. Supp. 979,989 (E.D. Pa. 1993).

⁶ Id.

at trial. Accordingly, the preliminary objections are sustained, and the Joinder Complaint is stricken.

CONCLUSION

For the foregoing reasons, Plaintiff's Preliminary Objections to Defendants' Joinder Complaint are sustained, and the Joinder Complaint is stricken.

BY THE COURT:



ALBERT JOHN SNITE, JR., J.