

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

CARUSONE CONSTRUCTION, INC.	:	
	:	MAY TERM 2002
	:	
v.	:	NO. 3588
	:	
	:	
COLONIAL SURETY CO., et al.	:	
	:	

**MEMORANDUM OPINION**

Appellant, Colonial Surety Co, appeals from the Court’s Order dated May 23, 2005, and docketed on May 24, 2005. It is suggested that this appeal be quashed because appellant has waived its appellate issues. Specifically, appellant failed to serve its Statement of Matters Complained of on the trial judge, in violation of Pa. R.A.P. 1925(b), and in further violation of the Court’s Order dated June 13, 2005. See Commonwealth v. Douglas, 2003 Pa. Super. 403, \*P5, 835 A.2d 742, 744 (2003) (“when an appellant fails to serve a court-ordered Pa. R.A.P. 1925(b) statement upon the trial court judge *and* file such with the clerk of courts, the issues are waived as if the appellant failed to file a Pa. R.A.P. 1925(b) statement at all”) (emphasis in original).

Further, in its Statement of Matters Complained of, appellant raises for the first time the rule of coordinate jurisdiction and the exceptions to the rule. This issue has been waived. See Glenbrook Leasing Co. v. Beausang, 2003 Pa. Super. 489, \*P13, 839 A.2d 437, 444 (2003) (“A Rule 1925(b) statement of matters complained of on appeal is not a vehicle in which issues not previously asserted may be raised for the first time”). While appellant may argue that it raised this issue in its reply to its Motion to Reinstate Third

Party Complaint Against Warminster Township, the issue was not raised in its initial Motion. It is noted that appellant's Motion to Reinstate Third Party Complaint Against Warminster Township was assigned to this Court on May 20, 2005. Appellant filed a reply brief to the response to the Motion to Reinstate Third Party Complaint Against Warminster Township on the same day, May 20, 2005. The Motion was assigned and decided *without* the reply. Furthermore, the reply was filed without leave of court and the Court had no obligation to consider it. Neither statewide rules nor local rules provide the parties with a right to reply let alone reply with issues and arguments which could have been contained in the Motion and Memorandum in the first instance.

Dated: August 2, 2005

**BY THE COURT:**

HOWLAND W. ABRAMSON, J.