

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

Susan Schlisman, and
Sam's Midtown Group, LLC,

Plaintiffs,

v.

Philadelphia 4 Construction,
Jose Gonzalez,
The Kachele Group, Inc.,
and
QBS International, Inc.,

Defendants.

AUGUST TERM 2010

No. 924

Commerce Program

Control Numbers 12030054, 12032198,
12032423 and 12032419

DOCKETED

09/24/12

C. HART
CIVIL ADMINISTRATION

ORDER

And now, this 23rd day of October, 2012, upon consideration of Defendants' Motions for summary judgment, of Plaintiffs' Responses, and the memoranda in support and opposition, it is

ORDERED as follows:

1. QBS' Motion for Summary Judgment on Liability is GRANTED.
2. QBS' Motion for Summary Judgment on Damages is MOOT.
3. Philadelphia 4 Construction and Jose Gonzalez' Motion for Summary Judgment is GRANTED as to Plaintiffs' tort claims against Philadelphia 4 Construction and Jose Gonzalez.
4. Defendant BM Consulting's Motion for Summary Judgment is GRANTED.

BY THE COURT:

Schlisman Etal Vs Phila-ORDOP



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ALBERT JOHN SNITE, JR., J.

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FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
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QBS International, Inc.,	:	
	:	Control Numbers 12030054, 12032198,
	:	12032423 and 12032419
Defendants.	:	
	:	

OPINION

I. Factual and Procedural History.

This matter arises from the construction of a restaurant on 11th Street in Philadelphia (the “Project”). Plaintiffs engaged Urban Space Design, who engaged a number of subcontractors, including many of the defendants in this action, to design and construct a restaurant on the property they owned. In August 2008, in the process of construction, a brick wall on the second floor, the floor, and portion of the roof collapsed.

Plaintiffs sued Philadelphia 4 Construction and Jose Gonzalez (the “P4C Defendants”), BM Consulting Services, Monsell Masonry, Access Mechanical Contractors, Neil Richmond, QBS International (“QBS”), and the Kachele Group, all contractors or subcontractors involved with the Project. Plaintiffs allege that QBS (a structural engineering firm) negligently assessed the site and created design and structural engineering drawings of the site, and that the P4C

Defendants negligently performed the demolition and construction work on the project, resulting in the partial collapse of the building described *supra*. Plaintiffs also allege that Defendants BM Consulting Services, Monsell Masonry, Access Mechanical Contractors, Neil Richmond, and the Kachele Group negligently performed their work on the Project, causing damage to the building and financial loss to the Plaintiffs.

P4C Defendants have filed a contract action against Plaintiffs, which has been consolidated with this action. Neil Richmond has also filed a contract action against Plaintiffs, which has been consolidated with this action. Defendants P4C, BM Consulting, and Monsell Masonry filed cross-claims for contribution against each other; however, these three parties have stipulated to the withdrawal of their cross-claims with prejudice. QBS has filed a cross-claim for contribution against the Kachele Group, which remains pending. P4C has filed a Motion for Summary Judgment, which both Plaintiffs and QBS have opposed. BM Consulting has filed a Motion for Summary Judgment, which is opposed by QBS only. Finally, QBS has filed two Motions for Summary Judgment, one on liability and one on damages, which are opposed by Plaintiffs.

II. Discussion.

a. QBS' Motion for Summary Judgment on Liability is GRANTED.

In their Amended Complaint, Plaintiffs allege that QBS' work on the Project was negligent in that it deviated from the standard of care to which a professional engineering firm is to be held. QBS argues that it should be granted summary judgment on liability because the Plaintiffs have not alleged adequate facts to supporting a finding of professional negligence. The Court agrees.

It is well-settled that “expert testimony is required to establish professional negligence where the determination of whether the actions were negligent is beyond the understanding of the ordinary person.”¹ In such situations, “the plaintiff must present expert testimony that the acts of the... practitioner deviated from good and acceptable ...standards, and that such deviation was a substantial factor in causing the harm suffered.”²

The expert report provided by Plaintiffs, however, is woefully inadequate to make out such a prima facie case of professional negligence. The report is characterized as a “preliminary report” and in paragraph 6, on the topic of QBS’ alleged negligence, states,

”[f]urther investigation and questions are warranted to be answered as to the responsibility and/or involvement of QBS in regard to their care, engineering skill or knowledge exhibited by or on behalf of QBS International, Inc., the engineer which by record sealed the architectural drawings of the buildings to be co-joined located at or about 116 South 11th Street, Philadelphia, Pennsylvania, which buildings subsequently had a partial collapse as a result of the design, investigation, demolition planning, project management, project administration, project oversight and review, project coordination, inspection, planning, and/or specifications by QBS International, Inc., that is the subject of the complaint in the above lawsuit, fell outside acceptable professional or occupational standards or engineering practices or construction practices.”

This paragraph is nonsensical; however, it is clear that it does not allege QBS’ involvement in the Project with the necessary reasonable degree of professional certainty. Similarly, in paragraph 7, the report states that “[f]urther investigation and questions are warranted to be answered as to the responsibility and/or involvement of QBS in this regard in connection with USD’S obtaining a construction permit for the project to ensure that the structural stability of the building was or would be further investigated to prevent collapse.” In short, the report simply restates the questions it would need to answer in order to support Plaintiffs’ claim for professional negligence. The report does not positively articulate what duty QBS allegedly

¹ Cipriani v. Sun Pipe Line Co., 393 Pa. Super. 471, 488; 574 A.2d 706, 715 (1990).

² Lindsay v. Mitchell, 2007 Phila. Ct. Com. Pl. LEXIS 339, *11-12 (2007) (internal citations omitted).

breached, and that the harm suffered by Plaintiffs was proximately caused by that breach. Without such allegations, the expert report cannot withstand summary judgment.

An expert must testify with much more certainty than exists in this report that the defendant caused the harm alleged through its actions or omissions. “[T]he expert has to testify, not that the condition of claimant might have, or even probably did, come from the accident, but that in his professional opinion the result in question came from the cause alleged. A less direct expression of opinion falls below the required standard of proof and does not constitute legally competent evidence.”³

The expert report provided by Plaintiffs does not constitute legally competent evidence, which is required in order to make out a claim of negligence as to professionals such as QBS. Accordingly, summary judgment is granted to QBS on liability.

b. QBS’ Motion for Summary Judgment on Damages is MOOT.

Because summary judgment was granted to QBS on liability, Plaintiffs cannot recover damages from QBS. Accordingly, QBS’ motion for summary judgment on damages is moot.

c. Philadelphia 4 Construction and Jose Gonzalez’ Motion for Summary Judgment is GRANTED as to Plaintiffs’ tort claims against Philadelphia for Construction and Jose Gonzalez.

The Release signed by the Plaintiffs and Philadelphia 4 Construction and Jose Gonzalez (the “P4C Defendants”) specifies that it applies only to the tort claims in this action, and that Plaintiffs reserve warranty and contract claims and defenses for purposes of offset or defense against claims made by the P4C defendants in a related action. Plaintiffs object to P4C Defendants’ Motion for Summary Judgment on this basis; however, summary judgment may be granted on the tort claims only, without affecting any other matters.

³Menarde v. Philadelphia Transp. Co., 376 Pa. 497, 501; 103 A.2d 681, 684 (1954).

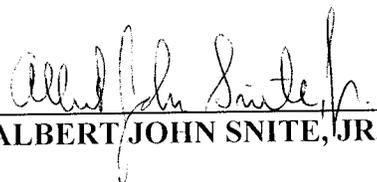
QBS also objects to P4C's Motion for Summary Judgment, arguing that all parties must remain in the litigation for the purpose of determining liability and contribution; however, as QBS has been granted summary judgment, its cross-claim against the Kachele Group is moot; therefore, QBS' objections to P4C's Motions are likewise moot. Accordingly, Summary Judgment is granted to P4C on the Plaintiffs' claims.

d. Defendant BM Consulting's Motion for Summary Judgment is GRANTED.

BM Consulting, like P4C, has entered into a joint tortfeasor pro rata release with Plaintiffs, settling all of Plaintiffs' claims against it. Additionally BM Consulting stipulated to withdraw its cross-claims against P4C and Monsell Masonry. BM Consulting therefore has no active claims against it, and unlike P4C, it has no counter-claim against Plaintiffs. Accordingly, summary judgment is appropriate for BM Consulting.

QBS objects to BM Consulting's Motion for Summary Judgment for identical reasons as its objection to P4C's Motion. However, as QBS has been granted summary judgment on all claims, its objections to BM Consulting's Motion are moot. Accordingly, Summary Judgment is granted to BM Consulting on the Plaintiffs' claims.

BY THE COURT:


ALBERT JOHN SNITE, JR., J.