

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

JOHN VALENTINO, MARY  
CLARE VALENTINO, AND JEEL  
CORPORATION

v.

HARLEYSVILLE PREFERRED  
INSURANCE COMPANY, SCOTT  
RITTER, individually and t/a SER  
BUILDING ASSOCIATES, INC.,  
STABLE CONTRACTING a/k/a  
STABLE ROOFING, AND RESQUE

FEBRUARY TERM, 2012

NO. 03608

COMMERCE PROGRAM

CONTROL NOS. 13061720 and  
13061955

DOCKETED

AUG 5 - 2013

C. HART  
CIVIL ADMINISTRATION

ORDER

AND NOW, this *5<sup>th</sup>* day of *August*, 2013, upon

consideration of the motions for summary judgment of defendant, Harleysville Preferred Insurance Company, and defendants Scott Ritter, individually and t/a SER Building Associates, Inc., and any responses thereto, it is hereby

**ORDERED**

as follows:

1. Harleysville Preferred Insurance Company's motion is **GRANTED** and judgment is entered against plaintiffs on Counts I and II of the Amended Complaint.
2. Scott Ritter, individually and t/a SER Building Associates, Inc.'s motion is **GRANTED** and judgment is entered against plaintiffs on Count III of the Amended Complaint.

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BY THE COURT:

  
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GLAZER, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
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<b>JOHN VALENTINO, MARY</b>	:	<b>FEBRUARY TERM, 2012</b>
<b>CLARE VALENTINO, AND JEEL</b>	:	
<b>CORPORATION</b>	:	<b>NO. 03608</b>
	:	
<b>v.</b>	:	<b>COMMERCE PROGRAM</b>
	:	
<b>HARLEYSVILLE PREFERRED</b>	:	<b>CONTROL NOS. 13061720 and</b>
<b>INSURANCE COMPANY, SCOTT</b>	:	<b>13061955</b>
<b>RITTER, individually and t/a SER</b>	:	
<b>BUILDING ASSOCIATES, INC.,</b>	:	
<b>STABLE CONTRACTING a/k/a</b>	:	
<b>STABLE ROOFING, AND RESQUE</b>	:	

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**OPINION**

GLAZER, J.

August 5, 2013

Before the court is the motion for summary judgment of Harleysville Preferred Insurance Company and the motion for summary judgment of Scott Ritter, individually and t/a SER Building Associates, Inc. For the reasons set forth below, defendants' motions for summary judgment are granted.

**FACTS AND PROCEDURAL BACKGROUND**

Plaintiffs commenced the present action alleging breach of contract against and bad faith against defendant Harleysville Preferred Insurance Company (hereinafter "Harleysville"). Moreover, plaintiffs also allege a claim for breach of contract against defendant Scott Ritter (hereinafter "Ritter"), individually and t/a SER Building Associates, Inc. (hereinafter "SER"). Plaintiffs, John Valentino and Mary Clare Valentino (hereinafter "Valentino"), own the premises located at 3001 Richmond Street, Philadelphia, PA (hereinafter "the premises"). Plaintiff, Jeel

Corporation (hereinafter “Jeel”), is the owner of the contents and personal property located at the premises. Harleysville issued an insurance policy covering the premises and the contents and personal property located at the premises. The Harleysville Policy at Section I, states:

We will pay for direct physical loss of or damage to Covered Property...caused by or resulting from a Covered Cause of Loss.

3. Covered Causes of Loss  
Risks of direct physical loss unless the loss is:
  - a. Excluded in Paragraph B. Exclusions in Section I;  
or
  - b. Limited in Paragraph 4. Limitations in Section I.
4. Limitations
  - a. We will not pay for loss of or damage to:
    - (5) The interior of any building or structure caused by or resulting from rain..., whether driven by wind or not, unless
      - (a) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain... enters.

See defendant Harleysville’s motion for summary judgment, Exhibit K, pp. 1-2 of 47.

On or about June of 2010, Valentino and Jeel retained defendants Scott Ritter and SER through an oral contract to allegedly perform the role of a general contractor with respect to repairs of the roof. Plaintiffs hired defendant Stable Contracting a/k/a Stable Roofing (hereinafter “Stable”) to install a new rubber roofing system. Additionally, plaintiffs hired Dan Beebie (hereinafter “Beebie”), t/a Resque (hereinafter “Resque”) to repair and restore the parapet walls surrounding the roof.

Portions of the roof were removed and allegedly not replaced in a timely manner causing rain water entered the premises and damage the exterior and interior of the building. Plaintiffs submitted notice of the damage to Harleysville, which denied coverage. Plaintiffs now bring the instant suit against Harleysville for breach of contract and bad faith. Moreover, plaintiffs allege that Ritter and SER breached their contract by “failing to complete the required work in a timely

fashion, or in the alternative, in completing the work in a dilatory and slipshod manner which permitted water to enter and damage plaintiffs' property and the contents thereof." See plaintiffs' amended complaint, ¶ 30.

## DISCUSSION

### I. Standard of Review

The court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Pa.R.C.P. 1035.2. A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. Note to Pa.R.C.P. 1035.2. When considering the merits for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Jones v. SEPTA, 565 Pa. 211, 772 A.2d 435, 438 (Pa. 2001). Further, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 589 A.2d 205, 206 (Pa. 1991).

### II. Breach of Contract – Harleysville

Interpretation of an insurance contract is generally performed by a court rather than by a jury. See Gonzalez v. United States Steel Corp., 484 Pa. 277, 398 A.2d 1378 (1979). "Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement." Gene & Harvey Builders v. Pennsylvania Manufacturers Assoc. Ins. Co., 517 A.2d 910, 913 (Pa. 1986), citing Mohn v. American Casualty Co. of Reading, 458 Pa. 576, 326 A.2d 346 (1974). However, where "the language of the contract is clear and unambiguous, a court is required to give effect to that language." Id., citing

Pennsylvania Manufacturers' Ass'n. Insurance Co. v. Aetna Casualty & Surety Insurance Co., 426 Pa. 453, 233 A.2d 548 (1967). "A defense based on an exception or exclusion in a policy is an affirmative one, and the burden is cast upon the defendant to establish it." Miller v. Boston Insurance Company, 420 Pa. 566, 570, 218 A.2d 275 (1966).

Plaintiffs argue that a direct physical loss occurred and thus coverage under the Harleysville Policy is triggered. They support this allegation by claiming that John Valentino observed water inside the building after the roof had not been replaced. Valentino had hired contractors to remove and replace the existing roof on the premises. The construction commenced in June 2010. The Harleysville policy states that the company does not have an obligation to pay for damage resulting from rain unless the building first sustains a Covered Cause of Loss to the roof, through which the rainwater enters. John Valentino testified as to how the water got into the building:

- Q. So do you know the source of the water that came into the building when you were there in July of 2010?  
A. Rain.  
Q. Just ordinary rain?  
A. Ordinary rain, God-given rain.

See defendant Harleysville's motion for summary judgment, Exhibit A, pp. 76.

Ordinary rain is not a covered loss under the policy. Plaintiffs respond by stating that there is "evidence to suggest that steps were taken to protect the roof from damage during the process of installing a new roof." See plaintiffs Valentino's opposition defendant Harleysville motion for summary judgment, p. 7. "Specially, when Mr. Valentino first discovered the water damage to the property he found that a tarp had been put in place..." Id. However, this argument does not contradict the evidence that the building sustained its loss by ordinary rain. Therefore, considering the plain language of the insurance contract, this court finds that the

limitation in the policy applies and summary judgment in favor of defendant Harleysville is granted.<sup>1</sup>

### **III. Breach of Contract – Scott Ritter and SER**

Under Pennsylvania law, a party must establish the following elements to prevail on a claim for breach of contract: (1) the existence of a contract, including its essential terms; (2) a breach of the duty imposed by the contract; and (3) resultant damages. CoreStates Bank, Nat'l Assn v. Cutillo, 723 A.2d 1053, 1058 (Pa.Super. 1999). “A party seeking damages for breach of contract ‘must be able to prove such damages with reasonable certainty.’” Exton Drive-In, Inc. v. Home Indem. Co., 439 Pa. 480 (1969), quoting Wilcox v. Register, 417 Pa. 475, 484, 207 A.2d 817, 822 (1965). Expert testimony is required whenever the subject matter of the inquiry involves special skills and training not common to laypersons. Storm v. Golden, 538 A.2d 61 (Pa. Super. 1988). Moreover, causation is a topic for expert testimony. See Ziegler v. Easton Suburban Water Authority, 43 A. 3d 553, 558 (Pa. Comm. 2011).

Rule 1035.2 provides that, a party may move for summary judgment “if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to the jury.” Plaintiff has not provided an expert report to prove the causal link between any alleged water infiltration into the interior of the property with corresponding damage. Plaintiff has stated that the “damages are a result of the breach of contract.” See

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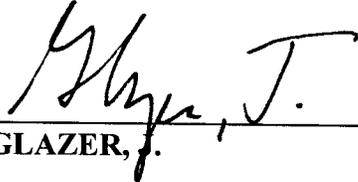
<sup>1</sup> While plaintiff also has a claim for Bad Faith, this court finds the claim meritless. “[T]o recover under a claim of bad faith, the plaintiff must show that the defendant did not have a reasonable basis for denying benefits under the policy and that defendant knew or recklessly disregarded its lack of reasonable basis in denying the claim.” Terletsky v. Prudential Property & Cas. Ins. Co., 437 Pa. Super. 108, 649 A.2d 680, 688 (1994) (citation omitted). Because the defendant had a reasonable basis for denying coverage, a claim for bad faith cannot withstand summary judgment.

plaintiff Valentino's opposition defendant Ritter and SER's motion for summary judgment, p. 10. Further, "Mr. Valentino testified at deposition that the entirety of the damage to the property was the result of acts and/or omissions of the contractors working on the roof." Id. at 10-11. Mr. Valentino has never been identified as an expert in roofing. This court finds that plaintiff has failed to produce evidence of damages and therefore summary judgment is granted in favor of Ritter and SER and against plaintiff.

### CONCLUSION

In light of the evidence, judgment is entered in favor of defendant Harleysville as to Count I and II of the amended complaint and in favor of defendants Scott Ritter, individually and t/a SER Building Associates, Inc. as to Count III.

**BY THE COURT:**

  
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GLAZER, J.