

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

498 ASSOCIATES, LIMITED PARTNERSHIPS,	:	
ET. AL.,	:	March Term, 2003
	:	
Plaintiffs,	:	
	:	
v.	:	No.: 2980
	:	
	:	
	:	Control Number: 041129
	:	
AMERICAN CASUALTY COMPANY OF	:	
READING, PENNSYLVANIA, ET. AL.,	:	Commerce Program
	:	
Defendants.	:	

ORDER and MEMORANDUM

AND NOW, this 6th day of August , 2003, upon consideration of Defendants American Casualty Company of Reading, Pennsylvania and CNA's Preliminary Objections to Plaintiffs complaint, all responses in opposition, the respective memoranda, all matters of record, and in accordance with the contemporaneous Memorandum Opinion, it is hereby **ORDERED** and **DECREED** that Defendants' Preliminary Objections are **OVERRULED**.

BY THE COURT:

C. DARNELL JONES II, J.

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MEMORANDUM OPINION

JONES, J......

Before this Court are the Preliminary Objections of Defendants American Casualty Company of Reading, Pennsylvania and CNA to Plaintiffs complaint. Plaintiffs complaint alleges three separate causes of action against Defendants. Count I(A) and Count I (B) allege causes of action for breach of contract and Count II alleges a cause of action pursuant to 42 Pa.C. S. A. section 8371, Pennsylvania’s Bad Faith Statute. Defendants argue (1) that plaintiffs have failed to state a cause of action against CNA since CNA is did not issue the subject policy of insurance and is not a corporate entity, (2) that plaintiffs failed to properly serve CNA, (3) that plaintiffs complaint should be dismissed for lack of personal jurisdiction and (4) the complaint fails to conform to a rule of law or rule of court. For the reasons that follow, defendants preliminary objections are overruled.

A. Plaintiffs Have Stated a Cause of Action Against Defendant CNA

Defendants argue that CNA is not a proper party to the proceedings since it did not issue the subject policy of insurance and is not a corporate entity. This court is not persuaded.

Plaintiffs allege in paragraph 5 of the complaint that CNA “controlled, managed, and processed the claims for coverage under the Policy with its agents, staff and directed and controlled the actions of the defendants in this action.” Since on demurrer all averments of facts and fair inferences therefrom are accepted as true and all doubts resolved in favor of refusing the demurrer, plaintiffs allegation that defendant CNA somehow controlled, managed and processed the claims for coverage under the policy is sufficient to assert that CNA is a proper party to the action at this stage in the proceedings.

Moreover, defendants allege that CNA is not a proper party to the proceedings since “CNA” is not a corporate entity but a trade name. (Defendants mtn ¶ 9) A trade name is used by manufacturers, industrialists and merchants to identify their businesses, which actually symbolizes reputation of business. Blacks Law Dictionary 1494 (6th Edition). Trade name is the name or title lawfully adopted and used by a particular organization engaged in commerce which can be used in advertising, promotion and to generate publicity for the business. Id. Pa. R.C.P. 2177 requires actions against a corporation to be prosecuted in the “corporate name” which is defined as “any name, real or fictitious, under which a corporation or similar entity was organized or conducts business, whether or not such name has been filed or registered.” Herman Goldner Company, Inc. v. Cimco Lewis Industries, 2003 WL 1848563 *1 (March 6, 2003) (Cohen); quoting Pa.R.C.P. 2176, 2177. This court finds that a trade name satisfies the definition of “corporate name” set forth in Pa.R.C.P. 2176, 2177.

Furthermore, the documents attached to the complaint and plaintiffs response to defendants preliminary objections to plaintiffs complaint further supports this courts holding. The documents reflect that, throughout the course of dealing between the parties, CNA was

referred to as CNA. The documents include, the declaration sheet of the policy as well as correspondence between CNA and plaintiffs representative. Defendants on the other hand did not attach any documents to support its claim that CNA is not a proper party¹.

Accordingly, defendants preliminary objection on this issue is overruled. Should plaintiffs discover during the course of the litigation that CNA has been improperly designated, plaintiffs could file a motion to amend the caption.

B. Plaintiffs' Complaint Should Not Be Dismissed for Improper Service and Lack of Jurisdiction

Defendants argue that CNA is not a proper party to these proceedings since plaintiffs have not effectuated service upon CNA and therefore the court lacks personal jurisdiction. A review of the record and docket in this matter demonstrates that William O. Kreckstein, Esquire of Nelson, Levine de Luca & Horst entered his appearance on behalf of the defendants in the above captioned matter. If an attorney enters his appearance without restriction opposite the names of two defendants on the docket, this is a good appearance for both, even though one of them has not been served with process. McCullough v. Clark, 784 A.2d 156, 157 (Pa. Super. 2001); quoting Vandergrift v. Knights Road Industrial Park, Inc., 490 Pa. 430, 416 A.2d 1011, 1013 (Pa. 1980). Accordingly, when the attorney entered his appearance on behalf of American Casualty Company of Reading, Pa. and CNA, this constituted acceptance of service by CNA, which binds them to the courts personal jurisdiction. See McCullough v. Clark, supra. Based on the foregoing, defendants preliminary objections are overruled with respect to this issue.

¹While plaintiffs failed to allege the nature of CNA either as an association, partnership, or corporation, defendants have not asked for a more specific pleading.

C. Plaintiffs Breach of Contract Claim is not Legally Insufficient

Pa. R. C. P. 1019(i)² requires a plaintiff to attach a copy of a writing on which his or her claim is based. Upon review of the complaint the court finds that the writing referred to in Count I(A) of the complaint is attached to the complaint. Accordingly, the court will overrule the defendants preliminary objections with respect to this issue.

Conclusion

For the reasons stated above, defendants preliminary objections to plaintiffs complaint are overruled.

This court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

C. DARNELL JONES, II, J.

Dated: August 6, 2003

²Defendants in their brief refer to Pa. R.C. P. 1019(i) as Pa. R.C.P. 1019 (h). Rule 1019(h) was amended effective January 1, 2001 to be relettered as Rule 1019(i).