

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

**CIVIL TRIAL DIVISION**

ALBERT M. GREENFIELD & CO., INC., : MAY TERM, 2000  
Plaintiff : No. 1555  
 :  
v. : COMMERCE CASE PROGRAM  
 :  
MARK L. ALDERMAN, ESQ., :  
ROBERT C. JACOBS, ESQ., and :  
WOLF, BLOCK, SCHORR & :  
SOLIS-COHEN, LLP., :  
Defendants : Control No. 010322

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**OPINION**

Plaintiff, Albert M. Greenfield & Co., Inc. (“Greenfield”) filed a Motion for Summary Judgment as to Counts III and IV of the Counterclaims of defendants, Mark L. Alderman, Esq., Robert C. Jacobs, Esq., and Wolf, Block, Schorr & Solis-Cohen, LLP (collectively “Wolf Block”). (“Motion”). Plaintiff also requests counsel fees for costs and expenses incurred in defending Counts III and IV of defendants’ Counterclaims, pursuant to 42 Pa.C.S.A. § 2503. The Motion focuses on the operation of a release agreement between Wolf Block and Quinnco 1600 Arch Street, LLC (“Quinnco”), which Greenfield contends also releases it from liability to Wolf Block as to these counterclaims. Defendants oppose this Motion on the grounds that the release agreement cannot be construed as applying to Greenfield who was not a party to the release and was not a representative of Quinnco when the release was executed. Defendants, in turn, also request counsel fees.

Since the language in the pertinent release agreement cannot unequivocally or reasonably be construed as discharging Greenfield in light of the surrounding circumstances, this court is denying the

Motion. However, neither party is entitled to counsel fees.

### **BACKGROUND**

This action concerns Greenfield's inability to purchase and develop three real estate properties in Philadelphia, including 1600 Arch Street, a building which was owned by Quinnco. Greenfield's claims against Wolf Block include breach of fiduciary duty, legal malpractice, interference with prospective contractual relations and fraudulent misrepresentation and non-disclosure, arising out of defendants' alleged misconduct in purportedly representing competing interests in these three transactions. See Compl., Counts I-IV. Wolf Block, in general, denies that it acted as Greenfield's lawyer in connection with Greenfield's acquiring these three properties or that Wolf Block had any proximate connection to Greenfield's inability to purchase these three properties. See Defs. Answer, New Matter and Counterclaims ("Defs. New Matter and Counterclaims"), at pp. 1-2.

Counts III and IV of defendants' Counterclaims primarily involve 1600 Arch Street and focus on the period of time in which Greenfield was engaged as the exclusive leasing agent for Quinnco. Id. at ¶¶ 27-48. Specifically, in 1997, Wolf Block entered into negotiations to lease space in the 1600 Arch Street Building for its law offices. Id. at ¶¶ 27-29. These negotiations were between Quinnco and its representatives, including Greenfield. Id. See also, Pl. Reply to New Matter and Counterclaims, ¶¶ 27-29 (admitting that Greenfield was appointed by Quinnco as the exclusive leasing agent for a portion of 1600 Arch Street and was involved in the negotiations with Wolf Block, but denying the extent of Greenfield's involvement). Wolf Block allegedly relied on certain representations of Greenfield regarding its principal's, Quinnco's consideration of the proposed terms of the lease and acceptance of this terms. Defs. New Matter and Counterclaims, ¶¶ 30-31.

In October, 1997, the parties purportedly reached an agreement on the terms of the lease. *Id.* at ¶ 31. Wolf Block publicly announced that the firm would relocate to 1600 Arch Street and also notified its landlord of the firm's decision to relocate and to terminate its existing landlord-tenant relationship. *Id.* at ¶¶ 33-34. See also, Pl. Reply to New Matter and Counterclaims, ¶¶ 33-34. Shortly, thereafter, the leasing agreement fell apart when the principals of Quinnco, on October 28, 1997, informed Wolf Block that Quinnco would not honor the terms of the lease agreement. *Id.* at ¶ 35. Quinnco allegedly proposed amended terms to Wolf Block, which Wolf Block found unacceptable. *Id.* at ¶ 36.

On November 10, 1997, Quinnco sent Greenfield a notice of termination of the Building Management Agreement as to 1600 Arch Street and a notice of termination as to the Exclusive Agency Agreement regarding the lease with Wolf Block. See Compl., Exhibit Q.<sup>1</sup> This letter also requested that Greenfield make no further representations or comments to anyone regarding the lease of 1600 Arch Street. *Id.*

As a result of the failed negotiations and broken lease deal, Greenfield and Wolf Block initiated separate lawsuits against Quinnco, both of which eventually settled. Specifically, on April 28, 1998, Greenfield sued Quinnco, seeking payment of the leasing commission which it had allegedly earned from the lease deal and also filed a broker's lien against Quinnco. Compl., ¶¶ 50-51. Wolf Block was not a party to that lawsuit. Rather, on May 7, 1998, Wolf Block commenced a lawsuit against Quinnco, seeking damages from Quinnco's purported breach of the lease deal. Defs. New Matter and Counterclaims, ¶ 37; Pl. Reply to New Matter and Counterclaims, ¶ 37. Greenfield was not a party to Wolf Block's lawsuit

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<sup>1</sup>This exhibit was also attached as Exhibit A to defendants' response to plaintiff's motion for summary judgment.

against Quinnco. On July 31, 1998, Wolf Block settled its case with Quinnco and executed a Release Agreement. Pl. Motion For Summary Judgment, Exhibit E.

The gravamen of Counts III and IV of defendants' Counterclaims is that Greenfield misled Wolf Block into believing that Quinnco's principals understood and agreed to the terms of the lease deal for 1600 Arch Street; that Wolf Block detrimentally relied on Greenfield's representations; and that Greenfield breached its express and implied warranties of authority to negotiate and finalize the lease deal. Defs. New Matter and Counterclaims, ¶¶ 38-48. Plaintiff filed a Motion for Summary Judgment as to these counterclaims.

### **DISCUSSION**

Rule 1035.2 of the Pennsylvania Rules of Civil Procedure [Pa.R.C.P.] allows a court to enter summary judgment "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action." A court must grant a motion for summary judgment when a non-moving party fails to "adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor." Ertel v. Patriot-News Co., 544 Pa. 93, 101-02, 674 A.2d 1038, 1042 (1996). A motion for summary judgment must be viewed in the light most favorable to the non-moving party, and all doubts as the existence of a genuine issue of material fact must be resolved against the moving party. Pennsylvania State University v. County of Centre, 532 Pa. 142, 145, 615 A.2d 303, 304 (1992). Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to judgment as a matter of law will summary judgment be entered. Skipworth v. Lead Industries Ass'n., Inc., 547 Pa. 224, 230, 690 A.2d 169, 171 (1997).

**I. The Release Agreement Between Wolf Block and Quinnco Does Not Include Greenfield.**

The present motion turns on this court's construction and interpretation of the Release Agreement between Wolf Block and Quinnco and whether that agreement absolves Greenfield from liability for Counts III and IV of defendants' Counterclaims. The language of this agreement and the surrounding circumstances lead this court to conclude in the negative.

A release is to be given effect according to the ordinary meaning of its language. Seasor v. Covington, 447 Pa.Super. 543, 547, 670 A.2d 157, 159 (1996). It must also be construed narrowly and in light of the circumstances at the time of its execution:

The courts of Pennsylvania have traditionally . . . interpreted the release as covering only such matters as can fairly be said to have been within the contemplation of the parties when the release was given. Moreover, releases are strictly construed so as not to bar the enforcement of a claim which had not accrued at the date of the execution of the release.

. . . [A] release covers only those matters within the parties' contemplation. In construing [a] general release, a court cannot merely read the instrument . . . [I]t is crucial that a court interpret a release so as to discharge only those rights intended to be relinquished. The intent of the parties must be sought from a reading of the entire instrument, as well as the surrounding conditions and circumstances. . . .

Vaughn v. Didizian, 436 Pa.Super. 436, 439, 648 A.2d 38, 40 (1994)(citations and quotation marks omitted). See also, Harrity v. Medical College of Pa. Hosp., 439 Pa.Super. 10, 22-23, 653 A.2d 5, 11-12 (1995)(focusing on limiting language in release and declining to apply it).

Here, the parties to the Release Agreement, dated July 31, 1998, were Wolf Block, all of its partners, Quinnco, Mark L. Alderman, individually, SunAmerica, Inc. ("Sun") and SunAmerica Affordable

Housing Partners (“SAHP”).<sup>2</sup> Pl. Motion for Summary Judgment, Exhibit E, at p.1. The Release Agreement explicitly pertained to the negotiations relating to the lease by Wolf, as tenant, from Quinnco, as owner of office space in 1600 Arch Street. Id. Paragraph 2 of the Release Agreement states, in pertinent part, that:

[i]n consideration of the premises and the promises set forth in this Agreement, and for other good and valuable consideration . . . Wolf [Block] and Alderman hereby **remise, release, quitclaim and forever discharge** Quinnco, Sun, SAHP, Quinnco-1600 Arch, LLC, SunAmerica Housing Fund 431, a Nevada Limited Partnership, Michael Maloney, Robert Proost and each of them, and **their** respective officer, directors, shareholders, partners, members, affiliates, subsidiaries and **representatives**, and its and their respective heirs, executors, administrators, successors and assigns (collectively, the “Quinnco/Sun Releasees”), of and from any and all claims, costs, expenses, damages, suits, contracts, demands, actions and causes of actions, in law or equity (known or unknown, foreseen or unforeseen), which the Wolf [Block] and/or Alderman, or either of them, had, may now have and/or might or could have against the Quinnco/Sun Releasees . . . based on any act, omission or occurrence on or before the Effective Date arising out of, relating to or in connection with the Wolf Balance and the following: (i) **any and all alleged negotiations, discussions and/or representations by any one, including without limitation, any of the parties hereto or their representatives**, regarding the proposed lease by Wolf [Block] of a portion of the Premises; (ii) the alleged execution by or on behalf of Quinnco and/or any other party of a letter of intent relating to such a lease; (iii) the wire transfer by Sun to Wolf [Block] of \$1,250,000 in connection with the aforementioned lease and/or negotiations; and (iv) **any and all of the claims asserted and demands made by any of the parties** in the Philadelphia County Civil Action and the California Civil Action . . . .

Id. at ¶ 2 (emphasis added). The Release Agreement also explicitly stated that it was “solely for the benefit of the parties, hereto, the Quinnco/Sun Releasees and the Wolf Releasees and no other person or entity shall be entitled to any rights or benefits arising under this Agreement.” Id. at ¶ 8. Further, third parties

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<sup>2</sup>Sun and/or SAHP are alleged as holding “at least fifty percent (50%) partnership interest in Quinnco.” Compl., ¶ 52.

or any person or entity, who was not a party to the agreement, had no rights in the agreement. *Id.* at ¶ 12.

Plaintiff contends that Wolf Block has judicially admitted that Greenfield was one of Quinnco's "representatives" as used in paragraph 2 of the Release Agreement. Pl. Mem. of Law, at 2. Specifically, Wolf Block did allege the following: "[o]ver the next several months[,] Wolf, Block negotiated the terms of the lease with Quinnco and its representatives, including Greenfield." Defs. New Matter and Counterclaims, ¶ 29. However, this court disagrees that this allegation constitutes an admission that Greenfield is included in the term "Quinnco/Sun Releasees." First, all of the Quinnco entities, their principals and the individuals at Quinnco were explicitly named in paragraph two of the Release Agreement which negates the inference that Greenfield was included as a Quinnco/Sun Releasee. Further, the ordinary meaning of the terms -- "their . . . representatives" -- modifies Quinnco and Quinnco entities, but does not connote separate and independent agents of Quinnco, such as Greenfield, who was engaged as a broker in the leasing of 1600 Arch Street on behalf of Quinnco. Additionally, the Release Agreement, when read in its entirety, appears to cover only those entities of Quinnco and not third parties who are not a party to the Agreement. Pl. Motion for Summary Judgment, Exhibit E, ¶ 12. Moreover, the fact that Greenfield was also suing Quinnco in a separate lawsuit for his broker's fee and at the same time that the Release Agreement was executed between Wolf Block and Quinnco, leads this court to conclude that the Release Agreement was not intended to apply to Greenfield.

Therefore, plaintiff is not entitled to summary judgment as to Counts III and IV of defendants' Counterclaims.

## **II. Neither Party is Entitled to Attorney Fees.**

Plaintiff also requested this court to award them counsel fees pursuant to 42 Pa.C.S.A. § 2503. This statute provides, *inter alia*, that a court may award reasonable counsel fees “as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter” or “because the conduct of another party in commencing the matter or otherwise was arbitrary vexatious or in bad faith.” 42 Pa.C.S.A. §§ 2503(7), (9). Plaintiff bases its request on the grounds that Wolf Block and its counsel brought Counts III and IV as Counterclaims in disregard of the release. As noted above, this court does not find that Greenfield is included in that release and cannot find that plaintiff is entitled to counsel fees. Similarly, however, defendants are also not entitled to counsel fees for having to defend against plaintiff’s motion since plaintiff had at least a colorable argument in this respect.

### **CONCLUSION**

For these reasons, the court is entering a contemporaneous Order, denying the plaintiff’s Motion for Summary Judgment as to Counts III and IV of defendants’ Counterclaims. The request for counsel fees is also denied as to either party.

**BY THE COURT:**

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**JOHN W. HERRON, J.**

**Dated: July 31, 2001**

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Defendants	:	Control No. 010322

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**ORDER**

AND NOW, this 31st day of July, 2001, upon consideration of plaintiff's Motion for (i) Summary Judgment as to Counts III and IV of defendants' Counterclaims, and (ii) counsel fees pursuant to 42 Pa.C.S.A. § 2503, defendants' opposition thereto, all other matters of record, and in accordance with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that the Motion is **Denied**.

**BY THE COURT:**

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**JOHN W. HERRON, J.**