

19-6369

No. 18A1235

ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES

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KELLY DUTTON

PETITIONER

VS.

AMERICAN BANKER INSURANCE COMPANY

RESPONDENT(S)

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ON PETITION FOR WRIT OF CERTIORARI

SUPERIOR COURT OF PENNSYLVANIA  
NAME OF COURT THAT LAST RULED ON MERIT OF YOUR CASE

PETITIONER FOR WRIT OF CERTIORARI

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**QUESTION PRESENTED**

**UNDER 42 PA. C. S. A. 5524,** does this rule exclude municipal court from statute of limitation?

**UNDER 42 PA. C. S. A. 5525,** does this rule apply only to insurance company?

**UNDER 42.PA. C. S. 8371,** does this rule exclude landlord?

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner Kelly Dutton Respectfully petition this court for writ certiorari to review the order of Superior Court of Pa. Eastern District affirming the court of common pleas Philadelphia county order.

**JURISDICTION**

This is a direct appeal from a final order of the court of Common Pleas, Philadelphia County, granting motion for Summary judgment for defendant 42 Pa. C.S. 5524(7) does not exclude Philadelphia Municipal Court from statute of limitation.

**CONSTITUTION AND STATUTORY PROVISIONS INVOLVE D**

**42 PA. C. S. A. 5524**

**42 PA. C. S. A. 5525,**

**42.PA. C. S. 8371**

## STATEMENT OF THE CASE

Defendant attorney filed motion for summary judgment 4/15/16. On May 18, 2016 was assigned to Judge Young, plaintiff believed respondent attorney had the case transferred to Judge: Daniel, because Judge Daniel did not believe pro se litigation have standard in the court, unlike Judge Daniel, who do. Judge Young rule against respondent attorney preliminary objection to have the case dismiss. Judge Daniel, who had this case from the beginning should have been given the opportunity to rule on the motion, this was a error of the supervising Judge who made the decision to reassign the case to Judge Daniel : 6/15/16. On 7/ 13/16 motion for relief filed by defendant was assigned to Judge Young; On 07/14/16. Motion for relief was Denied. On 07/18/16 Judge Daniel granting summary judgment for defendants. Judge Cohen rule that 42 pa. C.S.A. 5524 apply, this was a error of the court.

This rule does not exclude municipal court from statute of limitations. Judge Cohen felt that there were no genuine issues of material fact. Judge Daniel felt otherwise and rule against respondent attorney and allowed the case to go to trial. This is a breach of contract and bad faith claim. **Under 42 PA. C. S. A. 5525(a)** set forth the statute of limitation of 4 years for breach of contract. Because (ABICOF) insured with negligent, the contract between insured and petitioner allow petitioner to collect for damages.

Attorney David A Silverstein did not represent respondent Tenille Timbers. Attorney David A Silverstein represented American Bankers Ins. Co. of Florida (ABICOF). Petitioner, Kelly Dutton filed a Lawsuit against respondent, Tenille Timbers on or about June 25, 2014 in municipal court of Philadelphia.

The filing of the lawsuit was within the two-year statute limitation. At that time of filing, plaintiff cap damages at \$12,000 .00, because of the cap (Petitioner) could not sue in court of common pleas. On October 31, 2014 defense attorney for (ABICOF) misled the court when defendant attorney said "Mr. Dutton did not have standing to sue the insurance, company.

The court agreed and dismissed (ABICOF) . Petitioner withdrew his complaint and all parties agreed to resolve all claims. After looking over (ABICOF) attorney testimony, plaintiff found testimony to be false and misleading. **Under rule 42. PA. C.S . 8371** (bad faith) plaintiff can sue the insurance co., as third party.

### **REASON FOR GRANTING THE WRIT**

#### **CERTIORARI SHOULD BE GRANTED BECAUSE THE RULE ADOPTED BY THE PA. COURTS WILL HAVE SIGNIFICATION NATIONWIDE IMPACT**

##### **I**

Certiorari should be granted because the rules adopted by Pa. supreme court and other Courts will have a signification nationwide impact. The Pa. Supreme court order denying petitioners' petition for allowance of appeal was an error of law **Under Rule 42 Pa. 5524.**

##### **II**

#### **CERTIORARI SHOULD BE GRANTED TO RESOLVE A CONFLICT BETWEEN THE COURT OF APPEALS**

The Pa. Court interpretation of **Rule 42 Pa. 5524.** directly conflict with the statute of limitation

### **CONCLUSION**

Summary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material facts. When considering a motion for summary judgment, the trial court must take all facts of record and reasonable inferences therefore in a light most favorable to the non- moving party.

Summary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material facts. When considering a motion for summary judgment, the trial court must take all facts of record and reasonable inferences therefore in a light most favorable to the non-moving party. In so doing, the trial court must resolve all doubts as to the existence of a genuine issue of material facts against the moving party, and, thus, may only grant summary judgment "where the right to such judgment it's clear in freeform doubt" An appellate court may reverse a grant of summary judgment if there has been an error of law or an abuse of discretion.

1. Third party beneficiary is a lien holder of a title, deed as well as a property owner. Property owner has the same rights to be protected from loss, either by accidental or negligent act.

2. On or about 01/08 2013 appellant suffered a fire at 46 N 51st Street Phila, Pa. The cause of the fire was negligent by the insured.

3. Appellant filed a lawsuit against Appellee ( ABIC and TIMBERS) in Municipal court on 12/15/2015 within two year statute limitation, this toll the statute of limitation.

4. A trial Court may grant a motion for summary judgment only if there are no disputed issues of facts. Clearly there are issues that have not been resolve.

A- THIRD PARTY RIGHTS

B- STATUTE OF LIMITATION

The court should reverse the summary judgment because Judge Anders Daniel abuse his discretion and made an error of law 42 Pa. 5524 do not exclude municipal court and Pa. 5525 gives petitioner four years to sue. For all above reasons, the court should Grant petitioner Writ of Certiorari and reinstate petitioner complaint.

8-2-19

*10/14/19 @ The*