

EXHIBITS

- (A) SUPREME COURT OF PA.- ORDER / ALLOWANCE OF APPEAL
- (B) SUPERIOR COURT OF PA. -ORDER
- (C) COMMON PLEAS COURT OF PA -ORDER
- (D) COMMON PLEAS COURT OF PA. -OPINION
- (E) Philadelphia Court of Common Pleas -I.F.P. Order

(A) SUPREME COURT OF PA.- ORDER / *Allowance of Appeal*

IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

KELLY DUTTON, PETITITONER

: No. 443 EAL 2018

v.

: Petition for Allowance of Appeal from  
the Order of the Superior Court

AMERICAN BANKERS INSURANCE  
COMPANY,

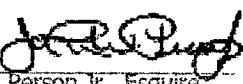
Respondent

ORDER

**PER CURIAM**

**AND NOW**, this 6th day of March, 2019, the Petition for Allowance of Appeal is  
**DENIED**.

A True Copy  
As Of 03/06/2019

Attest:   
John W. Person Jr., Esquire  
Deputy Prothonotary  
Supreme Court of Pennsylvania

Received 9/19/2018 5:22:39 PM Supreme Court Eastern District  
IN THE Filed 9/19/2018 5:22:00 PM Supreme Court Eastern District  
SUPREME COURT OF PENNSYLVANIA 443 EAL 2018

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No. 1288 EDA. 2017  
Trial court No. 16901412

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KELLY DUTTON,  
PETITIONER,  
V.  
AMERICAN BANKER INS. COMPANY  
RESPONDENT,

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**PETITION FOR ALLOWANCE OF APPEAL**

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Petition for Allowance of Appeal From Final Order August 22, 2018 at No. 1288 EDA 2017 dismissing Appellant Appeal. On Appeal Motion entered on April 17, 2017 and Memorandum and Order of the Philadelphia County Court of Common Pleas dismissing Appellant Complaint.

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KELLY DUTTON  
5607 WARRINGTON AVE  
PHILADELPHIA, PA 19143  
267-349-9192

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## **APPELLATE RIGHTS UNDER PENNSYLVANIA RULE**

**Under rule 42. PA. C.S . 8371 (bad faith) Appellant can sue the insurance co., as third party.**

## **STATEMENT OF 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)**

## **ORDER/DETERMINATION AND QUESTION**

This first order appeal from was entered by the court of Common Pleas July 18, 2016. Granting motion for summary judgment for defendant from was entered by the court of Common Pleas July 20, 2016 order is appended hereto.

## **STATEMENT OF QUESTIONS INVOLVED**

When the court dismiss plaintiff's case, were appellant rights violated?

## **STATEMENT OF THE CASE**

This is an appeal from motion for summary judgment for defendant.

## **FORM OF ACTION AND PROCEDURAL HISTORY OF THE CASE**

Attorney David A Silverstein did not represent defendant Tenille Timbers.

Attorney David A Silverstein represented American Bankers Ins. Co. of Florida (ABICOF).

Plaintiff Kelly Dutton filed a Lawsuit against defendant, 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 (plaintiff) 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, co." The court agreed and dismissed (ABICOF) . Plaintiff 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.**

### **SUMMARY ARGUMENT**

Defendant attorney filed motion for summary judgment 4/15/16.

On May 18, 2016 was assigned to Judge Young, plaintiff believed defendant 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 defendant 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 issue of material fact. Judge Daniel felt otherwise and rule against defendant 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 plaintiff allow plaintiff to collect for damages.

## ARGUMENT

Just like the Judge in Municipal Court made in error, when the court dismissed plaintiff complaint against (ABICOF), reason given by the court "plaintiff" had no contact with insurance, Co.

under **42.PA. C. S. 8371** plaintiff can sue insurance, Co. as third party.

Now the court of Common Pleas has made an error in law. **PA. 42.C. S. 5524** Can only apply to the insurance, Co. (ABICOF) and their insured. The insured was defendant, Tenille Timbers not plaintiff. Under **PA. 42.C. S. 5525** plaintiff have four years to sue defendant, Tenille Timbers.

The insurance company gave up their rights in municipal court when the case was dismissed against (ABICOF.) now they want the case dismissed against Tenille Timbers, even those defense Attorney did not represent defendant Tenille Timbers, only her interest as an insured.

## 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.

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 y accidental or negligent act.
2. On or about 01/08 2013 appellant suffered a fire at 46 N 51<sup>st</sup> 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**

5. Appellee never requested assignment right letter.

6. **UNDER ARTICLE V of Pa. Constitution**

Section 1- Municipal Court are a part of judicial system and therefore the statute of limitation was toll.

7. Pa Statute Limitation in Two years.

8. Pa. Rule proceeds Insurance Regulation

9. The opinion of the court is based on state court vs. federal court.

municipal court is part of Philadelphia court system. There is nothing in

**42.pa.5524** that exclude Municipal Court from statue of lamination. Therefore plaintiff complaint did toll the statue of limitation.

10. 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 **42 PA. 5525** gives plaintiff four years to Sue.

For all of above reasons, this court should **GRANT** appellants Petition for Allowance of appeal and reinstate plaintiff complaint.

Respectfully submitted,



Kelly Dutton  
5607 Warrington Ave  
Philadelphia, PA 19143  
267 349 9192

Date: September 19, 2017  
Philadelphia, PA

(B) SUPERIOR COURT OF PA. -ORDER

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

KELLY DUTTON	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
	:	
V.	:	
	:	
AMERICAN BANKERS INSURANCE COMPANY	:	No. 1288 EDA 2017

Appeal from the Order Entered April 5, 2017  
In the Court of Common Pleas of Philadelphia County  
Civil Division at No(s): September Term, 2016 No. 01412

BEFORE: PANELLA, J., OLSON, J., and STEVENS\*, P.J.E.

JUDGMENT ORDER BY PANELLA, J.

**FILED AUGUST 22, 2018**

Kelly Dutton appeals, *pro se*, the order granting judgment on the pleadings to American Bankers Insurance Company ("American"). Dutton seeks coverage under his neighbor's renter's insurance policy for damages caused by a fire in the neighbor's residence. The trial court found Dutton does not have standing to pursue his claim, and granted American's motion for judgment on the pleadings. In the alternative, the court found Dutton's claim was barred by the statute of limitations. We affirm.

Dutton filed a *pro se* complaint against American on September 13, 2016. Dutton alleged that on an unspecified date, Tenille Timbers experienced

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\* Former Justice specially assigned to the Superior Court.

a fire in her apartment. Timbers had an insurance policy with American. Dutton sustained damage to his property due to the fire.

Dutton's own insurance company paid for the repair of his property, but did not cover the rental income he lost. As a result, Dutton requested that American cover the rental income loss. An attached copy of a statement of loss submitted to Dutton's insurance company represented the date of his loss was January 8, 2013. He claimed \$22,185.00 in damages from American.

American's answer raised, among others, the defenses of Dutton's lack of standing and that his claim was barred by the statute of limitations. Dutton did not file a response to American's new matter.

American subsequently filed a motion for judgment on the pleadings, asserting Dutton's failure to respond to the factual allegations in its answer entitled it to judgment as a matter of law. In his answer, Dutton argued the court should deny the motion, as the law permitted Timbers to assign her bad faith claim against American to Dutton as an injured third party. Furthermore, he argued the statute of limitations had been tolled by settlement negotiations.

We must accept all well-pleaded allegations in the complaint as true when reviewing a challenge to an order granting judgment on the pleadings.

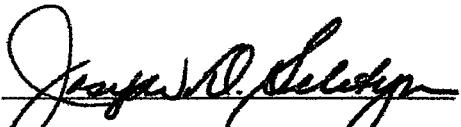
**See *Guerra v. Redevelopment Authority of City of Philadelphia*, 27 A.3d 1284, 1288-1289 (Pa. Super. 2011).** Judgment on the pleadings may be

granted when there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. **See id.**

After reviewing the parties' briefs and the certified record, we conclude the trial court's opinion thoroughly and adequately addresses the issues raised by Dutton on appeal. **See** Trial Court Opinion, 7/3/17 (finding Dutton had no inherent standing and had never explicitly alleged Timbers had assigned her rights to him, and furthermore, Dutton's claims were barred by both contractual and statutory claim limitations). We therefore adopt the trial court's reasoning as our own and affirm on that basis.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 8/22/18

(C) COMMON PLEAS COURT OF PA -ORDER

FILED

13 JAN 2017 03:03 pm

Civil Administration

E. MASCULLI

Kelly Dutton,

COURT OF COMMON PLEAS

Plaintiffs,

PHILADELPHIA COUNTY

vs.

American Bankers Ins. Co.,

NO.: 160901412

Defendant.

RECEIVED

APR 03 2017

OFFICE OF JUDICIAL  
RECORDS

ORDER

AND NOW, this 3<sup>rd</sup> day of April, 2017, upon consideration of the

Motion for Judgment on the Pleadings of Defendant American Bankers Insurance Company of Florida (incorrectly identified as American Bankers Ins. Co.), and any response thereto, it is  
**HEREBY ORDERED** that Defendant's Motion is **GRANTED**, and Plaintiff's Complaint is dismissed with prejudice.

BY THE COURT:

J.

00296654.v5

Dutton Vs American Ban-ORDRF



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Case ID: 160901412

Control No.: 17011884