

Docket Number: 3813

FIRETREE, Ltd.

Daniel F. Schranghamer, Esquire
~~Mark D. Schwartz, Esquire (Co-counsel)~~

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

Trent Hargrove, Chief Counsel
David L. Narkiewicz, Assistant Chief Counsel
Tanya C. Leshko, Senior Counsel

and

~~RUSS FAIRCHILD~~

~~Cynthia Rasmussen, Esquire~~

November 3, 2005

By Order of Commonwealth Court, case filed, Order as follows: AND NOW, this 3rd day of November, 2005, the Court having deferred consideration of petitioner's request for special relief in the nature of a preliminary injunction, said request is DENIED. Following argument on respondents' preliminary objections, the preliminary objection of the Department of General Services (DGS) in the nature of lack of original jurisdiction is SUSTAINED and injunctive Counts I through III are TRANSFERRED to the Board of Claims. The preliminary objection of Russ Fairchild in the nature of lack of original jurisdiction as to Counts IV through Count VI of the First Amended Petition for Review is SUSTAINED and Counts IV and V and TRANSFERRED to the Court of Common Pleas of the 17th Judicial District, Union County Branch.

THE FOLLOWING FILED IN COMMONWEALTH COURT

April 6, 2005

Petition for Review filed.

April 7, 2005

Application for Relief filed.
Application for Preliminary Injunction filed.

April 11, 2005

Hearing scheduled on petitioner's application for relief fixed for April 28, 2005 at 10:00 a.m. in Courtroom No. 1, 5th Floor, Irvis Office.

April 20, 2005

Praecipe for Appearances of Cynthia R. Person, Esquire and Brian Preski, Esquire filed.

April 20, 2005

Application for Continuance of hearing scheduled for April 28, 2005 filed.

April 20, 2005

Praecipe for Appearance of Linda Cadden Barrett, Esquire filed.

April 20, 2005

Order granting Application for Continuance. Hearing previously set for April 28, 2005 is continued until May 13, 2005 at 10:00 a.m., same location.

April 21, 2005

Praecipe for Appearance of Tanya Catherine Leshko, Esquire filed.

April 21, 2005

Application for Extension of Time to file responsive pleading filed.

April 21, 2005

Answer to Application for Relief and Answer to Application for Preliminary Injunction filed.

April 25, 2005

Order Granting Extension of Time to File Answer to Application for Preliminary Injunction is due May 26, 2005.

April 26, 2005

Application for Extension of Time to File Joinder in Application for extension for extension to file responsive pleading.

April 27, 2005

Order Granting Application for Extension of Time to File Defendant Fairchild's response to plaintiff's complaint is due May 26, 2005.

May 6, 2005

Application to Dismiss Plaintiff's Application for Relief filed.

May 6, 2005

Respondent's Brief Filed Supporting application to dismiss Plaintiff's application for relief.

May 6, 2005

Application for Relief Motion to Quash Subpoena and Motion for Protective Order filed.

May 6, 2005

Respondent's Brief filed Supporting Motion to Quash Subpoena and Motion for Protective Order.

May 11, 2005

Argument scheduled on Motion to quash subpoena/dismiss application for relief; set for May 13, 2005 at 10:00 a.m. in Courtroom 1, 5th Floor Irvis Building, Harrisburg, immediately prior to the scheduled commencement of hearing on petitioner's application for special relief.

May 11, 2005

Praecipe for Appearance of Thomas C. Marshall, Esquire filed.

May 12, 2005

Memorandum of Law filed in opposition to petitioner's application for relief in the nature of a request for preliminary injunction.

May 13, 2005

Hearing continued on petitioner's application for special relief is continued to June 9, 2005 at 10:00 a.m. in Courtroom 1, 5th Floor, Irvis Building, Harrisburg, PA.

May 19, 2005

Respondent's Brief filed supporting Motion to Dismiss Plaintiff's Application for Special Relief.

May 23, 2005

Memorandum of Law filed in support of Application for Relief.

May 25, 2005

Application to Amend Complaint.

May 26, 2005

Preliminary Objections filed.

May 26, 2005

Preliminary Objections filed.

May 27, 2005

Order filed. Both respondents' opposition and/or motion to dismiss application for relief are denied without prejudice to request consideration at the completion of the evidentiary hearing. Respondent, Fairchild's motion to quash subpoena is DENIED and his motion for protective order regarding discovery or disposition is dismissed. Petitioner's motion to amend complaint is granted and Respondent, Fairchild's p.o.s are stricken without prejudice to refile p.o.s to the amended complaint. See order filed.

June 1, 2005

Amended 1st Amended Complaint filed.

June 3, 2005

Application for Relief Withdrawal of Motion to Amend Complaint filed.

June 8, 2005

Memorandum of Law filed. Respondent Commonwealth of Pennsylvania, DGS' Pre-Hearing Memo of Law.

June 9, 2005

Hearing continued. Hearing on petitioner's application for special relief is continued generally pending further order of this Court. A status conference is set for June 24, 2005 at 10:00 a.m., to originate from the chambers of a judge in Harrisburg.

June 14, 2005

Application for Extension of Time to File Responsive Pleading.

June 20, 2005

Application for Relief Motion for Sanctions.

June 21, 2005

Preliminary Objections to plaintiff's first amended complaint.

June 22, 2005

Transcript filed of proceedings held on May 13, 2005.

June 22, 2005

Transcript filed of proceedings held on June 9, 2005.

June 22, 2005

Application for Relief Motion to Strike Motion for Sanctions filed.

June 22, 2005

Answer to Application for Relief Answer to Motion for Sanctions filed.

June 24, 2005

Status conference scheduled. A further status conference is set for July 7, 2005 at 1:30 p.m. via telephone. Petitioner's motion for sanctions, respondent, firetree's motion to strike same and cross-motion for sanctions are STAYED pending said status conference. Respondent, DGS, shall file a responsive pleading by July 27, 2005. Petitioner's praecipe for withdrawal to amend complaint is stricken as moot. Argument on respondent, Fairchild's

p.o.'s to amended complaint is set for September 7, 2005 at 1:30 a.m. in Courtroom 1, 5th Floor, Irvis Office Building. A briefing schedule for said argument shall be set at the July 27, 2005 status conference.

July 14, 2005

Application for Relief. Application for protective order.

July 14, 2005

Application for Relief. Memorandum in support of application for a protective order.

July 18, 2005

Argument scheduled on DGS' application for protective order, set for July 27, 2005 via telephone at 1:30 p.m.

July 22, 2005

Application for Protective Order and Motion for Reconsideration of Previous Motion for Protective Order.

July 25, 2005

Argument scheduled on respondent, Fairchild's motion for protective order/reconsideration is scheduled for July 27, 2005 at 1:30p.m. immediately following the previously-scheduled status conference at 1:30p.m.

July 27, 2005

Preliminary Objections to amended petition for review filed.

July 27, 2005

Status conference scheduled. A further status conference is set for August 12, 2005 at 12:00p.m. via telephone. All discovery is STAYED pending the 8/12/05 status conference, as are the motions for protective order. Argument on DGS's p.o.s to amended PFR is set for 9/7/05 at 1:30p.m. in Courtroom 1, 5th Floor, Irvis Office Building, Harrisburg, at the same time as argument on Fairchild's p.o.s currently scheduled. Supporting brief (5) is due 8/19/05 and opposing brief (5) is due 9/2/05.

August 16, 2005

Preliminary Objections to Preliminary Objections. Petitioner's Pos to Respondents Pos.

August 17, 2005

Argument scheduled on petitioners' preliminary objections to DGS's preliminary objections for September 7, 2005 at 1:30p.m., Courtroom 1, Irvis Office Building, Harrisburg.

August 22, 2005

Argument continued on all p.o.'s including petitioners p.o.'s to DGS's p.o.'s previously scheduled for September 7, 2005 at 1:30p.m. are CONTINUED GENERALLY to be rescheduled upon praecipe or order. A status conference is set for 9/7/05 at 1:30p.m. via telephone. All discovery is STAYED pending further order.

September 1, 2005

Praecipe to reset oral argument filed.

September 6, 2005

Praecipe to reschedule argument on POs filed.

September 7, 2005

Argument rescheduled for 10/20/05 at 10:00 a.m. via telephone. Brief (3) supporting both sets of p.o.'s are due 9/27/05; opposing briefs (3) are due 10/17/05. Discovery remains stayed pending further order of this Court.

September 27, 2005

Respondent's Brief filed supporting preliminary objections.

September 27, 2005

Respondent's Brief filed in support of P.O.'s.

October 17, 2005

Memorandum of Law filed opposing preliminary objections.

October 20, 2005

Petition for Enforcement of Settlement Agreement filed.

October 28, 2005

Application for Extension of time to file response to petition for enforcement filed.

October 31, 2005

Order granting Application for Extension of time to file DGS's answers to petition to enforce is due 14 days after this court issues a decision on the P.O.s.

October 31, 2005

Application for extension of time to file response to petition for enforcement filed.

November 3, 2005

Preliminary Objections Sustained. Memorandum Opinion (10 pgs). Preliminary injunction is DENIED. P.O. of DGS is SUSTAINED & injunctive Counts I thru III are TRANSFERRED to the Board of Claims. P.O. of Russ Fairchild in nature of lack of original jurisdiction as to Counts IV thru Count VI of 1st amended petition for review is SUSTAINED & Counts IV & V & TRANSFERRED to Court of Common Pleas of the 17th Judicial District, Union County Branch.

December 2, 2005

Transfer to Another Court (See OPINION of 11/3/05).

BEFORE THE BOARD OF CLAIMS

November 3, 2005

Commonwealth Court transferred record.

***November 10, 2005**

Defendant filed a letter (via fax) referencing two cases (Firetree and New Foundation) which were transferred to the Board from Commonwealth Court (Firetree - 165MD2005 and New Foundation - 431MD2005).

***November 16, 2005**

Board forwarded letter to Defendant, with copy to Plaintiff, advising that the Board had not received the transferred cases and that some administrative matters must first be resolved.

December 6, 2005

Board of Claims received file from Commonwealth Court. Amount of Claim: Unknown.

December 7, 2005

Board issued letter to Plaintiff requesting restated claim, original plus 3 copies, proof of mailing and filing fee.

January 12, 2006

Board forwarded letter to parties advising that no actions will be taken until restated claims are filed in Docket Nos. 3813 and 3815.

***February 13, 2006**

Plaintiff filed restated claim, proof of mailing and filing fee. Amount of Claim: unknown. ACCEPTED FOR FURTHER PROCESSING.

February 14, 2006

Board issued Acknowledgment letter and forwarded a copy of the Claim to Attorney General.

February 21, 2006

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged February 16, 2006.

March 8, 2006

Defendant filed Preliminary Objections, Brief in Support and Proposed Order.

March 17, 2006

Board forwarded letter to parties requesting an updated status relative to the Plaintiff's letter requesting the stay be lifted and the Board's request to consolidate Docket Nos. 3779 and 3813.

***March 20, 2006**

Plaintiff filed First Amended Statement of Claim and proof of mailing. Amount of Claim: unknown.

March 21, 2006

Board issued Acknowledgment letter and forwarded a copy of the First Amended Statement of Claim to Attorney General.

March 22, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 22nd day of March, 2006, the preliminary objections filed by the Defendant on March 8, 2006, are hereby **DENIED** as **MOOT**." Copy forwarded to Plaintiff and Defendant.

March 27, 2006

Defendant filed Entry of Appearance of David L. Narkiewicz, Assistant Chief Counsel and Tanya C. Leshko, Senior Counsel on behalf of Defendant.

March 27, 2006

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged March 22, 2006.

March 28, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated March 22, 2006. Receipt of same acknowledged March 23, 2006.

March 28, 2006

Defendant filed Acceptance of Service of Opinion and Order dated March 22, 2006. Receipt of same acknowledged March 24, 2006.

March 31, 2006

Defendant filed (via fax) letter advising that Defendant agrees that the cases (3779 & 3813) should be consolidated.

April 3, 2006

Defendant filed letter advising that Defendant has filed Notice of Appeal and Petition for Allowance of Appeal in Union County Court of Common Pleas and a Petition for Review in Commonwealth Court.

April 12, 2006

Defendant filed copy of the Commonwealth Court of Pennsylvania Docketing Statement Notice of Appeal and Statement of Issues Complained of on Appeal as filed in Commonwealth Court.

April 13, 2006

Defendant filed copy of Concise Statement of Matter complained of on appeal as filed in the Court of Common Pleas of the 17th Judicial District, Union County Branch.

April 13, 2006

Defendant filed Preliminary Objections and Brief in Support. [04A042506D]

April 24, 2006

Defendant filed Response to Preliminary Objections and Memorandum of Law in Opposition.

May 11, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 11th day of May, 2006, it is **ORDERED** and **DECREED** that Defendant's Preliminary Objections are **OVERRULED**. Defendant shall file a responsive pleading to Plaintiff's First Amended Statement of Claim within 20 days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

May 15, 2006

Defendant filed Acceptance of Service of Opinion and Order dated May 11, 2006. Receipt of same acknowledged May 12, 2006.

May 19, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated May 11, 2006. Receipt of same acknowledged May 12, 2006.

May 22, 2006

Defendant filed copy of Amended Emergency Petition for Review and Answer to Preliminary Objections to Emergency Petition for Review as filed in Commonwealth Court.

June 1, 2006

Defendant filed Answer and New Matter to First Amended Statement of Claim.

June 12, 2006

Defendant filed Entry of Appearance of David L. Narkiewicz, Assistant Chief Counsel on behalf of Defendant, as filed in Commonwealth Court.

June 12, 2006

Defendant filed Answer to Preliminary Objections to Emergency Petition for Review as filed in Commonwealth Court.

June 16, 2006

Plaintiff filed Answer to New Matter.

June 19, 2006

Board forwarded letter to parties directing them to proceed with discovery.

January 17, 2007

Plaintiff filed Notice of Service of Notice to Take Oral Deposition of Bradley J. Swartz.

October 18, 2007

Defendant filed status letter advising that the parties are in discovery and requesting that Docket Nos. 3789, 3815 and 3813 are consolidated.

November 1, 2007

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 1st day of November, 2007, the request of the parties to consolidate this Docket No. 3813 with Docket Nos. 3789 and 3815 is **DENIED**." Copy forwarded to Plaintiff and Defendant.

November 5, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated November 1, 2007. Receipt of same acknowledged November 2, 2007.

November 5, 2007

Defendant filed Acceptance of Service of Opinion and Order dated November 1, 2007. Receipt of same acknowledged November 2, 2007.

November 26, 2007

Plaintiff filed entry of appearance of Mark D. Schwartz, Esquire, on behalf of Plaintiff.

January 2, 2008

Plaintiff filed Withdrawal of Appearance of Mark D. Swartz, Esquire.

March 7, 2008

Defendant filed Motion for Summary Judgment, Brief in Support and Proposed Order. [08A040808D]

April 9, 2008

Plaintiff filed Answer to Motion for Summary Judgment, Memorandum of Law in Support and Proposed Order.

May 2, 2008

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 2nd day of May, 2008, upon consideration of the motion by Commonwealth of Pennsylvania, Department of General Services, for summary judgment on Firetree's claims in this matter at Docket No. 3813, and the response thereto by Firetree, it is **ORDERED** and **DECREED** that the motion is hereby **GRANTED**. Firetree's claims at Docket No. 3813 are **DISMISSED** with prejudice for the reasons stated in this opinion." Copy forwarded to Plaintiff and Defendant.

May 8, 2008

Plaintiff filed Acceptance of Service of Opinion and Order dated May 2, 2008. Receipt of same acknowledged May 6, 2008.

May 16, 2008

Plaintiff filed Motion for Reconsideration of Board's Order of April 24, 2008 (sic), Memorandum of Law and Proposed Order.

May 20, 2008

Plaintiff filed Motion for Reconsideration of Board's Order of May 2, 2008, Memorandum of Law and Proposed Order.

May 22, 2008

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 22nd date of May, 2008, for the reasons stated herein and in our Order of May 2, 2008, Plaintiff's motion for reconsideration is hereby **DENIED**." Copy forwarded to Plaintiff and Defendant.

May 22, 2008

Defendant transmitted via facsimile Acceptance of Service of Opinion and Order dated May 22, 2008. Receipt of same acknowledged May 22, 2008.

May 23, 2008

Defendant filed Acceptance of Service of Opinion and Order dated May 22, 2008. Receipt of same acknowledged May 22, 2008.

May 27, 2008

Defendant filed Acceptance of Service of Opinion and Order dated May 22, 2008. Receipt of same acknowledged May 23, 2008.

May 28, 2008

Plaintiff filed Acceptance of Service of Opinion and Order dated May 22, 2008. Receipt of same acknowledged May 23, 2008.

May 28, 2008

Plaintiff filed Petition for Review as filed in Commonwealth Court.

May 30, 2008

Commonwealth Court filed Notice of Filing of Petition for Review. [956 CD 2008]

June 17, 2008

Board filed certified list comprising the record from the Board of Claims to Commonwealth Court.

October 23, 2008

Commonwealth Court filed Order. Order as follows: "NOW, October 21, 2008, the record in this matter having been retained by the Board of Claims pursuant to Pa.R.A.P. 1952(b), it is hereby ordered that the Board of Claims shall transmit to the Commonwealth Court within twenty (20) days of the date of this order, the following portions of the original record pursuant to Pa.R.A.P. 1952(b): 1) Plaintiffs First Amended Statement of Claim and proof of mailing, filed March 20, 2006; 2) Defendant's Answer and new Matter to the First Amended Statement of Claim, filed June 1, 2006; 3) Plaintiff's Answer to New Matter, filed June 1, 2006; 4)

Defendant's Motion for Summary Judgment, Brief in Support thereof, and Proposed Order, filed March 7, 2008; 5) Plaintiff's Answer to Motion for Summary Judgment, memorandum of law in Support thereof, and Proposed Order filed April 9, 2008; 6) Plaintiff's Motion for Reconsideration of Board's Order of May 2, 2008, Memorandum of Law and Proposed Order, filed May 20, 2008; and 7) the Board's Opinion and Order rendered May 22, 2008. The Order denied Plaintiff's Motion for Reconsideration."

October 24, 2008

Board forwarded requested documents to Commonwealth Court per Order dated October 21, 2008.

July 31, 2009

Commonwealth Court Order filed. Order as follows: "AND NOW, this 30th day of July, 2009, the order of the Board of Claims in the above-captioned matter, dated May 2, 2008, is AFFIRMED."

October 7, 2009

Commonwealth Court returned file.
