

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

FIRETREE, Ltd.,	:	
	Plaintiff	NO: 06-2136
	:	
vs.	:	
	:	
BFI WASTE SERVICES OF	:	
PENNSYLVANIA, LLC, and RIVERPORT	:	
INSURANCE COMPANY,	:	CIVIL ACTION
	Defendants	:

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

On December 22, 2010, following argument, this Court denied the Plaintiff's Motion for Delay Damages. On January 12, 2011, the Plaintiff filed a Notice of Appeal, appealing this Court's Order of December 22, 2010 and additionally appealing court orders entered on December 30, 2008, January 12, 2009 and July 28, 2009 by the Honorable Dudley N. Anderson.

On February 4, 2011 the Plaintiff filed its Concise Statement of Matters Complained of on Appeal. In its concise statement the Plaintiff contends that this Court committed an error of law and abused its discretion in denying the Plaintiff's Motion for Delay Damages and not holding a hearing on the issue of the Plaintiff's delay damages.¹

¹ As the Plaintiff's Concise Statement of Matters Complained of on Appeal references only this Court's Order of December 22, 2010, these are the only issues addressed in this 1925(a) Opinion. See Pa.R.A.P. 1925(b)(4)(vii).

The Plaintiff's claim for delay damages is based upon entry of an award for summary judgment in its favor. This Court denied the Plaintiff's request pursuant to Pa.R.C.P. 238.

Pa.R.C.P. 238(a)(1) provides:

At the request of the plaintiff in a civil action seeking monetary relief for bodily injury, death or property damage, damages for delay shall be added to the amount of compensatory damages awarded against each defendant or additional defendant found to be liable to the plaintiff **in the verdict of a jury, in the decision of the court in a nonjury trial or in the award of arbitrators** appointed under section 7361 of the Judicial Code, 42 Pa.C.S. § 7361, and shall become part of the verdict, decision or awarded. (Emphasis added).

As the clear language of the rule does not permit awards for delay damages arising from entry of summary judgment, this Court denied the Plaintiff's request.

During argument, the sole authority cited by the Plaintiff was Pa.R.C.P. 126 which provides for the liberal construction of the procedural rules. The purpose of the rule regarding liberal construction, however, is the "just, speedy, and inexpensive determination" of actions. The rule simply allows a court to disregard procedural errors which do not affect the "substantial rights of the parties." Certainly adding a provision to a rule to permit a party to recover additional damages would affect the "substantial" rights of the parties. Although the Plaintiff asserts that the spirit of the rule permits recovery of delay damages, the court is not permitted to disregard the clear language of a rule when the words of the rule are clear and free from ambiguity.

Pa.R.C.P. 127 provides:

(a) The object of all interpretation and construction of rules is to ascertain and effectuate the intention of the Supreme Court.

(b) Every rule shall be construed, if possible, to give effect to all its provisions. **When the words of a rule are clear and free from all**

ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. (Emphasis added).

This is consistent with statutory construction principles which the Pennsylvania Superior Court has applied in interpreting the rules of appellate procedure.

Commonwealth v. Dorman, 414 A.2d 713 (Pa.Super. 1979).

1 Pa.C.S.A. § 1903(a) provides:

Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a particular and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning or definition.

The Pennsylvania Supreme Court has held that when ascertaining the meaning of a statute, the court must first determine whether the issue may be resolved by reference to the express language of the statute, which is to be read according to the plain meaning of the words. Commonwealth v. Fedorek, 946 A.2d 93 (Pa. 2008).

The court's duty to interpret statutes does not include the right to add provisions that the legislature has omitted. Grom v. Burgoon, 672 A.2d 823 (Pa.Super. 1996).

As the rule regarding delay damages permits recovery of delay damages under certain specific circumstances – and summary judgment is clearly not one such circumstance, this Court's decision to deny delay damages did not constitute error of law or an abuse of discretion, and this Court respectfully requests affirmance of its December 22, 2010 Order.

BY THE COURT,

Richard A. Gray, J.

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