

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

STEVEN P. TAWNEY,	:	
	:	
Plaintiff	:	DOCKET NO. 11-01,235
	:	CIVIL ACTION – LAW
vs.	:	
	:	
ZACHARY R. ARMSTRONG, WALTER BOREK, and	:	
JENNIE BOREK,	:	
Defendants	:	

**ORDER**

AND NOW, this 30<sup>th</sup> day of May, 2012, it is hereby ORDERED and DIRECTED that Defendants’ Motion for Summary Judgment, filed on April 12, 2012, is GRANTED. This Court notes that Plaintiff does not appear to be opposed to the granting of this motion because he did not file a response to the motion or a corresponding brief and he did not appear at the scheduled oral argument on the motion. Count I of Plaintiff’s Complaint (Negligence) is STRICKEN as to Defendants Walter Borek and Jennie Borek. Count II of Plaintiff’s Complaint (Negligent Entrustment) is STRICKEN.

Pa. R.C.P. 1035.2 provides that summary judgment may be granted at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. Ct. 2011). Pa. R.C.P. 1035.3 provides that an adverse party must file a response within thirty days of the service of the motion for summary judgment identifying either factual issues to be addressed at trial or evidence in the record establishing facts essential to its cause of action or defense; the adverse party cannot solely rely on the allegations or denials in its pleadings. Pa. R.C.P. 1035.3(a); *Keystone*, 31 A.3d at 971. “Failure of a non-moving party to adduce sufficient evidence on an issue essential to its case and on

which it bears the burden of proof... establishes the entitlement of the moving party to judgment as a matter of law.” *Keystone*, 31 A.3d at 971 (citing *Young v. Dep’t of Transportation*, 744 A.2d 1276, 1277 (Pa. 2000)).

In the instant matter, Defendants filed a motion for summary judgment regarding Plaintiff’s claims against Defendants Walter and Jennie Borek; Plaintiff brought claims against these defendants in negligence and negligent entrustment. However, Plaintiff has not adduced sufficient evidence to support either of these claims against Defendants Walter and Jennie Borek. *See Smalich v. Westfall*, 269 A.2d 476, 480 (Pa. 1970) (holding that “a bailor is not liable for the negligence of a bailee in the operation of a bailed chattel”); *Ferry v. Fisher*, 709 A.2d 399, 403 (Pa. Super. Ct. 1998) (defining the negligent entrustment as “negligence to permit a third person to use a thing... which is under the control of the actor, if the actor *knows or should know* that such person intends or is likely to use the thing... in such a manner as to create an unreasonable risk of harm to others” (emphasis added)). Therefore, this Court grants Defendant’s motion and Defendants Walter and Jennie Borek are dismissed as parties defendant.

BY THE COURT,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard A. Gray, J.

RAG/abn

cc: Richard Wiener, Esquire  
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