

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LAURIE FIDLER and JAMIE BROWN, Plaintiffs	: NO. 13 – 03,182 : : CIVIL ACTION - LAW
vs.	: : :
AARON REIDELL and PIZZA TO GO, LLC, Defendants	: : Petition to Open Judgment

OPINION AND ORDER

Before the Court is the Petition to Open and/or Strike filed by Defendant Pizza To Go on April 14, 2014.¹ Argument on the petition was heard May 9, 2014.

In their Complaint, Plaintiffs allege they were rear-ended by Defendant Aaron Reidell while he was driving a vehicle for the purpose of delivering pizzas for Defendant Pizza To Go. Plaintiffs allege that Pizza To Go is vicariously liable for Aaron Reidell's negligence, and that Pizza To Go is itself negligent for failing to provide liability insurance knowing that Aaron Reidell had no liability insurance himself. Defendant Reidell did not file a response and a default judgment was entered against him on March 5, 2014. Defendant Pizza did not file a response either, and a default judgment was entered against it on April 2, 2014.

The instant petition to Open and/or Strike was filed on April 14, 2014, within 10 days of entry of the judgment and thus, pursuant to Rule 237.3, the judgment must be opened if "the proposed [] answer states a meritorious [] defense." Pa.R.C.P. 237.3. In the Answer attached to the petition, Defendant Pizza denies generally the allegations of the Complaint,² and in New Matter, alleges that "[t]he Answering Defendant is not vicariously liable", and "[t]o the extent that the Plaintiff claims that the Defendant is liable under a theory of negligent entrustment, said negligence is denied." In its petition, Pizza To Go explains that a meritorious defense is stated "as the claim against Pizza To Go is based on vicarious liability and the Plaintiff has not obtained a judgment against the primary alleged tort feason".

¹ Although captioned a petition to open and/or strike, the petition relies on Pa.R.C.P. 237.3 and speaks only to a request to open the default judgment.

² Pizza To Go does, however, admit that at the time of the accident, Reidell was working as a pizza deliveryman for Pizza To Go.

In fact, Plaintiff has obtained a default judgment against Aaron Reidell, and Pizza's claim that it has a defense based on the lack of a judgment is thus without merit.

Pizza also argues that its proposed Answer is sufficient even though it denies generally all allegations of the Complaint in a boiler-plate fashion, citing Stabley v. Great Atlantic & Pacific Tea Company, 2014 PA Super 72 (April 14, 2014). While the Court in Stabley does state that "[t]here is no requirement that the answer attached to a petition to open be any more specific than the typical broad answer to a complaint", Id., the Court also noted the New Matter which stated "[t]he alleged injuries of the plaintiff were the result of the plaintiff, Bertha Stabley's, own negligence, which exceeded any negligence of the answering defendants, ... and, therefore, pursuant to the Pennsylvania Comparative Negligence Act, the plaintiff's claims are barred", and counsel's assertions at the hearing on the petition that "Stabley 'was walking in the rain with her head down with an umbrella in front of her and she walked right in[to] the path of a person that was pushing the carts. He has 12 carts. He couldn't stop in time.'" The Court stated that the content of the proposed Answer, "*read in tandem* with their assertions" at the hearing, sufficed to set forth a potentially meritorious defense. Id. (emphasis added.) In the instant case, the only explanation of the boiler-plate assertions provided by counsel at argument was that no judgment had been obtained against the primary tort-feasor and thus no vicarious liability could attach. That defense is based on facts proven by the record itself to be incorrect. Therefore, the court finds no meritorious defense has been set forth and there is no basis upon which to open the judgment.

ORDER

AND NOW, this day of May 2014, for the foregoing reasons, the Petition to Open and/or Strike is hereby DENIED.

cc: Marc Drier, Esq.
 Joseph Orso, III, Esq.
 Gary Weber, Esq.
 Hon. Dudley Anderson

BY THE COURT,

Dudley N. Anderson, Judge