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APR - 4 2018

PHILADELPHIA CONTRIBUTIONSHIP  
INSURANCE COMPANY a/s/o  
BARTOLOMEO NAPODANO,

Plaintiff,

v.

JOSE ANDRADE, QBE NORTHEAST, IRA  
TROW and JOHN DOES 1-5 and ABC CORPS.  
1-5,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO.: ESX-L-5261-15

CIVIL ACTION

**ORDER FOR SUMMARY JUDGMENT  
AS TO DEFENDANT JOSE ANDRADE**

THIS MATTER, having come before the Court upon motion of Rivkin Radler LLP,  
counsel for Defendant, Jose Andrade and the Court having read and considered the moving papers  
and good cause having been shown;

IT IS this 4<sup>th</sup> day of April, 2018, hereby

ORDERED that Summary Judgment dismissing all claims brought by Plaintiffs, against  
Mr. Jose Andrade and all Cross Claims against Mr. Jose Andrade <sup>w/o</sup> with prejudice is hereby granted;

AND IT IS FURTHER ORDERED that a copy of the within Order be served upon all  
counsel of record within seven (7) days of receipt thereof.

X

OPPOSED

UNOPPOSED

Hon. L. Bruce Spivey J.S.C.

For Reasons Stated on Record  
and See Attached Statement  
of Reasons

STATEMENT OF REASON

**PHILADELPHIA CONTRIBUTIONSHIP INSURANCE CO V. JOSE ANDRADE, ET AL**  
DOCKET NO. ESX-I-5261-15

In determining the merits of Defendant Andrade's motion, the Court is guided by Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995), in which the Court held that a genuine issue of material fact is present when the evidence presented on motion, viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact finder to find favor of the non-moving party. Further, the Court is compelled to accept the non-movant's version of the facts as true and give the non-movant "the benefit of all inferences that those facts support." Baird v. Am. Med. Optics, 155 N.J. 54 (1998).

The facts are that after 4 separate independent investigations, factors contributing to the ignition and the cause of the ignition were designated as "undetermined" and no expert has provided an opinion as to the cause and origin of the fire which would be necessary to establish the negligence of Defendant Andrade.

While expert testimony is not always warranted, "[t]he primary justification for permitting expert testimony is that the average juror is relatively helpless in dealing with a subject that is not a matter of common knowledge." Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 85 (App.Div.1961). Here, the Court recognizes that the average juror might be able to infer the causation of a fire from discarded smoking paraphernalia. If various complex forensic fire investigative techniques could not conclude the cause of this fire it would be not be logical to believe that the average juror would be able to discern the behavior of fire, such as the rate of spread, and intensity of the fire, without the testimony of an expert witness.

This Court finds that, "[i]t is clear that this subject (fire behavior) is beyond the ken of the average juror and thus is suitable for explanation through expert testimony." State v. Kelly, 97 N.J. 178 (1984). Accordingly, Plaintiff has failed to demonstrate that an allegation of negligence in the causation of this fire can be attributed to Mr. Andrade as 1) no expert witness has been presented as to causation, and 2) fire behavior is beyond the average ken of jurors. While the Court recognizes that, when considering motions for Summary Judgment, every reasonable inference of fact must be given to the non-moving party, the Court cannot input facts which would necessarily require expert testimony.

**HON. L. GRACE SPENCER, J.S.C.**