

MOORE'S LUMBER AND
BUILDING SUPPLIES,
Plaintiff

vs.

STRAYER CONTRACTING, INC.
ELVIN N. STRAYER, JR., and
KATHERINE STRAYER, Individually,
Defendants

vs.

OWENS CORNING, INC.,
Additional Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 99-00,383

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OPINION AND ORDER

This Order is entered on the motion of Defendants to relief to file an additional defendant complaint, that Motion having been filed July 26, 1999. By a prior Order of September 9, 1999, following oral argument, a decision on this Motion was deferred. At that time it was noted that the parties should be given an additional period of time in which to file affidavits to supplement the factual record.¹ On September 9, 1999, Defendant did file an Affidavit. The Additional Defendants have chosen not to file any responsive affidavit. The record is now complete.

This Court believes that the Defendant's Motion must be DENIED. The Motion must be denied because the Defendant has failed to demonstrate the requisite good cause to allow late joinder under Pa.R.C.P. §2253 and further because to allow the joinder would be improper under Pa.R.C.P. §2252(d). The Defendant's contention that this joinder would be

¹ The Order of September 9, 1999, also granted the Preliminary Objections of the Additional Defendant to an additional defendant complaint filed against them by the Defendant on July 16, 1999 and struck the additional defendant complaint of that date.

permissible because under Pa.R.C.P. §2252(d) the cause of action against the proposed additional defendant arises out of a transaction or occurrence upon which Plaintiff's cause of action is based is rejected.

This Court finds persuasive and appropriate the reasoning of the briefs of the proposed Additional Defendant, Owens Corning, which were filed August 20, 1999 and September 24, 1999 (entitled "Supplemental Memorandum. . .") The Court hereby adopts and incorporates herein the statement of facts and procedural history as set forth in said briefs as being an appropriate statement of the facts and procedural history of this case and further adopts the arguments set forth in said brief as reasons for this Court's decision and following Order.

ORDER

AND NOW, this 30th day of September 1999 the Motion of Defendants filed July 26, 1999 for leave to file an additional defendant complaint is DENIED.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
Kenneth B. Young, Esquire
Scott T. Williams, Esquire
W. Matthew Reber, Esquire
Suite 1400, One Penn Center; 1616 John F. Kennedy Boulevard; Phil., PA 19103
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)