

**IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

**WILLIAM F. DEIBERT and ALMA  
DEIBERT, husband and wife, MICHAEL  
P. BOROWSKI and PAMELA  
BOROWSKI, husband and wife,**

**Plaintiffs**

**v.**

**NO. 2006-C-0084**

**PENNSYLVANIA TURNPIKE  
COMMISSION, t/a the Pennsylvania  
Turnpike, P.A. GIANNI HOMES, INC.,  
t/a Corrado Homes, CORRADO HOMES,  
INC., t/a Corrado Homes, MINESITE  
ROAD, L.P. and MINESITE ROAD, LLC, t/a  
Corrado Homes and LOWER MACUNGIE  
TOWNSHIP,**

**Defendants**

**v.**

**SCHLOUCH, INC.,**

**Additional Defendant.**

**MEMORANDUM OPINION**

Before the Court for consideration is the Motion For Leave To Join The Additional Defendant, Lehigh Engineering Associates, Inc. Of Defendants, Corrado Homes, Inc. And Minesite Road, LP<sup>1</sup>, filed on February 12, 2008.

When requesting the late joinder of a party, the joining party “must show (1) that joinder is based on proper grounds; (2) some reasonable excuse exists for the delay in commencing joinder

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<sup>1</sup> Minesite Road, LP is the sole shareholder of Corrado Homes, Inc. Therefore, throughout this memorandum opinion, when referring to the Moving Defendants by name, the Court refers only to Corrado Homes. See Anthony Corrado Deposition Tr., 11/13/2006, pp. 6 – 7, lines 17 – 1.

proceedings; and (3) that the original plaintiff will not be prejudiced by the late joinder.” Lawrence v. Meeker, 717 A.2d 1046 (Pa. Super. 1998).

**A. BASED ON PROPER GROUNDS**

As to criteria that the joinder be based on proper grounds, it appears to the Court that the proposed additional defendant, Lehigh Engineering Associates, Inc. (hereinafter “Lehigh Engineering”), could have been a proper party when this case began, or shortly thereafter.

This litigation involves the Plaintiffs’ allegation that the Plaintiffs’ land has been suffering, and continues to suffer, flood damage as a result of the construction of the Corrado Homes Subdivision. The Plaintiffs contend that the flooding of their land resulted from the improper design of the storm water management facility contained within the Corrado Homes Subdivision. See First Amended Complaint, §§ 47 – 49. Additionally, the Plaintiffs allege that the Defendants violated “ordinances, statutes and other laws” in constructing the Corrado Homes, including failing to comply with the SALDO requirements and the Stormwater Management Act (Act 167). See First Amended Complaint, §§ 41 - 48, 101 Therefore, this case, in its most basic terms, involves the flow of water from the Corrado Homes Subdivision onto the Plaintiffs’ property due to the allegedly improper design of the storm water management facility.

At his deposition, Anthony Corrado, owner of Corrado Homes, Inc., testified that he retained Lehigh Engineering to design the storm water management facility located within the Corrado Homes Subdivision. See Anthony Corrado Deposition Tr., 11/13/2007, pp. 6, lines 6 – 8; 12, lines 6-12. Mr. Corrado testified that he relied upon Lehigh Engineering to obtain all requisite plan approvals and permits. Anthony Corrado Deposition Tr., p. 30, lines 4 – 10. Larry Turoscy, director of engineering and president of Lehigh Engineering, testified that, as part of Lehigh Engineering’s responsibilities, it would have submitted its proposed drainage calculations and

proposed plans to the Pennsylvania Turnpike Commission for its review. Larry Turoscy Deposition Tr., 11/20/2007, pp. 94 – 95, lines 23 – 20.

The Moving Defendants aver, however, that to date, despite a subpoena and further requests for same, Lehigh Engineering has not produced any documents that establish: (1) that Lehigh Engineering obtained the Pennsylvania Turnpike Commission’s approval; and (2) that it complied with all requisite SALDO requirements and other applicable statutes, laws and regulations. It is the Moving Defendants contention that Lehigh Engineering failed to obtain the requisite approvals in connection with the implementation of the storm water management facility contained within the Corrado Homes Subdivision and that joinder of Lehigh Engineering would permit adjudication of claims, including those for contribution and indemnity.

Based on the foregoing, it appears to the Court that Lehigh Engineering could have been a proper party to this action. Therefore, the first prong of the test for proposed late joinder is met.

**B. REASONABLE EXCUSE FOR DELAY**

However, the Moving Defendants’ excuse for the delay in commencing the joinder proceedings is not reasonable. It appears to the Court that the facts, as alleged by the Moving Defendants themselves, justify the idea that Corrado Homes knew or reasonably should have known that Lehigh Engineering should have been added as an additional defendant at this matter’s commencement or shortly thereafter. The Court is not persuaded by the Moving Defendants’ argument that Corrado Homes did not discover Lehigh Engineering’s alleged failure until the recent deposition of Larry Turoscy, and the “even more recent failure of Lehigh Engineering to produce documents it claims it possessed relating to its contacts of the Pennsylvania Turnpike Commission.” Defendants’ Motion For Leave To Join Additional Defendant, § 22.

Corrado Homes retained Lehigh Engineering to design the storm water management facility located within the Corrado Homes Subdivision. See Anthony Corrado Deposition Tr., p. 12, lines 6-12. Corrado Homes was aware that the Plaintiffs' Complaint involved allegations of flood damage due to the flow of water from the Corrado Homes Subdivision onto the Plaintiffs' property and the alleged improper design of the storm water facility. Corrado Homes' failure to discover that Lehigh Engineering, as the designer of the storm water management facility located within the Subdivision, could have been a proper party to this action at the time this case commenced or shortly thereafter appears unreasonable to the Court. This is not a situation in which the party seeking joinder has been surprised to learn about the role of the proposed additional defendant. Rather, the role of Lehigh Engineering, the proposed additional defendant, in the subject of the lawsuit was known by Movant, Corrado Homes, since before this lawsuit was filed. Indeed, Movant hired Lehigh Engineering to do the work in question.

Therefore, the Court finds that the Moving Defendants did not meet the second prong of the criteria for joinder.

### **C. PREJUDICE**

Finally, it appears to the Court that the Plaintiffs would be prejudiced by this proposed late joinder. This case was commenced by Praecipe For Summons over two (2) years ago on January 12, 2006 and is now scheduled for trial on January 26, 2009, three (3) years after the case was initially commenced. Granting leave to join an additional defendant would postpone this date for at least another six (6) months. Additionally, the Pre-Trial Discovery Deadline in this matter is April 30, 2008. The Plaintiffs already have held depositions and have paid for expert reports. Granting leave to join an additional defendant at this juncture would require that the Plaintiffs expend more

money for expert reports, depositions and other discovery, in addition to that for which they have already paid.

The Court is cognizant of the fact that late joinder would serve judicial economy to the extent that it would avoid a second lawsuit since, should the Moving Defendants be found liable in this action, they then might file another action against Lehigh Engineering for contribution or indemnity. However, this potential judicial economy is outweighed by the Moving Defendants' failure to fulfill its obligation over the course of the previous two (2) years to thoroughly examine the Plaintiffs' claims and the possible liability of Lehigh Engineering. Even if the Court accepts as true the Moving Defendants' assertion that information regarding Lehigh Engineering was only recently discovered, it is the Court's position that this was through the fault of Corrado Homes itself. It appears to the Court that Corrado Homes should have made a diligent effort to question Lehigh Engineering regarding the Plaintiffs' allegations when this case was commenced. Corrado Homes' failure to do so is not a convincing reason to justify the prejudice to the Plaintiffs that would result should joinder be granted.

Therefore, for the above reasons, the Motion For Leave To Join Additional Defendant, Lehigh Engineering Associates, Inc., Of Defendants, Corrado Homes, Inc. And Minesite Road, L.P., is hereby DENIED.

**BY THE COURT:**

**DATE: March 12, 2008**

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**J. Brian Johnson, J.**

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**Defendants**

**v.**

**SCHLOUCH, INC.,**

**Additional Defendant.**

**ORDER**

AND NOW, this 12th day of March, 2008, upon consideration of the Motion For Leave To Join The Additional Defendant, Lehigh Engineering Associates, Inc. Of Defendants, Corrado Homes, Inc. And Minesite Road, LP, filed on February 12, 2008 and the Plaintiffs' response thereto;

IT IS HEREBY ORDERED, for the reasons set forth in the accompanying memorandum opinion, that the motion is DENIED.

**BY THE COURT:**

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**J. Brian Johnson, J.**