

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

<b>WILLIAM F. DEIBERT and ALMA</b>	:	
<b>DEIBERT, husband and wife, MICHAEL</b>	:	
<b>P. BOROWSKI and PAMELA</b>	:	
<b>BOROWSKI, husband and wife,</b>	:	
	:	
<b>Plaintiffs</b>	:	
	:	
<b>v.</b>	:	<b>NO. 2006-C-0084</b>
	:	
<b>PENNSYLVANIA TURNPIKE</b>	:	
<b>COMMISSION, t/a the Pennsylvania</b>	:	
<b>Turnpike, P.A. et al.,</b>	:	
	:	
<b>Defendants</b>	:	
	:	

**ORDER**

AND NOW, this \_\_\_\_ day of September, 2009, upon consideration of the Plaintiffs' Emergency Motion To Strike Defendant, Corrado Homes', "Praecipes/Writs To Join Additional Defendants" filed on August 31, 2009 and the Defendants', Corrado Homes, Inc. And Minesite Road, LP, Motion For A Trial Continuance presented in Motions Court on September 3, 2009, the parties responses thereto and after argument thereon;

IT IS HEREBY ORDERED, for the reasons set forth in the accompanying Memorandum Opinion, that the Plaintiff's motion is GRANTED and the Defendant's Praecipes to join additional defendants filed on August 19, 2009 are hereby STRICKEN; and

IT IS FURTHER ORDERED that the Defendants' motion for a trial continuance is DENIED.

**BY THE COURT:**

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**J. Brian Johnson, J.**

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<b>PENNSYLVANIA TURNPIKE</b>	:	
<b>COMMISSION, t/a the Pennsylvania</b>	:	
<b>Turnpike, P.A. et al.,</b>	:	
	:	
<b>Defendants</b>	:	
	:	

**MEMORANDUM OPINION**

**J. Brian Johnson, J.**

Before the Court for consideration is the Plaintiffs’ Emergency Motion To Strike Defendant, Corrado Homes’, “Praecipis/Writs To Join Additional Defendants” and the Defendants’, Corrado Homes, Inc. And Minesite Road, LP, Motion For A Trial Continuance. The Court heard argument on these motions on September 3, 2009.

As these two (2) motions are inter-related, the facts, discussion and conclusion sections that follow are applicable to both.

**A. RELEVANT FACTS**

On March 12, 2008, this Court denied the motion of the Defendants, Corrado Homes, Inc. and Minesite Road, L.P., to join additional defendants on the basis of unreasonable delay and prejudice. On August 5, 2009, the Plaintiff filed a Second Amended Complaint in which it made a minor change to the alleged damages language of its Complaint from asserting that sinkholes *could* occur to sinkholes *have* occurred. Based on this amendment, the Moving Defendants now seek to add an additional defendant, arguing that this is their right under Pennsylvania Rule of Civil

Procedure 2253(a) to join additional defendants within sixty (60) days of the filing of an amended complaint.

**B. DISCUSSION**

While the Court is cognizant of Rule 2253(a), it appears to the Court that it must examine the specific circumstances presented by this case. In doing so, it appears to the Court that the amendments contained in the Second Amended Complaint are not of the type anticipated by Rule 2253(a). Rather, the Second Amended Complaint merely makes a minor change to the language of the asserted damages, rather than a substantive change that could give rise to the necessity to join additional defendants. The Court also notes that its reasons for denying the Moving Defendants' motion to join additional defendants on March 12, 2008 have not been altered by the filing of the Second Amended Complaint. See Biello v. Bryant, 203 Pa. Super. 175, 199 A.2d 506 (1964)(finding that merely changing the wording of a complaint does not constitute the filing of an amended complaint for purposes of permitting the bringing of an additional defendant, particularly where the court had previously refused to permit the joinder).

Even assuming *arguendo* that the filing of the Second Amended Complaint gave rise to the Moving Defendants' right to join an additional defendant, the Court notes that the cause of action that the Moving Defendants would assert against the additional defendant, Lehigh Engineering Associates, Inc., an engineering company on which they relied, appears to be one for professional negligence. Certainly joining this proposed additional defendant would do nothing to serve judicial economy, as surely motions practice would ensue in which other parties to this action sought to either bifurcate the trial in this matter or strike Lehigh Engineering as an improper party. Therefore, even if the Moving Defendants could join Lehigh Engineering Associates, Inc., as a procedural matter the claim against this additional defendant would be bifurcated or the additional defendant would be stricken as an improper party and a second trial would have to be held.

Finally, the Court notes that, again assuming *arguendo* that Rule 2253(a) permits the Moving Defendants to join an additional defendant under the present circumstances, it appears to the Court that an action against Lehigh Engineering Associates, Inc. would be premature, as the Moving Defendants have not suffered any harm (i.e., have not been found liable in this case), so they would be missing an element of their claim.

**C. CONCLUSION**

For all of these reasons, the Court is compelled to grant the Plaintiff's Emergency Motion To Strike Defendant, Corrado Homes', "Praecipis/Writs To Join Additional Defendants" and deny the Defendants', Corrado Homes, Inc. And Minesite Road, L.P., Motion For A Trial Continuance.

Trial in this matter will proceed on September 21, 2009.

**BY THE COURT:**

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**J. Brian Johnson, J.**