

**[J-183-2004]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.**

DEMETRIOS S. TOULOUMES, CONNIE	:	No. 33 MAP 2004
A. TOULOUMES, AND 31 S. BALTIMORE	:	
INC. D/B/A HOLLY INN,	:	Appeal from the Opinion and Order of the
	:	Superior Court dated January 30, 2003 at
Appellants	:	1963 MDA 2001 and 1944 MDA 2001,
	:	affirming the Orders of the Court of
v.	:	Common Pleas of Cumberland County
	:	dated January 31, 2002, and February 4,
	:	2002, at Civil Division No 98-245.
	:	
E.S.C. INCORPORATED,	:	
	:	
Appellee	:	ARGUED: November 30, 2004
	:	

**DISSENTING OPINION**

**MADAME JUSTICE NEWMAN**

**DECIDED: June 19, 2006**

I dissent from the Majority Opinion because Pennsylvania Rule of Civil Procedure 238 (Pa.R.C.P. 238) expressly provides for delay damages in actions involving property damages: “[a]t the request of the plaintiff in a civil action seeking monetary relief for bodily injury, death or property damage, damages for delay shall be added to the amount of compensatory damages awarded against each defendant or additional defendant found to be liable to the plaintiff . . . .” Pa.R.C.P. 238 (emphasis added).

The Majority states that it “must construe our Rules of Civil Procedure” and refers to Pa.R.C.P. 127(a), which provides that “[t]he object of all interpretation and construction of the rules is to ascertain and effectuate the intention of the Supreme Court.” Majority Opinion at 4-5 (citing Pa.R.C.P. 127(a)). However, that Rule also provides that “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” Pa.R.C.P. 127(b). The Majority has disregarded the letter of the Rule.

In the matter *sub judice*, the words of Pa.R.C.P. 238 are both clear and free from all ambiguity. The Rule specifically authorizes delay damages where, *inter alia*, the following elements are present: (1) plaintiff requests them; (2) in a civil action; (3) seeking monetary damages; (4) where there is bodily injury, death, or property damage. Appellants have satisfied these four requirements. Therefore, the Majority’s exploration of the intent of the Rule was not required because the Rule itself explicitly provides that Appellants are entitled to delay damages.

The litigation was occasioned by the failure of Appellee, a roofing company, to install a roof at the Holly Inn, a motel owned by Appellants, in a workman-like manner. During a significant snowstorm, water infiltrated the roof, and the motel suffered extensive water damages as a result of the leak, leaving it uninhabitable. Property damage resulting from the leak affected the motel’s rooms and their contents, and its ceilings, drywall, and carpet.

Because Rule 238 explicitly authorizes delay damages when property damage occurs, the Majority’s foray into the intent of the Rule violates a key principle of statutory construction that the letter of a Rule is not to be disregarded in pursuit of its spirit. Contrary

to the position that the Majority espouses, the Rule does not differentiate between actions for breach of contract, such as the one brought by Appellants, or ones sounding in tort.

Accordingly, I would reverse the Order of the Superior Court and hold that, pursuant to Pa.R.C.P. 238, Appellants are entitled to delay damages as a result of the property damage that accrued to the motel.