

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

HARRIET HUEITT,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
PHILADELPHIA MEDIA HOLDINGS L.L.C.	:	
D/B/A THE PHILADELPHIA DAILY NEWS	:	
AND JEFF ALEXANDER VARGAS,	:	
	:	
Appellee	:	No. 1922 EDA 2011

Appeal from the Order Entered June 13, 2011  
In the Court of Common Pleas of Philadelphia County  
Civil No(s): 3553 May Term, 2008

BEFORE: SHOGAN, WECHT, and FITZGERALD,\* JJ.

MEMORANDUM BY FITZGERALD, J.:

Filed: January 28, 2013

Appellant, Harriet Hueitt, appeals from the order entered in the Philadelphia County Court of Common Pleas granting summary judgment in favor of Appellee, Philadelphia Media Holdings, LLC, doing business as the Philadelphia Daily News [hereinafter "Daily News"]. Because, *inter alia*, Ms. Hueitt has an outstanding claim against co-defendant Jeffrey Alexander Vargas, we quash.<sup>1</sup>

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> The record reflects an amended complaint correcting the name of Mr. Vargas.

We briefly state the facts, which are generally undisputed, in the light most favorable to Ms. Hueitt.<sup>2</sup> In the early morning of October 6, 2006, Ms. Hueitt was driving on Island Avenue in northeast Philadelphia. She stopped at the intersection with Bartram Avenue to purchase a Philadelphia Daily News newspaper from a street vendor. Mr. Vargas, who was driving behind Ms. Hueitt, rear-ended her vehicle. As a result, Ms. Hueitt was injured.

The street vendor is known as a “hawker.” The Daily News sells newspapers to contractors.<sup>3</sup> Ex. B to Daily News’s Mem. of Law in Support of Mot. for Summ. J. The contractors, in turn, hire and train homeless or disadvantaged people—“hawkers”—to sell newspapers. *Id.* The agreement between the Daily News and the contractors specifies the general areas

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<sup>2</sup> Ms. Hueitt included documents in the reproduced record that were not in the certified record.

In this regard, our law is the same in both the civil and criminal context because, under the Pennsylvania Rules of Appellate Procedure, any document which is not part of the officially certified record is deemed non-existent—a deficiency which cannot be remedied merely by including copies of the missing documents in a brief or in the reproduced record. . . . Simply put, if a document is not in the certified record, the Superior Court may not consider it.

***Commonwealth v. Preston***, 904 A.2d 1, 6–7 (Pa. Super. 2006) (*en banc*) (citations omitted). Thus, we disregarded any factual allegations made by the parties that were not substantiated by the certified record or outside our scope of review. ***See id.***

<sup>3</sup> The parties dispute whether the contractors are independent.

within which they may sell. Ex. C. to Daily News' Mem. of Law in Support of Mot. for Summ. J. The agreement also contains a risk of loss provision:

**RISK OF LOSS.** Upon Contractor's pick-up of Newspapers from [Daily News], the risk of loss with respect to the Newspapers, and the title to the Newspapers, passes to Contractor who then becomes responsible for any damaged or extra Newspapers that were picked up. In addition, Contractor bears all other risks incurred in running Contractor's business, including the risk of loss of non-payment by purchasers.

*Id.* The contractors also indemnify Daily News for any injuries resulting from any actions or omissions by the contractors and hawkers. *Id.*

Ms. Hueitt filed a complaint against the Daily News and Mr. Vargas. Ms. Hueitt raised two separate claims: a claim of negligence against the Daily News and a claim of negligence against Mr. Vargas. Ms. Hueitt's Am. Compl. The Daily News joined Timothy B. Keeley, also known as Timothy B. Keeley, Sr., as an additional defendant. Joinder Compl. of Daily News. The Daily News alleged Mr. Keeley was the contractor who supervised the hawker in this case and also invoked indemnification. Mr. Vargas raised a cross-claim of negligence against the Daily News. Mr. Vargas's Answer with New Matter to Ms. Hueitt's Am. Compl. No party sued the hawker.

Discovery ensued. The Daily News filed a motion for summary judgment. On June 13, 2011, the trial court granted the Daily News's motion and dismissed Ms. Hueitt's claims against the Daily News only. Order, 6/13/11. The order did not express "that an immediate appeal would facilitate resolution of the entire case." **See** Pa.R.A.P. 341.

Ms. Hueitt filed a timely notice of appeal on July 7, 2011. On July 22, 2011, the trial court *sua sponte* ordered that “Plaintiff’s<sup>[4]</sup> case against . . . Timothy Keeley is non-prossed.” Order, 7/22/11. The record does not reflect any disposition of the other outstanding claims.

Because of these outstanding claims, we examine the propriety of this appeal. Pennsylvania Rule of Appellate Procedure 341 defines a final order for purposes of appeal:

**(a) General rule.** Except as prescribed in subdivisions (d), and (e) of this rule, an appeal may be taken as of right from any final order of an administrative agency or lower court.

**(b) Definition of final order.** A final order is any order that:

(1) disposes of all claims and of all parties . . . .

\* \* \*

**(c) Determination of finality.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim or when multiple parties are involved, the trial court or other governmental unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an immediate appeal would facilitate resolution of the entire case.

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<sup>4</sup> It is unclear whether the trial court was referring to Ms. Hueitt, as the original plaintiff, or the Daily News, as the “joinder plaintiff.” **See 202 Island Car Wash, L.P. v. Monridge Const., Inc.**, 913 A.2d 922, 927 (Pa. Super. 2006) (stating, “where the original defendant has properly joined an additional defendant . . . , the plaintiff’s case may proceed just as if the plaintiff filed those claims directly against the additional defendant.” (citations omitted)).

Pa.R.A.P. 341(a)-(c). “The key inquiry in any determination of finality is whether there is an outstanding claim.” *Levitt v. Patrick*, 976 A.2d 581, 588 (Pa. Super. 2009) (citing Pa.R.A.P. 341).

In this case, Ms. Hueitt has an outstanding claim of negligence against Mr. Vargas.<sup>5</sup> Mr. Vargas has an unresolved cross-claim of negligence against the Daily News. At least one party has an open claim against Mr. Keeley. *See* n.4, *supra*. Because of these outstanding claims, the June 13, 2011 order granting summary judgment in favor of the Daily News is not a final order for purposes of appeal. *See* Pa.R.A.P. 341(b)-(c). The trial court did not indicate “that an immediate appeal would facilitate resolution of the entire case.” *See* Pa.R.A.P. 341(c). Accordingly, we quash because the appeal is interlocutory. *See Druot v. Coulter*, 946 A.2d 708, 710 (Pa. Super. 2008) (*per curiam*) (quashing appeal from order granting summary judgment adverse to all claims raised by plaintiffs but leaving unresolved defendants’ counterclaims).

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<sup>5</sup> We acknowledge the allegation that Ms. Hueitt and Mr. Vargas settled a claim. The alleged settlement, however, is not in the certified record. *See Preston*, 904 A.2d at 6–7. Further, even if the settlement was part of the certified record, we suggest the claim would be outstanding pending compliance with Pa.R.C.P. 229. Pennsylvania Rule of Civil Procedure 229 provides that a “discontinuance **shall be the exclusive method** of voluntary termination of an action, in whole or in part, by the plaintiff before commencement of the trial.” Pa.R.C.P. 229 (emphasis added); *see also* Fed. R. Civ. P. 41. Indeed, marking a case as settled on the docket does not necessarily terminate the case. *Cameron v. Great Atl. & Pac. Tea Co.*, 266 A.2d 715, 717 (Pa. 1970) (holding case was still pending given, *inter alia*, “tentative nature of the docket entry—‘Case **reported** settled’”).

J. A11041/12

Appeal quashed.