

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

CONSOLIDATED RAIL CORPORATION,	:	No. 909 MAL 2006
	:	
Respondent	:	
	:	
v.	:	Petition for Allowance of Appeal from the
	:	Order of the Commonwealth Court
	:	entered on October 5, 2006, at No. 238
	:	CD 2006, vacating and remanding the
	:	Order of the Court of Common Pleas of
CITY OF HARRISBURG AND THE	:	Dauphin County, Civil Division, entered
HARRISBURG AUTHORITY,	:	on January 20, 2006, at No. 3780 S
	:	1998.
Petitioners	:	
	:	
	:	
	:	
	:	

**ORDER**

**PER CURIAM**

**DECIDED: August 21, 2007**

The Petition for Allowance of Appeal is hereby **GRANTED, LIMITED TO** the issue set forth below. Allocatur is **DENIED** as to all remaining issues. The issue, as stated by Petitioners, is:

Whether the Commonwealth Court improperly determined that the City, or the Authority, committed an anticipatory breach of the 1941 Agreement?

A material aspect of the Commonwealth Court’s resolution of this matter is found in its statement that “[t]he trial court found that Conrail asked [Petitioners] whether they would do the work and the answer was ‘No.’” Consolidated Rail Corp. v. City of Harrisburg, No. 238 C.D. 2006, slip op. at 8 (September 12, 2006). The trial court, however, stated to the contrary. See Consolidated Rail Corp. v. City of Harrisburg, No. 3780 S 1998, slip op. at 12 (C.C.P. Dauphin January 19, 2006) (stating that

“Defendants have never refused to perform the work, but refused to pay for the work initiated by plaintiff.”).

We also note that the Commonwealth Court did not identify the standard of review applicable to summary judgment determinations. See Trowbridge v. Scranton Artificial Limb Co., 747 A.2d 862 (Pa. 2000) (explaining that summary judgment may only be granted if it is clear that no genuine issues of material fact exist in the record and the moving party is entitled to judgment as a matter of law). We make this point only because various statements of fact on the part of the Commonwealth Court appear to be couched in terms of “findings,” whereas the function of the courts at the summary judgment stage is not to find facts, but rather, to examine whether there are genuine disputes as to material facts in issue and whether any party is entitled to judgment as a matter of law. See Trowbridge.

The order of the Commonwealth Court is thus **VACATED**, and the matter is **REMANDED** for reconsideration.