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BERKLEY ASSURANCE COMPANY, Plaintiff, v. GRIFIN CAMPBELL DBA CAMPBELL CONSTRUCTION LLC, et al., Defendants.	PHILADELPHIA COUNTY COURT OF COMMON PLEAS AUGUST TERM 2013 NO. 000129

MEMORANDUM OF BERKLEY ASSURANCE COMPANY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AS TO COUNT I OF BERKLEY'S THIRD AMENDED COMPLAINT DECLARING THAT THERE IS NO COVERAGE DUE TO CANCELLATION OF POLICY

I. STATEMENT OF THE MATTER BEFORE THE COURT

Plaintiff Berkley Assurance Company ("Berkley") submits the following Memorandum in support of its Motion For Summary Judgment As To Count I Of Berkley's Third Amended Complaint Declaring That There Is No Coverage Due To Cancellation Of Policy seeking a determination that there is no issue of material fact that the Berkley insurance policy at issue ("the Policy") was cancelled by the insured, Grifin Campbell dba Campbell Construction ("Campbell"), acting through Campbell's attorney-in-fact, Skipjack Premium Finance Company ("Skipjack"), and that the Policy was cancelled in May 2013 before the June 5, 2013 date of the loss in this matter – by Campbell through his attorney-in-fact Skipjack.

While Berkley has filed two earlier Motions on this issue, neither was decided on the merits. Berkley's first such Motion (filed on December 9, 2014) was withdrawn to allow time

for Berkley to join additional parties to this case (after they were added to the underlying tort lawsuits). Berkley's second Motion (filed on December 14, 2015) was denied by the Court without prejudice by Order dated June 1, 2016. That Order emphasized that (at that time) the discovery deadline has been extended and had not yet expired. Since then, however, the discovery deadline has expired – and discovery has confirmed that there are no disputed facts material to Berkley's Motion. As such, Berkley renews its Motion.

As set forth herein and in the accompanying Declarations of William T. Evans[1] and Anthony L. Miscioscia, the material facts are not disputed. Those facts are:

1. Berkley issued the Berkley Policy to first named insured, Campbell.

2. The Berkley Policy allows the first named insured, Campbell, to cancel the Policy.

3. Campbell entered into, and signed, a written premium financing agreement (the "PFA") with Skipjack Premium Finance Company ("Skipjack"), financing the premiums for the Berkley Policy.

4. Pursuant to the PFA, Campbell appointed Skipjack as Campbell's attorney-in-fact upon the occurrence of an Event of Default (including non-payment of the premium installments due under the PFA) granting Skipjack authority to effect cancellation of the Berkley Policy.

5. Campbell failed to pay the first installment payment when due – and no other person or party paid the installment payment to Skipjack.

6. Campbell's failure to pay the required first installment payment constituted an Event of Default under the PFA – allowing Skipjack to cancel the Policy as attorney-in-fact of Campbell.

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[1] Evans works for Skipjack, the premium finance company that financed the premiums for the Berkley Policy issued to Campbell. *See* Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 11, 19-20. Evans provided Berkley with a Declaration that Berkley submits in support of this Motion. *See* Evans Decl.; *see also* Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 13-17. At his June 10, 2016 deposition, Evans confirmed that he read his Declaration before signing it and that the statements therein are true and correct. *Id.* at 124. Evans also confirmed that nothing in his deposition testimony of June 10 was intended to change his Declaration. *Id.* at 139.

7. Skipjack, on April 16, 2013, prepared a Notice of Intent to Cancel addressed to Campbell (and also sent to Campbell's agent, the McGlawn Agency ("McGlawn")) indicating that the Policy would be cancelled in 15 days if the past due installment was not paid.

8. The first installment was not paid within 15 days of the Notice of Intent to Cancel – or at any time prior thereafter.

9. After issuing the Notice of Intent to Cancel, Skipjack generated and sent to Campbell a cancellation notice stating that the Policy was cancelled effective as of May 1, 2013 for nonpayment of premium, pursuant to the PFA (the "Cancellation Notice"). The Cancellation Notice was also sent to Atlantic Specialty as Berkley's general agent, and to McGlawn.

10. The Building Collapse for which Campbell seeks coverage occurred on June 5, 2013 – more than 15 days after the Notice of Intent was sent to Campbell and nearly a month after the Policy was cancelled.

In light of the foregoing undisputed facts, Berkley is entitled to summary judgment as a matter of law declaring that the Berkley Policy was cancelled by the insured, Campbell, acting through the insured's premium finance company, Skipjack, as the insured's attorney-in-fact and that such cancellation was effective before the June 5, 2013 date of the loss in this matter – as the Policy was cancelled in May 2013 by Campbell through his attorney-in-fact Skipjack.

Finally, having been cancelled by the first Named Insured, Campbell, before the June 5, 2013 Building Collapse, the Berkley Policy is cancelled as to any and all insureds, including the STB Parties seeking additional insured coverage from Berkley. As such, judgment should be entered in favor of Berkley and against all parties, declaring that Berkley has no duty to defend or indemnify any party with respect to the Building Collapse and related tort lawsuits on account of the Policy's cancellation.

II. STATEMENT OF THE QUESTIONS PRESENTED

Question: Should the Court determine that the Berkley Policy issued to Campbell was properly cancelled effective in May 2013 -- before the June 5, 2013 date of the Building Collapse and thus provides no coverage to either

Campbell or the STB Parties for the Building Collapse and related tort lawsuits?

Suggested Answer: Yes.

III. FACTUAL BACKGROUND

A. The Berkley Policy Gives The First Named Insured, Campbell, The Right To Cancel The Policy

This action relates to Berkley Assurance Company's General Liability Policy No. VUMC0029300, effective March 6, 2013 (the "Policy"). *See* Second Amended Complaint at ¶ 112 (identifying policy) and Campbell's Answer to Second Amended Complaint at ¶ 112 (admitting that the policy was issued); *see also* Ex. 1 to Miscioscia Aff. (Berkley Policy). The Berkley Policy provides in the "Common Policy Conditions" regarding cancellation by the insured that:

> A. 1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
>
> . . .
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> 4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date. [*Id.* at BERK0008]

The first Named Insured to the Policy is Grifin Campbell dba Campbell Construction ("Campbell"). *See* Ex. 1 to Miscioscia Aff. (Berkley Policy) at Declarations page (BERK0004).

B. Campbell Entered Into A Premium Finance Agreement With Skipjack Pursuant To Which Campbell Authorized Skipjack To Exercise Campbell's Right To Cancel The Policy

Campbell elected to fund a portion of the $29,195.00 premium for the Policy by entering into a written premium financing agreement (the "PFA") with Skipjack Premium Finance Company ("Skipjack"). Declaration of William T. Evans ("Evans Decl.") at ¶¶ 4-5 and Exhibit

A thereto; *see also* Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 19-20, 27 (testifying that Skipjack received a PFA signed by Campbell and McGlawn). The PFA form used by Skipjack was approved by the Pennsylvania Department of Insurance. Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 125.

Under the PFA, Skipjack advanced to the insurer on behalf of Campbell the sum of $21,262.50, representing the difference between the full amount of the premium for the Policy of $29,195.00, and the insured's down payment of $7,932.50. Evans Decl. at ¶ 5 and Ex. A thereto.

Under the PFA, the amount advanced by Skipjack to pay the policy premium constitutes a loan from Skipjack to the insured, Campbell, which Campbell was required to repay to Skipjack with interest. The PFA required the insured to make nine monthly payments of $2,453.09, with the first payment due April 6, 2013. PFA (Ex. A to Evans Decl.) at p. 1.

Under the PFA, Campbell granted Skipjack a security interest in the Policy, assigning to Skipjack as security "all sums payable to the Insured with reference to [the Policy] including, among other things, any gross return premiums and any payment on account of loss which results in reduction of unearned premium in accordance with the term(s) of [the Policy]." *Id.*

Under the PFA, the insured, Campbell, also granted a power of attorney to Skipjack, appointing Skipjack as its attorney-in-fact "upon the occurrence of an Event of Default . . . and, after proper notice has been mailed as required by law, grants to [Skipjack] authority to effect cancellation of the [Policy] . . .." PFA, p. 2, ¶ 3. Campbell also agreed "that proof of mailing any notice hereunder constitutes proof of receipt of such notice." *Id.*

Under the PFA, an Event of Default occurs when, among other things, the "Insured does not pay any installment according to the terms of this Agreement or any other agreement." *Id.*, ¶ 7(a).

At his deposition, Campbell confirmed that (a) his signature appeared on the Premium Finance Agreement, which obligated him to make the payments, (b) he was aware that an initial payment was made toward the Policy premium (the "down payment") and that "...they [Plato Marinakos gave him a check] paid the $10,000 deposit...", and (c) he knew further payments were required to pay the full premium for the Berkley policy, and that such payments were in the neighborhood of $2,500 per month. Ex. 9 to Miscioscia Aff. (Campbell 2/2/2016 D.T.) at 1208-10, 1255, 1265-66; *see also* Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 19-20 (testifying that Skipjack received a PFA signed by Campbell and McGlawn).[2]

C. Campbell Failed To Make The Required First Installment Payment Under The PFA – Thereby Allowing Skipjack To Cancel The Berkley Policy On Account Of Such Event Of Default

Discovery has confirmed not only that Campbell did not pay the required first installment payment, but also the evidence is uncontradicted that no other person did so on his behalf. *See* Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 22-23 (testifying that Skipjack "never received a dime" relating to the Berkley Policy). The following facts are incontrovertible.[3]

Skipjack sent Campbell a set of payment coupons on March 22, 2013. *See* Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 28-29. The cover letter and first coupon reminded Campbell that the first payment of $2,453.09 was due on April 6, 2013. Evans Decl. at ¶ 11 and Ex. D thereto. Skipjack also sent a Notice of Financed Premium to the general agent for

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[2] Earlier in this case, certain Defendants suggested that discovery was required to prove that Campbell authorized the PFA. In light of Campbell's deposition testimony, that is no longer an issue.

[3] Earlier in this case, certain Defendants also suggested that further discovery was needed in order to determine whether Campbell, or someone else on his behalf, paid the required installment premiums. That too is no longer an issue given the subsequent discovery cited herein.

Berkley, Atlantic Specialty, on March 22, 2013. *Id.* at ¶ 12. The Notice of Financed Premium stated that "[u]pon default in payment of any installment, Skipjack Premium Finance Company will cancel the policy in accordance with the authority given to us by the insured." *Id.* at ¶ 12.

Campbell failed to pay the first installment due on April 6, 2013. Evans Decl. at ¶ 13. In fact, Campbell confirmed at his deposition that he did not make any payment and has no information that any of the monthly payments were made. Ex. 9 to Miscioscia Aff. (Campbell 2/2/2016 D.T.) at 1208-10, 1255, 1265-66. Campbell's testimony is consistent with that of Skipjack's witness, Evans, who confirmed that Skipjack "never received a dime" relating to the Berkley Policy and that the "first installment was due [but] was never paid." Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 22-23.

D. Campbell, Through His Power Of Attorney, Skipjack, Cancelled The Berkley Policy Effective In May 2013 – BEFORE the June 5, 2013 Building Collapse

As a result of the failure to pay the required installment payment when due, Skipjack, on April 16, 2013,[4] prepared a Notice of Intent to Cancel addressed to Campbell, indicating that the Policy would be cancelled in 15 days if the past due installment was not paid. Evans Decl. at ¶ 14. The Notice of Intent to Cancel was also sent to the insured's agent, McGlawn Insurance Agency ("McGlawn"). *Id.*

The Notice of Intent to Cancel addressed to Campbell was sent by regular mail to 1605 West Butler Street, Philadelphia, PA 19140, which is the address provided to Skipjack by Campbell and is the last known address of the insured in Skipjack's records. *Id.* at ¶¶ 14-15.

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[4] At his deposition, Evans clarified that the Notice of Intent was emailed to Campbell's agent, McGlawn, on April 16, and mailed by regular mail to Campbell on April 17. Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 110-12. The one day difference is not material – as Campbell was sent notice of the intent to cancel more than 15 days before the June 5, 2013 Building Collapse and Campbell still failed to cure his Event of Default by making any of the required installment premium payments.

After issuing the Notice of Intent to Cancel, Skipjack did not receive any payment or other response from Campbell. Evans Decl. at ¶ 16.

Campbell's insurance agent, in fact, testified that Campbell knew that he owed the installment premium, but that Campbell refused to pay it – claiming that the cost was too much. As McGlawn explained, "[p]rior to the incident [*i.e.*, the Building Collapse] he [Campbell] said he wasn't going to pay it." Ex. 10 to Miscioscia Aff. (McGlawn 3/17/16 D.T.) at 220. McGlawn asked Campbell "before [the installment was due] because the payment was due. He [Campbell] said I'm not paying it." *Id.* at 220. McGlawn repeated this testimony several times, again and again stating that Campbell told him, McGlawn, that he was no going to pay the premium. *Id.* at 220-22. As McGlawn explained, this conversation took place "whenever he [Campbell] was supposed to pay it, and I can remember now that you're saying that, it's jogging my memory, I did call him and he said I'm not paying the premium. He said no contractor around has a policy that he has to pay $2,000. I said, well, this is a special type of policy. He told me he wasn't going to pay it." *Id.* at 221-22. Campbell then did as he said – he did not pay the first premium installment.

As a result of Campbell's continued nonpayment, on May 1, 2013, Skipjack generated and sent to Campbell on May 2, 2013 a cancellation notice stating that the Policy was cancelled effective as of May 1, 2013 for nonpayment of premium, pursuant to the PFA (the "Cancellation Notice"). Evans Decl. at ¶ 17 and Ex. H thereto. The Cancellation Notice also was sent to Atlantic Specialty as Berkley's general agent, and to McGlawn. *Id.*; *see also* Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 73-75.

The Cancellation Notice was sent to Campbell, Atlantic Specialty, and McGlawn, to advise them of the cancellation of the Policy by the insured pursuant to the power of attorney

contained in the PFA. Evans Decl. at ¶ 18; *see also* Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 139. All of the foregoing communications are reflected on an electronic log maintained contemporaneously by Skipjack, which shows the date and time on which each notice was generated, the date and time when it was sent, the nature of the notice, the addressee, and the method by which it was sent. Evans Decl. at ¶¶ 9-10.

Skipjack received no payment after it issued the Notice of Intent to Cancel or the Cancellation Notice. *Id.* at ¶¶ 16, 19. Moreover, while certain Defendants previously argued that summary judgment was premature as additional fact discovery was needed to confirm whether Skipjack truly failed to receive the first installment payment, discovery on those issues has now ended – and has confirmed that there is absolutely no evidence that anyone – Campbell, STB, McGlawn or any other person – paid the first installment payment due under the PFA.

Among other depositions, the following depositions were taken **after** Berkley filed its initial Motion for summary judgment on the cancellation issue:

1. Lois Basciano of the STB Parties was deposed on 3/13/15 and 3/23/15.

2. Richard Basciano of the STB Parties was deposed on 12/15/2015, 12/16/2015, 12/17/2015 and 12/18/2015.

3. Frank Cresci, the Corporate designee of STB Investments Corp., CFO for accounting (STB Investments Corp., 2100 W. Market Street, 2132 Market Street Realty, Corp., 303 W. 42nd Street Realty Corp.); and corporate secretary (STB Investments Corp., 21 Market Street, and 2132 West Market Realty) was deposed on 3/12/2015 and 11/20/15.

4. Stephen Gillespie, Berkley's corporate designee, was deposed on 5/14/15.

5. Plato Marinakos, the architect for STB Corp. was deposed on 10/6/2014, 10/7/2014, 10/9/2014, 10/13/2014, 11/3/2014 and 11/6/2014.

6. Thomas Simmonds, the property manager for 303 42nd Street Realty, managed properties of Richard Basciano and STB, who managed the property where the building collapse occurred and was responsible for procuring insurance on the

properties, was deposed on 12/1/2015, 12/2/2015, 12/3/2015, 12/4/2015, 12/7/2015 and 12/14/2015.

7. Grifin Campbell, the first Named Insured to the Berkley Policy, who was deposed on 1/11/16, 1/12/16, 1/13/16, 1/14/16 and 2/2/2016.[5]

8. Anthony McGlawn of the McGlawn Agency, the insurance agent for Campbell and the individual involved in submitting Campbell's insurance applications and communicating with Marinakos and the STB Parties concerning Campbell's insurance, who was deposed on 3/17/2016.

9. William Evans, of Skipjack – the premium finance company for Campbell, who was deposed on 6/10/2016.

10. Emily Gault, of Atlantic Specialty – the wholesale broker involved with the Berkley Policy, who was deposed on 6/14/2016.

See Affidavit of Anthony L. Miscioscia ("Miscioscia Aff.) at Exs. 2-12 thereto.

Any party could have asked any of these witnesses questions about the Berkley policy premiums, installment payments, cancellation and similar issues. And, in fact, many parties did so. Tellingly, the responses to such questions simply further confirmed that neither Campbell nor anyone else paid the required installments payments to Skipjack.

For example, as noted, Campbell himself was deposed – and confirmed that he did not pay the installment payment (despite knowing that it was owed) and that he was not aware of anyone else paying the installment payment on his behalf. Ex. 9 to Miscioscia Aff. (Campbell 2/2/2016 D.T.) at 1208-10, 1255, 1265-66. The other witnesses testified consistently.

Frank Cresci testified that Thomas Simmonds told him that Campbell did not have adequate insurance, so STB made arrangements to provide money so that Campbell could purchase insurance. *See* Ex. 6 to Miscioscia Aff. (Cresci 11/20/15 D.T.) at 231. But, significantly, in discovery, STB has not produced any check or checks showing payment of the

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[5] Frank Parker, a worker for Grifin Campbell, also was deposed on 9/16/2014 and 11/6/2014.

full installment premium – and the time for such production has come and gone. This Court must now conclude that there is no evidence that STB made the installment payment.[6]

Moreover, when Thomas Simmonds of STB was deposed about the insurance issues, he provided no testimony disputing the fact that the installment payment was not made. Simmonds testified that he was responsible for obtaining insurance for certain of the STB entities, and that he also was the person on behalf of Mr. Basciano and the STB entities for ensuring that Griffin Campbell had insurance for the demolition. *See* Ex. 7 to Miscioscia Aff. (Simmonds 12/14/15 D.T.) at 1799-1805. Simmonds explained that STB paid $9,500 towards Campbell's insurance, but paid nothing further towards Campbell's insurance. *See id.* at 1831-32. In fact, Simmonds had never heard of Berkley before the collapse. *See id.* at 1799. Further, while Simmonds had a copy of Campbell's insurance application, Simmonds did not review it. *See id.* at 1807-12. And, while Simmonds recalls seeing a certificate of insurance to the Berkley policy identifying certain additional insureds, Simmonds "never actually saw the policy." *See id.* at 1813-14.

Significantly, Simmonds also admitted that, in February 2013, he received an email from Plato Marinakos suggesting that they pay for only a few months of insurance coverage for Campbell. In that email, Marinakos stated:

> Tom,
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> I heard back from Anthony [McGlawn] the cost of the policy is $20,000 for the year un-believable. **Maybe, we can buy the policy and cancel to one to two months.**
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> ...

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[6] If any such payments were made, Marinakos, STB, Basciano or any other party could have provided such proof. Bank records could have been produced or subpoenaed. No such records have been provided evidencing proof of the installment payments. There is no such proof because none of the installment payments were ever made.

See Ex. 13 to Miscioscia Aff. (Simmonds Dep. Ex. 82) at PM003631; Ex. 7 to Miscioscia Aff. (Simmonds 12/14/15 D.T.) at 1828-29 (emphasis added).

Further, when asked whether he (Simmonds) did anything to ensure that the insurance policy issued to Campbell included a provision that the policy would not be cancelled or allowed to expire until at least 30 days prior written notice was provided to the owner [certain of the STB entities], Simmonds admitted he did nothing, conceding "I never saw that actual policy." *See* Ex. 7 to Miscioscia Aff. (Simmonds 12/14/15 D.T.) at 1844-46.

And, when Marinakos was deposed, he was asked whether he paid for the policy and, if so, whether he paid "the full premium" or "just a portion of the premium." *See* Ex. 3 to Miscioscia Aff. (Marinakos 10/9/14 D.T.) at 819. Marinakos responded by admitting that he only paid "a down payment", not the full premium. *See id.*

Thus, there is no evidence, even though the depositions of the people above have been taken, that Campbell or anyone else paid the **full** Berkley policy installment premiums, nothing indicating that Skipjack received payment in full, and contains nothing refuting Berkley's Motion demonstrating that Skipjack – on behalf of Campbell – cancelled the Berkley policy prior to the building collapse on June 5, 2013.

IV. ARGUMENT AND CITATION OF AUTHORITY

A. Standard for Summary Judgment

In a declaratory judgment action, summary judgment is appropriate in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Pa.R.Civ.P. 1035.2; *see also Hydropress Envtl. Servs., Inc. v. Township of Upper Mt. Bethel*, 836 A.2d 912, 918 (Pa. 2003); *Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1221 (Pa. 2002). "A factual issue is considered

'material' for summary judgment purposes if its resolution could affect the outcome of the case under the governing law." *Strine v. Commonwealth of Pa.*, 894 A.2d 733, 738 (Pa. 2006). The reviewing court must view the record in the light most favorable to the nonmoving party, resolving all doubts as to the existence of a genuine issue of material fact against the moving party. *Atcovitz,* 812 A.2d at 1221. When the facts are so clear that reasonable minds cannot differ, the trial court may properly enter summary judgment. *Atcovitz*, 812 A.2d at 1222 (citing *Cochran v. GAF Corp.,* 666 A.2d 245, 248 (Pa. 1995)).

Here, the undisputed facts conclusively demonstrate that:

(1) Campbell entered into a Premium Finance Agreement with Skipjack under which he gave a power of attorney to Skipjack to cancel the policy in the event of a default; Evans Decl. at ¶¶ 4-5; PFA (Ex. A to Evans Decl.), at p. 2;

(2) Campbell defaulted by failing to make the first premium installment payment due; Evans Decl. at ¶ 13;

(3) After Campbell's default, Skipjack gave proper notice of intent to cancel under the PFA and applicable law; Evans Decl. at ¶¶ 14-15; *see also Prudential Prop. & Cas. Co. v. Safeguard Mut. Ins. Co.*, 528 F. Supp. 709, 711-12 (E.D. Pa. 1981) (granting summary judgment to insurer, as statute governing notice requirements imposed on insurers with respect to automobile policies did not apply to cancellation under premium finance agreement because such cancellation was by the insured); and

(4) After Campbell failed to cure the default, Skipjack, acting as the insured (Campbell) under the power of attorney, properly issued a notice cancelling the policy, which is legally effective as of the date the insured, by Skipjack as attorney-in-fact, stated the Policy was cancelled, and is effective when it was mailed, rather than on receipt. Evans Decl. at ¶¶ 16-18; *see also Scott v. Southwestern Mut. Fire Assoc.*, 436 Pa. Super. 242, 254, 647 A.2d 587, 594 (1994).

Therefore, the undisputed facts warrant entry of partial summary judgment in favor of Berkley.

B. Skipjack Gave Proper Notice Pursuant to the Terms of the Premium Finance Agreement and the Pennsylvania Insurance Premium Finance Act

Campbell elected to enter into a premium finance agreement with Skipjack (the "PFA") so that Campbell could pay the bulk of the premium for the Policy in installments rather than in a lump sum. In simple terms, the PFA constitutes a lending transaction in which the policy, and the return premium due upon cancellation, serve as the collateral to secure the insured's repayment of the loan. Evans Decl. at ¶¶ 6-7. Under the PFA, Campbell promised to make nine monthly payments to Skipjack of $2,453.09, with the first payment due April 6, 2013. *Id.* at ¶ 6 In the PFA, Campbell granted Skipjack a security interest in the Policy including all return premiums, and Campbell granted a power of attorney to Skipjack, appointing Skipjack as Campbell's attorney-in-fact to effect cancellation of the policy, after giving appropriate notice, in the event Campbell defaulted by failing to make the required payments. PFA (Exhibit A to Evans Decl.), at pp. 1-2.

Campbell did default. He never made a single payment under the PFA. Evans Decl. at ¶ 13; Ex. 9 to Miscioscia Aff. (Campbell 2/2/2016 D.T.) at 1208-10, 1265-67. And no other person paid the installment payment on Campbell's behalf. In fact, discovery revealed that Campbell knew that further, installment payments of around $2500 per month were required, but that he would not be making those payments – as he thought that Plato Marinakos or "New York " was supposed to make the monthly payments. Ex. 9 to Miscioscia Aff. (Campbell 2/2/2016 D.T.) at 1208-10.

Marinakos, however, did not pay the installment payment for Campbell. In fact, Marinakos expressly contemplated purchasing an insurance policy but then allowing it to lapse in a month or two on account of the cost. *See* Ex. 13 to Miscioscia Aff. at PM003631 ("Maybe, we can buy the policy and cancel to one to two months."). That is precisely what happened.

Similarly, STB did not pay the installment premium. Simmonds confirmed that STB only paid the initial $9,500 towards Campbell's insurance, but paid nothing further towards Campbell's insurance. *See* Ex. 7 to Miscioscia Aff. (Simmonds 12/14/15 D.T.) at 1831-32. And, as noted, STB produced no document in discovery contradicting this fact.

As a result, on April 16, 2013, Skipjack prepared a Notice of Intent to Cancel, indicating that the Policy would be cancelled in 15 days if the past due installment was not paid. Evans Decl. at ¶ 14 and Ex. G thereto. The Notice of Intent to Cancel was mailed to the insured, Campbell, at the address he provided to Skipjack and which appears on the PFA, which was the last known address of the insured in Skipjack's records. *Id.* at ¶ 15. A copy of the Notice of Intent to Cancel was sent to the insured's agent, McGlawn Insurance Agency ("McGlawn") by email. *Id.* at ¶ 14 and Ex G thereto.

After issuing the Notice of Intent to Cancel, Skipjack did not receive any payment or other response from Campbell. Evans Decl. at ¶ 16. As a result, on May 1, 2013, Skipjack generated a cancellation notice stating that the Policy was hereby cancelled effective as of May 1, 2013 for nonpayment of premium (the "Cancellation Notice"). *Id.* at ¶ 17 and Ex. H thereto. The Cancellation Notice was sent to Campbell at his last known address on the records of Skipjack, as well as to Atlantic Specialty and McGlawn, to advise them of the cancellation of the Policy by the insured pursuant to the power of attorney contained in the PFA. *Id.* at ¶ 18 and Ex. H thereto.[7]

The procedures followed by Skipjack when Campbell defaulted on the first premium installment comply with the terms of the PFA and the Pennsylvania Insurance Premium Finance

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[7] Further, Campbell's insurance agent, McGlawn, testified that he spoke to Campbell about the need to make payments and that Campbell's "response was that either he wasn't going to pay or he no longer needed the policy." Ex. 10 to Miscioscia Aff. (McGlawn 3/17/16 D.T.) at 174.

Act (the "Act"). The PFA required Skipjack to provide "notice as required by law." The Act, at 40 P.S. § 3310, provides that where a premium finance agreement "contains a power of attorney enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement," and when the insured defaults, the premium finance company shall provide "[n]ot less than 15 days' written notice" of intent to cancel, which "shall be mailed to the insured, at his last known address as shown on the records of the insurance premium finance company." In other words, the statute only requires mailing of the notice, not separate proof of receipt, for the notice to be effective.

Skipjack provided 15 days written notice of intent to cancel, which was sent to the insured's last known address. Evans Decl. at ¶¶ 14-15. Therefore, Skipjack complied with the notice provisions of the PFA and the Act. No other notice of intent to cancel is required, because cancellation pursuant to the terms of a power of attorney in a premium finance agreement is cancellation by the insured. *See Prudential Prop. & Cas. Co.*, 528 F.Supp. at 711-12 (granting summary judgment to insurer, as statute governing notice requirements imposed on insurers with respect to automobile policies did not apply to cancellation under premium finance agreement because such cancellation was by the insured).[8]

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[8] The Policy contains no notice requirements for cancellation by the insured. It merely states (Common Policy Conditions, ¶A.1) "The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance notice of cancellation." Further, where an insured's cancellation is precise and clear – as it was here – "[s]trict compliance with the policy's cancellation provisions can be waived" (*Scott*, 436 Pa. Super. at 255, 647 A.2d at 594); thus, to the extent that Campbell did not provide Berkley with "advance" notice of cancellation, but rather informed Berkley of the cancellation the day after Campbell, through Skipjack, cancelled the Policy, that one day difference is of no import. Campbell still cancelled the Policy.

C. The Cancellation Was Effective When the Cancellation Notice Was Mailed

Because the insured did not cure the default or otherwise respond to the Notice of Intent to Cancel, after 15 days passed, Skipjack issued a Notice of Cancellation, stating that the Policy was cancelled effective as of May 1, 2013 for nonpayment of premium. The Notice of Cancellation was sent to Campbell at his last known address on the records of Skipjack, as well as to Atlantic Specialty and McGlawn, to advise them of the cancellation of the Policy by the insured pursuant to the power of attorney contained in the PFA. Evans Decl. at ¶ 17-18.

The Act provides at 40 P.S. § 3310(c) that "[i] n the event that after giving the prescribed notice, the default is not cured within the 15-day period, the insurance premium finance company may cancel the insurance contract or contracts by mailing a notice of cancellation to the insurer. The insurance contract shall be canceled as if the notice of cancellation had been submitted by the insured himself but without requiring the return of the insurance contract. The insurance premium finance company shall also mail a notice of cancellation to the insured at his last known address as shown on the records of the insurance premium finance company." In other words, the statute only requires mailing of the notice, not separate proof of receipt, for the notice to be effective. The PFA is consistent, reciting that the insured agrees that proof of mailing any notice constitutes proof of receipt.

Skipjack complied with these requirements of the statute. As a result, the Policy was cancelled effective as of the date indicated on the Notice of Cancellation.

While Evans sometimes stated at his deposition that in mailing the Notice of Cancellation he "requested" cancellation[9], his testimony (and confusion) does not alter the legal effect of his

[9] *E.g.*, Ex. 11 to Miscioscia Aff. (Evans 6/10/16 D.T.) at 47-49, 78-79. Further, Evans later explained that the insured can advise the insurer that it (the insured) is cancelling the policy,

Cancellation Notice. Pennsylvania law is clear that cancellation of a policy by the insured is effective on the date the insured clearly states the policy is cancelled (which Campbell, through Skipjack, did in this case), rather than a later date on which the insurer receives notice of cancellation. *Scott v. Southwestern Mut. Fire Assoc.,* 436 Pa. Super. 242, 254, 647 A.2d 587, 594 (1994).

That is precisely what happened here. Skipjack, acting on behalf of Campbell, cancelled the Berkley Policy effective May 1, 2013. Cancellation under the Power of Attorney in the PFA is cancellation by the insured. This point was addressed specifically in *Prudential Property & Cas. Ins. Co. v. Safeguard Mut. Ins. Co.*, 528 F. Supp. 709 (E.D. Pa. 1981) (applying Pennsylvania law), which involved a cancellation notice issued by a premium finance company, acting on behalf of the insured pursuant to a power of attorney in the premium finance agreement. The court held that the statutory provisions regarding cancellation of automobile policies by insurers did not apply, because the cancellation pursuant to the premium finance agreement was a cancellation by the insured, and the automobile insurance notice statute (then in force) also provided that it was inapplicable "[i]f the named insured has demonstrated by some overt action to the insurer or its agent that he wishes the policy to be cancelled." *Id.* at 711.

The principles of these cases apply here. As the court explained in *Scott*, the touchstone is whether an insured cancellation "is precise and clear." *Id.*, 436 Pa. Super. at 255, 647 A.2d at 594. Here, there can be no doubt that Campbell – through Skipjack – stated a clear and precise date of cancellation, stating that cancellation was effective May 1, 2013. By virtue of

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but that the insurance company then issues the cancellation endorsement and does the return premium calculation and refunds premium. *Id.* at 135. When shown his Cancellation Notice, Evans admitted – as he must – that there was no "request" in that Notice; rather, the Cancellation Notice informed Berkley that the Policy was cancelled – stating: "The insurance policy listed above is hereby cancelled by the Lender for reason: Non-Payment of Premium." *Id.* at 158.

Campbell's agreement to the PFA, the Notice of Cancellation issued pursuant to the PFA constitutes such "precise and clear" cancellation by the insured, and compels the conclusion that the Policy was cancelled effective in May 2013 before the June 5, 2013 date of the loss in this matter.

D. Campbell's Cancellation – Through His Power Of Attorney Skipjack – Was Effective As To All Insureds, Including The Additional Insured STB Parties

1. Cancellation By The First Named Insured, Campbell, Is Effective As To All Insureds

The Common Policy Conditions to the Berkley Policy distinguish between cancellation by the insured and cancellation by the insurer, providing that:

> A. Cancellation
>
> 1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
>
> . . .
>
> 4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

See Ex. 1 to Miscioscia Aff. (Berkley Policy) at Common Policy Conditions (BERK0008). The first Named Insured to the Berkley Policy is listed on the Declarations page – as "Grifin Campbell dba Campbell Construction LLC." *Id.* at BERK0004. Campbell thus, as the first Named Insured, had the right and ability to cancel the Berkley Policy.

Further, the Additional Insured Endorsement upon which the STB Parties rely for coverage states, in bold caps, that "ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED. *See* Ex. 1 to Miscioscia Aff. (Berkley Policy) at Additional Insured - Owners, Lessees Or Contractors - Automatic Status When Required In Agreement

With You Endorsement (BERK0093). Nothing in the Additional Insured Endorsement or elsewhere in the Policy required that advance notice of cancellation, or notice of cancellation, be provided by Berkley to any additional insured.

"[A]n additional insured, is a 'third-party beneficiary [and therefore] bound by the same limitations in the contract as the signatories . . . . [He] cannot recover except under the terms and conditions of the contract [of insurance].'" *Fire & Cas. Co. of Conn. v. Cook*, 155 Fed. Appx. 587, 591, 2005 U.S. App. LEXIS 24164, *12 (3d Cir. 2005)). As the Supreme Court of Pennsylvania has emphasized, the additional insured "has paid neither premiums nor any consideration for the benefits of this insurance policy. As such, it seems inequitable to permit [the additional insured] to pick and choose those contract provisions [it] prefers while not granting that same latitude to the named insured." *Johnson v. Pennsylvania Nat'l Ins. Cos.*, 527 Pa. 504, 509, 594 A.2d 296, 299 (1991).

Accordingly, cancellation by Campbell – the First Named Insured to the Policy – cancels the Policy as to all insureds, including the additional insured STB Parties.

2. STB Was Not Entitled to Advance Notice of Cancellation

The STB Parties have argued that, even if cancellation is effective as to Campbell (which Berkley demonstrates above it was/is), cancellation was not effective as to the STB Parties because they did not receive advance notice of the cancellation from Skipjack or Berkley. The STB Parties are wrong. While it is true that neither Skipjack nor Berkley provided the STB Parties with advance notice of Campbell's intent to cancel (exercised through Skipjack acting as Campbell's power of attorney), it also is true that nothing obligated either Skipjack or Berkley to provide any such notice to the STB Parties.

a. Berkley Was Not Obligated To Provide Notice Of Cancellation To STB

Berkley did not cancel the Policy – the first Named Insured, Campbell, did, acting through its power of attorney granted to Skipjack. It is well-settled that cancellation of a policy pursuant to a power of attorney contained in a Premium Finance Agreement constitutes cancellation ***by the insured***. *Prudential Prop. & Cas. Ins. Co. v. Safeguard Mut. Ins. Co.*, 528 F. Supp. 709 (E.D. Pa. 1981). As such, the provisions of the Policy regarding cancellation by the insured apply. There are no provisions in the Policy requiring notice by, or to, anyone other than the insurer in the event of cancellation by the insured.[10]

Nothing in the Berkley Policy or law required Berkley to provide any such notice to the STB Parties when, as here, cancellation was made by the first Named Insured, Campbell, acting through his power of attorney.

At his deposition, Campbell confirmed that STB never asked him to advise STB if the Policy was cancelled and never asked to see proof of payment. Ex. 9 to Miscioscia Aff. (Campbell 2/2/16 D.T.) at 1298-99. Further, as is clear from the documents submitted by Berkley herewith and the deposition of STB's own witnesses (including Thomas Simmonds) detailed above, there was never any requirement that STB be provided with any notice of cancellation. Thomas Simmonds, the man responsible for obtaining insurance for certain of the

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[10] Because Campbell, not Berkley, cancelled the Policy, the Policy provisions (previously cited by the STB Parties) discussing cancellation by the insurer do not apply. Plus, even if those provisions did apply, notice only would need to be provided to the First Named Insured, Campbell – not also to all putative additional insureds. *See Great Northern Ins. Co. v. Greenwich Ins. Co.*, 2008 U.S. Dist. LEXIS 82210, *6 (W.D. Pa. Oct. 16, 2008) ("In the insurance industry, when there is more than one named insured on a particular policy, that particular policy is almost always referenced by the first named insured. … The first insured has a responsibility for speaking on behalf of all other additional insureds or loss payees that are attached to the policy. … When the insurer desires to cancel or terminate the policy, notice to the first named insured is sufficient and payment of premiums or refund of premiums is made to the first named insured and not allocated by the insurer among additional insureds.").

STB entities and also the person on behalf of Basciano and the STB entities for ensuring that Griffin Campbell had insurance for the demolition (Ex. 7 to Miscioscia Aff. (Simmonds 12/14/15 D.T.) at 1799-1805), admitted that he never reviewed the Berkley Policy and that he never did anything to ensure that the Berkley Policy issued to Campbell included a provision requiring advance notice of cancellation be provided to STB. *Id.* at 1844-46.

Moreover, a document produced to Berkley by Sterling & Sterling, STB's insurance agent evidences that Sterling & Sterling advised STB of the need to have an insurance policy include a provision requiring notice to an additional insured if STB wanted to get notice of cancellation (*see* Miscioscia Aff. at Ex. 15, attaching 1/2/2013 email) – but there is no evidence, disputed or otherwise, that any person requested, let alone received, such policy language in the Berkley Policy. To the contrary, the evidence is that STB did ***nothing*** to ensure that it received notice of cancellation. *See* Ex. 10 to Miscioscia Aff. (3/17/16 McGlawn D.T.) at 279 (stating that he, McGlawn, presented the Berkley Policy to STB and they accepted it; "whatever was in the policy they accepted"); *see also id.* at 295-96 (testifying that he, McGlawn, did not ask Berkley to amend the cancellation provision because "I didn't see a need to ... since they [Victor Chan on STB's behalf] accepted the policy.").

At the deposition of Simmonds, the person at STB responsible for insurance issues, Simmonds was asked whether he did anything to ensure that the insurance policy issued to Campbell included a provision that the Berkley Policy would not be cancelled or allowed to expire until at least 30 days prior written notice was provided to the owner [certain of the STB entities]. Simmonds admitted he did nothing, conceding "I never saw that actual policy." *See* Ex. 7 to Miscioscia Aff. (Simmonds 12/14/15 D.T.) at 1844-46. Additionally, the Certificate of Insurance provided to STB by McGlawn concerning the Berkley Policy reiterates the need to

look to the Policy terms – in reciting that in the event of cancellation "notice will be delivered in accordance with the policy provisions." Miscioscia Aff. at Ex. 14, attaching Certif. of Ins.[11] That Certificate, thus, refers the reader back to the Policy. Simmonds admits that he had this Certificate, but that he never reviewed the Policy thereafter to confirm whether the STB entities would be provided notice of cancellation. *See* Ex. 7 to Miscioscia Aff. (Simmonds 12/14/15 D.T.) at 1844-46.

The STB Parties should not now be permitted to rewrite the Berkley Policy to include a notice provision that is not in the Policy, which STB knew was required in order for it to obtain notice of cancellation and which STB did nothing to have added to the Policy.

b. Nothing In The PFA Or The Law Obligated Skipjack To Provide Notice Of Cancellation To STB

The STB Parties also have argued that Campbell/Skipjack's cancellation of the Berkley Policy did not comply with 40 P.S. § 3310(d) (a provision of the Premium Finance Act), which provides in relevant part that "All statutory, regulatory and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee or other third party shall apply where cancellation is effected under the provisions of

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[11] The Claimants and STB Parties have suggested that the ACORD Certificate of Insurance listing STB and other entities as additional insureds somehow created an obligation to give notice to the STB Parties. That is not so. The ACORD Certificate, by its terms, creates no additional contractual obligations. It states that it "confers no rights on the certificate holder" and "does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder." *See In re Asousa Partnership,* 2005 WL 2857983, at *4-5 (Bankr.E.D.Pa. 2005) (interpreting same certificate language, and holding that unambiguous intent of the certificate was merely to inform certificate holder of the existence of liability insurance, and certificate confers no rights in certificate holder); *Donegal Mut. Ins. Co. v. Grossman*, 195 F.Supp.2d 657, 669 (M.D.Pa. 2001) (certificate of insurance stating that it was "issued as a matter of information only and confers no rights upon the certificate holder" did not bind insurer to terms of coverage different from those stated in the policy).

this section." Assuming that STB were in fact an additional insured,[12] the STB Parties' argument fails because the STB Parties have not shown that Skipjack or Berkley was contractually obligated to provide notice of the cancellation to STB. In fact, there is no contract that requires notice to be given to STB.

Skipjack was not obligated to provide notice to STB. The statement in the preamble to the PFA that "'Insured' means all insureds covered by the Policies listed in the Schedule of Policies and any co-obligors" does not refer to unnamed contractual additional insureds, and does not set forth an obligation to give notice to anyone. The PFA is clear that "notice of cancellation must be given as required by law."

The applicable law, 40 P.S. § 3310, provides that where a premium finance agreement "contains a power of attorney enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement," and when the insured defaults, the premium finance company shall provide written notice of intent to cancel, which "shall be

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[12] The STB Parties do not contend that STB, or any party related to STB, was a named insured to the Policy. Rather, they contend that STB was an additional insured by operation of an endorsement in the Policy entitled "Additional Insured –Owners, Lessees Or Contractors – Automatic Status When Required In Agreement With You," which provides in part:

> **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing that such person or organization be added as an additional insured. Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed for that additional insured. . . .

Berkley has reserved and continues to reserve all rights to deny coverage to STB and any other party claiming additional insured status under this endorsement to the extent that they do not qualify as additional insureds under the endorsement, and also reserves all rights to deny coverage based on any of the exclusions added by that endorsement. Berkley further reserves all of its rights to assert any of the coverage defenses that have been or may in the future be raised in the pleadings, at trial or otherwise.

mailed to the insured, at his last known address as shown on the records of the insurance premium finance company." Skipjack did precisely that. Hence, all of the prerequisites to an effective cancellation were satisfied.

The STB Parties previously have cited to Section 17.1 of the demolition contract between STB and Campbell (to which neither Skipjack nor Berkley is a party) and argued that such provision required Campbell to give advance notice to STB of cancellation of the Policy. However, the contractual language does not require the notice which the STB Parties aver nor does that language support their argument.

The relevant language of Section 17.1 previously relied upon by the STB Parties states, "Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner." That language does not impose an obligation on anyone, even Campbell, to provide notice of cancellation to STB. It merely sets forth an undertaking by Campbell to negotiate a provision in any policy to that effect.

But, there is no such requirement in the Berkley Policy. Campbell failed to negotiate the insurance policy provision that STB requested in its contract with Campbell, and Campbell did not obtain a policy that required a 30 day advance notice to STB. Similarly, as Simmonds conceded, the STB parties did nothing to ensure that the Berkley policy actually included any such requirement. Simmonds did not even obtain, let alone review, the Berkley policy. *See* Ex. 7 to Miscioscia Aff. (Simmonds 12/14/15 D.T.) at 1844-46. In short, no such notice requirement ever came into being.[13]

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[13] Section 17.1 of the demolition contract provided that "Certificates of Insurance acceptable to Owner shall be filed with the Owner prior to commencement of the Work." STB "accepted" a Certificate that by its express terms conferred no rights on it and which said nothing

Even if the demolition contract did contain an obligation of Campbell to provide notice to STB, neither Berkley nor Skipjack were parties to that contract. Therefore, the demolition contract does not set forth a contractual obligation that either Berkley or Skipjack was required to comply with to satisfy 40 P.S. §3310(d). Nothing in 40 P.S. § 3310(d) makes either an insurer or a premium finance company "contractually" obligated to perform under a contract to which it is not a party.[14]

The STB Parties' suggestion that either Skipjack or Berkley is required to reach beyond its own contract and determine whether the insured complied with some undertaking with a third party makes no sense. It would, for example, unrealistically require Skipjack to enlist the cooperation of the defaulting and non-responding insured, here Campbell, to identify any notice provision in any contract it had with anyone who might qualify as an additional insured for some purpose. Such a reading of section 3310(d) would violate fundamental principles of statutory

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about whether the policy contained the notice provisions the demolition contract asked Campbell to obtain. STB had the ability to follow up and ensure Campbell's compliance if it so chose, but it apparently did not. *See* Ex. 10 to Miscioscia Aff. (McGlawn 3/17/16 D.T.) at 286-96 (testifying that he provided the Berkley Policy to STB, that Victor Chan of Sterling & Sterling was reviewing the Policy for STB, and that no one asked McGlawn, or Berkley, to alter the cancellation provision); Ex. 7 to Miscioscia Aff. (Simmonds 12/2/15 D.T.) at 376 (testifying that he relied upon Chan to review Campbell's insurance to make sure it was adequate), (Simmonds 12/14/15 D.T.) at 1806-23 (discussing Simmonds' reliance upon Chan of Sterling & Sterling) and (Simmonds 12/14/15 D.T.) at 1841-44 (conceding that Simmonds did not review the certificate of insurance and determine whether it was acceptable to the owner on his own, he consulted Sterling).

[14] The case previously cited by the STB Parties in support of their argument that they should have received notice of the cancellation is not to the contrary. *See Scottsdale Ins. Co. v. Grim*, 44 Pa.D.&C. 4th 338, 1999 WL 33207262 (Com.Pl. Monroe Co. 1999), is not to the contrary. In *Grim*, the court's opinion expressly states that the cancellation was deficient because the insurer did not comply with the "cancellation provisions contained in its own insurance contracts." 44 Pa. D. & C. 4th at 352 (emphasis added). Nowhere does the *Grim* opinion indicate that an insurer or a premium finance company is required to comply with a contract to which it is not a party, or to do anything under its own contract beyond that which the contract requires of it.

interpretation. *See* 1 Pa.C.S. § 1922 (1) (in ascertaining the intent of the General Assembly it is presumed "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable").

In sum, neither Skipjack nor Berkley was obligated to provide notice of intent to cancel or notice of cancellation to the STB Parties.

V. RELIEF REQUESTED

For the reasons set forth above, Berkley respectfully requests entry of an Order granting partial summary judgment and determining that the Policy was cancelled by the insured, Campbell, acting through Skipjack as the Campbell's attorney-in-fact, that such notice was effective when it was sent, and that cancellation, by Campbell through his attorney-in-fact Skipjack, was effective before the June 5, 2013 Building Collapse. As such, Berkley has no duty to defend or indemnify any party with respect to the Building Collapse and related tort lawsuits on account of the Policy's cancellation.

Respectfully submitted,

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