

FAYETTE LEGAL JOURNAL

VOL. 85

SEPTEMBER 3, 2022

NO. 36



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

KIP CALLAHAN, late of Connellsville,
Fayette County, PA (3)

Administratrix: Trudie Callahan
428 Englishman Hill Road
Connellsville, PA 15425
c/o Tremba, Kinney, Greiner, & Kerr
1310 Morrell Avenue, Suite C
Connellsville, PA 15424
Attorney: John Greiner

TYLER JACOB DURST, late of Point Marion,
Fayette County, PA (3)

Personal Representatives:
Barbara Durst Walters and Shae Konkus
c/o Goodwin Como, P.C.
108 North Beeson Boulevard, Suite 400
Uniontown, PA 15401
Attorney: Amanda Como

ROY E. KESNER, a/k/a ROY KESNER, late
of Hopwood, Fayette County, PA (3)

Personal Representative: Amy Kesner
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

GEORGE M. LEASURE, late of Belle Vernon,
Fayette County, PA (3)

Executor: Rodger Leasure
268 Skyline Drive
Belle Vernon, PA 15012
c/o Sikov and Love, P.A.
310 Grant Street, Suite 1110
Pittsburgh, PA 15219
Attorney: Carol Sikov Gross

**ALBERTA LUCILLE LEONARD, a/k/a
A LUCILLE LEONARD**, late of Lower
Tyrone Township, Fayette County, PA (3)

Personal Representative:
Elizabeth Leonard
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

**JOHN ONOFREY, a/k/a JOHN A.
ONOFREY**, late of Denbo, Washington
County, PA (3)

Executor: Frank Bastian
5 Old Mine Road
Denbo, PA 15429
c/o 257 Driftwood Road
Brownsville, PA 15417
Attorney: William Worthington

**BERTHA R. RIGGIN, a/k/a BERTHA RAE
RIGGIN**, late of Uniontown, Fayette County,
PA (3)

Executrix: Lynette Riggin Mitchell
c/o Adams Law Offices, PC
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

**RANDY ALLAN ROSE, a/k/a RANDY A.
ROSE**, late of North Union Township, Fayette
County, PA (3)

Administratrix: Lindsey R. Rose
1256 Fernridge Drive
Pittsburgh, PA 15241
c/o 5305 Steubenville Pike
McKees Rocks, PA 15136
Attorney: Dennis W. Trohaugh

TIMOTHY G. SAWYERS, late of German
Township, Fayette County, PA (3)

Personal Representatives:
Timmie Gene Antesberger, Amy Condupa,
Tiffany Ann Sawyers
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

DEBRA L. SOK, late of Connellsville, Fayette County, PA (3)

Administrator: Misty Callahan
120 Penn Avenue
Connellsville, PA 15425
c/o Mears, Smith, Houser & Boyle, P.C.
127 North Main Street
Greensburg, PA 15601
Attorney: Kim Ross Houser

MEREDITH M. TROUT, late of Bullskin Township, Fayette County, PA (3)

Personal Representative: Melanie R. Rotz
2152 Hafer Road
Fayetteville, PA 17222
c/o Hoskinson, Wenger & Rife
147 East Washington Street
Chambersburg, PA 17201
Attorney: Lawrence R. Rife, IV

Second Publication

JAMES M. LAUGHERY, late of North Union Township, Fayette County, PA (2)

Co-Executrix:
Jamie Kline and Tonya Luckey
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

MARY EDNA SCHVARCZKOPF, late of Uniontown, Fayette County, PA (2)

Personal Representative: Lisa Zeller
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

MARION CAROL TRIMBATH a/k/a CAROL TRIMBATH, late of Dunbar Township, Fayette County, PA (2)

Personal Representative: Marti Pletcher
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

First Publication

FRANCES BELL, a/k/a FRANCES LA BELLA, late of Uniontown, Fayette County, PA

Executor: Harold Bell
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

VINCENT CAPOZZA, late of Masontown, Fayette County, PA

Administratrix: Rebecca Capozza
c/o Pratt Law Offices, LLC
223 East High Street
Waynesburg, PA 15370
Attorney: Kimberly Simon-Pratt

DENNIS J. CARINI, late of Belle Vernon Borough, Fayette County, PA

Executrix: Chelsea Carini
71 Sampson Street
Belle Vernon, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

NANCY J. DEMARK, late of Fairchance, Fayette County, PA

Executor: Charles Enos, III
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

ALFRED E. DUBOIS, JR., late of South Union Township, Fayette County, PA

Executrix: Renee L. DuBois
c/o Webster & Webster
51 East South Street
Uniontown, PA 15041
Attorney: Webster & Webster

ALBERTA J. GALLIK, a/k/a ALBERTA JEAN GALLIK, late of Grindstone, Fayette County, PA

Personal Representative: Alicia M. Johnson
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Michael A. Aubele

TEDDY FRANK LACH, late of Luzerne Township, Fayette County, PA
Personal Representative: Gary Ciesielczyk
 c/o Davis & Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: Jeremy J. Davis

**CATHERINE E. REGETS, a/k/a
 CATHERINE REGETS**, late of South Union Township, Fayette County, PA
Executrix: Judith R. Queen
 c/o Zebley Mehalov & White, P.C.
 18 Mill Street Square
Attorney: Mark M. Mehalov

**TIMOTHY RAY RITENOUR, a/k/a
 TIMOTHY RITENOUR**, late of Melcroft, Fayette County, PA
Administratrix: Joyce Ritenour
 1731 Indian Creek Valley Road
 Melcroft, PA 15462
 c/o Nakles and Nakles
 1714 Lincoln Avenue
 Latrobe, PA 15650
Attorney: Ryan P. Cribbs

JOAN P. SCHAFER, late of South Union Township, Fayette County, PA
Administrator: Gregory L Schafer, Sr.
 c/o 11 Pittsburgh Street
 Uniontown, PA 15401
Attorney: Thomas W. Shaffer

DOLORES A. SERINKO, late of Perryopolis Borough, Fayette County, PA
Executor: Regis Serinko, Jr.
 124 Cambridge Lane
 Bellefonte, PA 16823
 c/o 823 Broad Avenue
 Belle Vernon, PA 15012
Attorney: Mark R. Ramsier

DAVID S. THOMAS, late of Smock, Fayette County, PA
Executrix: Betty L. Kashuba
 P.O. Box 113
 Waltersburg, PA 15488
 c/o Radcliffe Law, LLC
 648 Morgantown Road, Suite B
 Uniontown, PA 15401
Attorney: William M. Radcliffe

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA

In the Matter of Peter John Daley, II, Dec'd
 (Attorney Registration No. 70244)

CIVIL DIVISION
 No. 1566 of 2022

NOTICE OF CONSERVATORSHIP

By order dated August 12, 2022, Herbert G. Mitchell, Jr., Esquire, was appointed as Conservator for the files of Peter John Daley, II (deceased).

If you believe the Law Office of Peter John Daley, II, is holding monies that belong to you, please contact the Conservator immediately. Any monies remaining in the accounts of Mr. Daley may be paid over to the Pennsylvania Lawyers Fund for Client Security.

If you are a current or former client, please call the Conservator's Office at (724) 785- 4600 or send a fax to (724) 785-4606 within 45 days to retrieve your files. All unclaimed files will be destroyed in accordance with Rule 322 of the Pennsylvania Rules of Disciplinary Enforcement.

If you are in need of substitute counsel, you can contact the Fayette County Bar Association Lawyer Referral Service at (724) 437-7994, 45 E. Main Street, #100, Uniontown, PA 15401.

Herbert G. Mitchell, Jr., Esquire
 Conservator for Peter John Daley, II
 902 First Street
 Hiller, PA 15444
 Phone: (724) 785-4600
 Fax: (724) 785-4606

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
The Honorable President Judge
John F. Wagner, Jr.

ACTION TO QUIET TITLE
No. 1568 of2018, G.D.

WENDELL H. STONE COMPANY, INC.
a Pennsylvania Corporation,
Plaintiff,
vs.

TERRY LEWELLEN and IVA LEWELLEN,
his wife, and NATHAN J. NELSON,
their heirs, successors and assigns, generally,
Defendants.

TO: **TERRY LEWELLEN, (Deceased)**, his
heirs, personal representatives, successors and
assigns, **IVA LEWELLEN** and **NATHAN J.
NELSON**, their heirs, successors and assigns,
generally, Defendants.

PLEASE TAKE NOTICE that on
October 25, 2018, Wendell H. Stone Company,
Inc. filed its Reinstated Complaint in Action to
Quiet Title at No. 1568 of 2018, G.D., in the
Court of Common Pleas of Fayette County,
Pennsylvania claiming ownership in fee and in
possession of the premises sold to Wendell H.
Stone Company, Inc. at Fayette County Tax Sale
on July 31, 2017. Property is identified as
Fayette County Tax Assessment Map No. 19-05-
0053, Luzern Township and being the premises
acquired by David and Carmen Johnson by
Fayette County Tax Claim Bureau deed of May
4, 2012.

That the Defendants above named appear
to have an interest in the property which creates
a cloud upon Plaintiffs title. Plaintiff filed its
Complaint after exercising due diligence is
asking the Court to enter a decree terminating all
rights which Defendants may have in the
premises, decreeing that the Plaintiff has full and
free use of the premises discharging any right,
title, lien or interest of Defendants.

Service of this Complaint by publication is
made pursuant to an Order of Court dated
August 8, 2022 and filed at the above term and
number.

You are hereby notified that you have been
sued in Court. If you wish to defend against the
claims set forth in the Complaint filed against
you, a copy of which may be obtained at the
Office of the Prothonotary, Fayette County
Courthouse, Uniontown, Pennsylvania, you must
take action within twenty (20) days after the

Complaint and this Notice is served, by entering
a written appearance personally or by attorney
and filing your defenses or objections to the
claims. You are warned that if you fail to do so
the case may proceed without you and a
judgment will be entered against you by the
Court without further notice for possession of
the property. You may lose money or property
rights important to you.

**YOU SHOULD TAKE THIS PAPER
TO YOUR LAWYER AT ONCE. IF YOU
DO NOT HAVE A LAWYER OR CANNOT
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THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET
LEGAL HELP.**

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HARRISBURG, PENNSYLVANIA 17108
TELEPHONE: 1-800-692-7375**

DONALD McCUE LAW FIRM, P.C.
By: Donald J. McCue, Esquire
Attorney for Plaintiff
Donald McCue Law Firm, P.C.
813 Blackstone Road
Connellsville, PA 15425
(724) 628-5150

NOTICE

NOTICE is hereby given pursuant to the
provisions of Act 295 of December 16, 1982,
P.L. 1309, that a Certificate was filed in the
Office of the Secretary of the Commonwealth of
Pennsylvania, at Harrisburg, Pennsylvania, on or
about August 9, 2022, to conduct a business in
Fayette County, Pennsylvania, under the
assumed or fictitious name of **Red Barn Auto
Repair** with the principal place of business
at255 Rehoboth Church Road. Perryopolis, PA
15473. The name or names and addresses of
persons owning and interested are: The Service
Department, LLC. 255 Rehoboth Church Road.
Perryopolis, PA 15473

FICTITIOUS NAME REGISTRATION

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on July 05, 2022 for **Ritenour Auto Repair** at 1218 East Crawford Ave. Connellsville, PA 15425. The entity interested in such business is Ritenour Tools LLC, whose Commercial Registered Office provider's address is 1218 East Crawford Ave. Connellsville, PA 15425 in Fayette County. This was filed in accordance with 54 PaC.S. 311.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

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JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY
CIVIL DIVISION

CHRISTINA CONNELL, individually, as	:	
Administratrix of the ESTATE OF JEFFREY M.	:	
CONNELL, SR., deceased, and as parent	:	
and natural guardian over Jeffrey M. Connell,	:	
Jr., a minor, and Megan Connell, individually	:	
and Emily Connell, individually,	:	
Plaintiffs,	:	
v.	:	
TENG ZHENG, individually and t/d/b/a	:	
NEW CENTURY CHINESE BUFFET,	:	
NEW CENTURY CHINESE RESTAURANT	:	
AND BUFFET, INC., and NEW CENTURY	:	
CHINESE, INC.,	:	
Defendants,	:	
v.	:	
ELENI TRADING, INC., KING SEAFOOD,	:	
INC., EMPIRE CRAB COMPANY, INC.,	:	
SHELLS UNLIMITED, LLC, and SHELLS	:	
UNLIMITED CRAB DIVISION, LLC.	:	No. 1696 of 2017 G.D.
Additional Defendants.	:	Honorable Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

August 15, 2022

SUMMARY

Currently before the Court is Additional Defendant Shells Unlimited Crab Division, LLC and Shells Unlimited, LLC's motion for summary judgment in the above matter as against original Defendants. After oral argument and consideration of the record, the motion is granted for the reasons set forth below.

BACKGROUND

Plaintiff Christina Connell, administratrix of the decedent's estate and the parent and natural guardian of decedent's son, Jeffrey M. Connell, Jr., and Plaintiffs Megan Connell and Emily Connell, daughters of the decedent, commenced an action via praecipe for writ of summons on August 7, 2017 and filed a Complaint on October 30, 2017, naming Teng Zheng, individually and t/d/b/a New Century Chinese Buffet, New Century Chinese Restaurant and Buffet, Inc., and New Century Chinese, Inc. as original Defendants.

The Complaint alleged that the acts and/or omissions of the original Defendants resulted in the death of Jeffrey M. Connell, Sr. from complications of an infection by the bacterium *Vibrio vulnificus*. This bacterium occurs naturally in shellfish found in coastal waters and shorelines and can be transmitted to humans through consumption of raw or undercooked shellfish. Complaint at ¶ 13. Plaintiffs alleged that on July 24,

2015, the decedent and his family ate at Defendant New Century Chinese Restaurant where the decedent consumed raw or undercooked oysters. Id. at ¶ 8. In the early morning of July 30, 2015, the decedent began to complain of pain in his right foot. By the evening, he experienced severe pain, burning, and weakness as well as a purple blister on his right foot. He was transported to the emergency department of Highlands Hospital in Connellsville, Pennsylvania and subsequently to UPMC Mercy Hospital in Pittsburgh, Pennsylvania. Id. at ¶ 9-11. Cultures of the decedent's right foot were positive for *Vibrio vulnificus*, and he underwent multiple surgeries for debridement of necrotizing cellulitis. Id. at ¶ 12, 15. The decedent's condition worsened from July 30, 2015 onward, and he suffered pain, edema of the lower extremities and necrotizing fasciitis, multiorgan failure, septicemia, septic shock and bacteremia. Id. at ¶ 14. Eventually, the decedent experienced acute myocardial infarction and an acute ischemic middle cerebral artery (MCA) stroke, and he died on August 7, 2015. Id. at ¶ 16-17.

The Complaint included allegations of negligence per se, negligence, and strict liability in the form of wrongful death and survival action and alleged that Defendants breached their duty to use reasonable care in the preparation, serving, display and sale of food products, including raw and undercooked oysters, in order to ensure that the products did not become contaminated with *Vibrio vulnificus* or another dangerous pathogen. Id. at ¶ 20.

On December 21, 2018, original Defendants were granted leave to file a Complaint to Join additional defendants. Defendants thereafter filed their initial Complaint to Join on December 31, 2018 against Additional Defendants as participants in the storage, sale, or transport of oysters before they were delivered to original Defendants. Those Additional Defendants included: Shells Unlimited, LLC and Shells Unlimited Crab Division, LLC (Shells); King Seafood, Inc. (King); Empire Crab Company, Inc. (Empire); and Eleni Trading, Inc. (Eleni).

Several procedural filings and exchanges from, between, and among the Defendants {1} and respective Additional Defendants followed until Defendants filed their Fourth Amended Complaint on March 12, 2020. {2} Defendants' Fourth Amended Complaint alleges that the decedent's injuries and death were directly, solely, and proximately caused by Additional Defendants via failure to comply with rules and regulations, failing to maintain shellfish at an appropriate temperature as required to limit the growth of *Vibrio vulnificus*, and failing to comply with the duty to consumers to provide food products that were safe and suitable for human consumption. {3} The exchange of interrogatories, answers, and responses among the parties was occurring as late as December 17, 2021, when, on Shell's motion, Plaintiffs and original Defendants were ordered to serve amended responses.

{1} Defendants filed three (3) praecipes to reinstate the Complaint to Join on January 18, 2019, February 28, 2019, and June 4, 2019

{2} Since the filing of the initial Complaint to Join, all Additional Defendants except Empire have filed at least one Answer. Empire filed Preliminary Objections to the Fourth Amended Complaint on April 23, 2020, which it withdrew on May 9, 2022. Shells filed an Amended Answer, New Matter, and Crossclaim to the Third Amended Complaint to Join on January 16, 2020; King Seafood filed an Answer, New Matter, Counterclaim, and Crossclaim to the Second Amended Complaint to Join on September 9, 2019 and a New Matter, Counterclaim, and Crossclaim to the Third Complaint to Join on February 18, 2020; Eleni Trading filed an Answer, New Matter, Counterclaim, and Crossclaim to the Fourth Amended Complaint to Join on April 3, 2020.

On January 25, 2022, after receiving Defendants' amended responses, Shells moved for summary judgment on the ground that despite months of discovery, there is no evidence on record to support the claim that Shells was negligent.

LEGAL STANDARD

Any party may move for summary judgment after the relevant pleadings are closed when there is no genuine issue of material fact that could be established by additional discovery or when, after discovery is complete, an adverse party with the burden of proof at trial has failed to produce evidence of facts that are essential to the cause of action. Pa.R.Civ.P. 1035.2(1)-(2). "The moving party has the burden of proving that no genuine issues of material fact exist" and the "court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party." *Burnish v. KWI Building Co.*, 916 A.2d 642,645 (Pa. Super. Ct. 2007) (internal citations omitted). "[A] record that supports summary judgment either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense." *Cont'l Casualty Co. v. Pro Machine*, 916 A.2d 1111, 1115 (Pa. Super. Ct. 2007) (internal citations omitted).

DISCUSSION

Defendants oppose summary judgment on the basis that discovery is still ongoing and therefore Shells' motion is premature. {4} Defendants also discuss that Shells' brief cites to non-binding case law to support its motion.

For its part, Shells contends that Defendants do not possess any evidence to support the claim that Shells was negligent, and that, in fact, Plaintiffs have admitted there were not even raw oysters served at Defendants' buffet on July 24, 2015.

First, as to the issue of whether discovery is still ongoing, any party may file for summary judgment after the relevant pleadings have closed, but "the adverse party must be given adequate time to develop the case and the motion will be premature if filed before the adverse party has completed discovery relevant to the motion." *Burger v. Owens Illinois, Inc.*, 966 A.2d 611, 618 (Pa. Super. Ct. 2009).

Nevertheless, the discovery period cannot extend indefinitely; parties must conduct discovery in a timely way and proceed with due diligence:

Although parties must be given reasonable time to complete discovery before a trial court entertains any motion for summary judgment, the party seeking discovery is under an obligation to seek discovery in a timely fashion. Where ample time for

{3} In the Fourth Amended Complaint, Count I is against only Eleni; Count II is against only King and Empire; and Count III is against only Shells. The Fourth Amended Complaint to Join alleges that: Shells harvested and/or sold and transported oysters; King purchased oysters from Shells, transferred some to Empire Crab and sold others to Eleni; Empire stored and sold oysters from King and transferred them to Eleni; and Eleni purchased oysters from King and Empire, then sold them to original Defendants. A second copy of the Fourth Complaint to Join was filed on April 2, 2020.

{4} Defendants themselves moved for summary judgment on February 22, 2022 and also argue that if summary judgment is granted for Shells, it should also be granted for Defendants since there is no evidence showing an issue of material fact as between Defendants and Plaintiffs.

discovery has passed, the party seeking discovery (and opposing summary judgment) is under an obligation to show that the information sought was material to their case and that they proceeded with due diligence in their attempt to extend the discovery period.

Reeves v. Middletown Athletic Ass'n, 866 A.2d 1115, 1124 (Pa. Super. Ct. 2004) (internal citation omitted). In Reeves, despite the adverse party's request for an extension of the discovery period, the Superior Court declared discovery to be complete as of the date the motion for summary judgment was filed because the adverse party had had seven months in which to pursue discovery and did not do so.

Here, as this case is being brought in Fayette County, local procedural rules clearly establish that, without a court order stating otherwise, discovery is to be completed within 240 days from the filing of a complaint. F.C.R.Civ.P. 212.1(a). The local rules also provide for instances in which discovery requires a longer period of time: "In those cases where it is apparent that extensive discovery will be required, counsel may present a motion requesting a status conference, or file and present an appropriate motion, with the trial Judge to whom the case has been assigned to establish an alternate discovery time table." F.C.R.Civ.P. 212.1(b).

Defendants filed the Fourth Amended Complaint to Join on March 12, 2020, and Shells filed its Motion for Summary Judgment on January 25, 2022 - 684 days later. There is no case management order on record, nor has any party moved to establish a time table for discovery. Defendants do not argue that the overrun was for good cause, nor have they moved to compel discovery. It cannot be said that the parties have not had adequate time to prepare and pursue relevant discovery, and so discovery should be deemed complete. {5}

Defendants argue that the deposition of a corporate representative is relevant discovery still to be undertaken and so should preclude summary judgment. Defendants' brief in opposition states that they wish to depose corporate representatives because such individuals would "presumably" know about the sales, processing, storing, and procedures of business as related to oysters and other seafood. However, this does not demonstrate the information is material to Defendants' case. Defendants have not acknowledged they have any evidence to show lapses or deficiencies in temperature, storage, or sanitation. In the absence of evidence specific to the events and dates underlying their claim, it is unclear how corporate representative testimony on general company policies and procedures would be material.

Defendants do not adequately support that the additional discovery they seek is material to their case and the time limit for discovery has been far exceeded without good cause. Because Defendants have not indicated they possess any evidence of facts essential to the cause of action, summary judgment is proper under Pa.R.Civ.P. 1035.2 (2).

{5} In order to demonstrate that discovery is still ongoing, Defendants provided copies of emails exchanged between July 2021 and February 2022 in which counsel for Defendants and Additional Defendants Shells and Eleni discuss conducting depositions. However, while it does appear that some effort to perform discovery was undertaken during this time period, the earliest email Defendants provide is dated July 20, 2021. That date is 495 days after Defendants filed their Fourth Amended Complaint to Join and still far exceeds the permissible timeframe for discovery. Furthermore, the July 20, 2021 email was sent by counsel for Additional Defendant Shells, the party now moving for summary judgment.

As to Shells' contention that Plaintiffs in this case have admitted that there were no raw oysters served at Defendants' restaurant on July 24, 2015 and that none had been served during prior visits, Plaintiffs' Complaint (and by extension, Defendants' Complaint to Join) alleges that the duty to use reasonable care was related to the service of raw and undercooked oysters. The deposition testimony only states that oysters were cooked but does not address the degree to which they were cooked. Therefore, although this cannot be considered a full admission sufficient to resolve the issue, summary judgment still may be granted because there is no evidence of any facts essential to this action.

In addition, Defendants' argument that Shells relies upon non-binding case law is moot. Shells cites to the unpublished opinion in *Horan v. Dilbet, Inc.*, 724 Fed. Appx. 148 (3rd. Cir. 2018) (affirming summary judgment because a restaurant could only be found liable if its food handling practices caused a defect in raw clams by increasing the level of *Vibrio vulnificus* beyond non-infective levels); and the unpublished opinion in *Bergeron v. Pac Food, Inc.*, 51 Conn. L. Rptr. 471, 2011 WL 1017872 (Super. Ct. Feb. 14, 2011) (granting summary judgment in part because plaintiff in this product liability case did not demonstrate a genuine issue of material fact as to whether an oyster contaminated with *Vibrio vulnificus* is dangerous beyond that which would be contemplated by the ordinary consumer).

Non-binding case law certainly may still be considered for its persuasive value. However, in this case, there is no need to apply that case law in any capacity since Defendants have not brought forward any evidence at all to support the facts essential to their cause of action, including the oysters the decedent consumed (if any) indeed were contaminated. Therefore, summary judgment may be granted regardless of Shells' citations to non-binding case law.

CONCLUSION

The discovery period in this case has far exceeded the time period allowed without any showing of good cause and so relevant discovery should be deemed complete. Defendants have not identified any evidence establishing an issue of material fact, nor have they demonstrated that the additional discovery sought is material to their case. Summary judgment therefore is granted on Additional Defendant Shells' motion as against original Defendants under Pa.R.Civ.P. 1035.2(2).

ORDER

AND NOW, this 15th day of August, 2022, in consideration of the Motion for Summary Judgment filed by Additional Defendant Shells Unlimited, LLC, and Shells Unlimited Crab Division, LLC and after oral argument on the motion, it is hereby ORDERED and DIRECTED that the Motion is GRANTED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Prothonotary

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, September 21st from 12:00 p.m. to 1:30 p.m.**
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: **Auto Stops and Searches**
- Presenter: Professor Bruce A. Antkowiak, J.D.

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2017

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**** All fees to be paid at the door ****
A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or email to cindy@fcbar.org on or before Monday, September 19th.

BENCH BAR CONFERENCE

FCBA Bench Bar Conference will be held on

Wednesday, October 12th from
8:30 a.m. to 1:00 p.m. at

The Historic Summit Inn

Agenda to follow

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