

Appellants rely on the Second Class Township Code, 53 P.S. Sec. 65741 which provides that "ordinances shall be recorded in the ordinance book of the township and shall become effective five days after such adoption." Since the zoning ordinance enacted in 1973 by Greene Township was not physically recorded in the official ordinance book, appellants submit that it was not legally effective.

This Court cannot accept such a contention in light of the Pennsylvania Municipalities Planning Code, 53 P.S. Sec. 10101 et. seq. The purpose of its provisions are to provide for the orderly planning and development of municipalities throughout the Commonwealth, including second class townships such as Greene Township. In accordance with this Code, Greene Township properly enacted their zoning ordinances after holding the required public hearings.

Section 611 of this Planning Code provides: "Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein." 53 P.S. Sec. 10611. While appellants contend that the notation placed in the Ordinance Book was not sufficient since it did not specifically state that the zoning ordinance was incorporated by reference, no definitive language is contained in the statute for an incorporation by reference.

In this case, the notation was found in the Ordinance Book itself, the bound copy of the zoning ordinance was in the same drawer as the Ordinance Book and the zoning ordinance was referenced in the index as being in the ordinance book. All of these factors establish that anyone examining the Ordinance Book could not fail to be aware of the existence of the zoning ordinance and its availability for inspection.

As pointed out by counsel for the Greene Township Zoning Hearing Board, if the formalities of ordinance recordation found in the Second Class Township Code had been meant to apply to ordinances adopted under the Planning Code, the drafters of the Planning Code could have so provided by remaining silent on the subject. Instead, they inserted a specific provision in the Planning Code for incorporating zoning ordinances into official ordinance books by reference. It is evident from this action that the intent was to make the procedure for recordation under the Planning Code less formal than its counterpart in the Second Class Township Code.

We conclude that the Greene Township Zoning Ordinance was indeed effective prior to 1980 when appellants commenced

the non-conforming activities upon their land. The decision of the Greene Township Zoning Hearing Board is accordingly affirmed. The collateral issues discussed in the Board's decision need not be addressed since they are rendered moot by this opinion.

ORDER OF COURT

NOW, this 4th day of June, 1982, the appeal of Kenneth E. Stake and Bonny D. Stake, is dismissed. Costs to be paid by appellants.

Exceptions are granted appellants.

COUNTY OF FRANKLIN V. L.B.T. CORPORATION, C.P.,
Franklin County Branch, A.D. 1980-219

FARMERS AND MERCHANTS TRUST COMPANY, V. L.B.T.
CORPORATION, C.P., Franklin County Branch, A.D.
1979-226

Trespass - Joinder of Additional Defendant - Pa. R.C.P. 32253

1. The principal purpose of Pa. R.C.P. 32253 is to protect the Plaintiff from delay.
2. In considering whether or not to grant a late joinder the court may consider such factors as the prejudice a late joinder may work upon the parties, whether the defendant has acted in a reasonable manner and whether the interests of justice will be served by joinder.
3. Where no prejudice other than an increased risk of liability results from a late joinder, the court will permit the joinder.
4. In an effort to avoid a multiplicity of suits, the court may permit the late joinder of a party.

William A. Addams, Esq., Attorney for Proposed Additional Defendants

Robert P. Reed, Esq., Attorney for Farmers & Merchants Trust Company

Jeffrey B. Rettig, Esq., Attorney for Chambersburg Area Jaycees

James D. Flower, Jr., Esq., Attorney for County of Franklin

Walter K. Swartzkopf, Jr., Esq., Attorney for L.B.T. Corporation, d/b/a Hoxie Bros. Circus

OPINION AND ORDER

EPPINGER, P. J., June 7, 1982:

The Chambersburg Area Jaycees sponsored the Hoxie Brothers Circus. For the duration of the circus, the Jaycees arranged for the use of a dump truck to be used by the circus. On July 15, 1978, shortly after 4:30 a.m., Officer Christman of the Chambersburg Police Department observed the truck proceeding through Chambersburg. Though it was being operated in a lawful manner by William Anderson, a former employee of the Hoxie Brothers Circus, Christman suspected it had been stolen. Christman then radioed Officer Haldeman, also of the Borough Police Department to intercept and stop the truck. Depositions show that shortly thereafter the officers intercepted and boxed in the truck, but as Officer Haldeman approached the truck from behind, Anderson put the truck in reverse and to avoid being hit, Haldeman quickly moved the cruiser. This allowed the driver to maneuver the truck away from the officers. As the truck fled, a high speed chase ensued for the next fifteen minutes throughout the borough and its surrounding limits. While attempting to avoid pursuit, Anderson drove the truck through the borough square and into the Franklin County Court House Annex and the Farmers and Merchants Trust Company building, causing considerable property damage and fatal injuries to Anderson.

The Farmers and Merchants Trust Company commenced action against the defendants, L.B.T. Corporation doing business as Hoxie Brothers Circus and the Chambersburg Area Jaycees on July 10, 1979, while Franklin County filed suit against the same defendants on July 15, 1980. Subsequently, Hoxie filed a Petition for Removal to the U. S. District Court in the Farmers and Merchants Trust Company case, which was remanded to the Court of Common Pleas of Franklin County on June 26, 1981. Finally, all parties involved stipulated to consolidation and an appropriate order was entered on March 1, 1982.

Depositions of Officers Christman and Haldeman were taken on February 26, 1982. The information received at these depositions led defense counsel to believe that the officers' conduct may have been at least partly responsible for the

crash causing the driver's death and resulting property damage. On May 15, 1982, eight months after remand to this court, defense counsel filed a Petition to Join the Borough of Chambersburg and Officers Christman and Haldeman as additional defendants.

We ordered the Borough and Officers Christman and Haldeman to show cause why the prayer of the petition should not be granted.

Pa. R. C. P. Sec. 2253 states: "Neither praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by a complaint, shall be filed by the original defendant or an additional defendant later than sixty (60) days after the service upon the original defendant of the initial pleading of the plaintiff or any amendment thereof unless such filing is allowed by the court upon cause shown." Thus, the issue before this court is whether sufficient cause exists to justify an extension of time to permit the joinder of the proposed additional defendant. See *Welch Foods, Inc., v. Bishopric Company*, 254 Pa. Super. 256, 385 A.2d 1007 (1978).

The principal purpose of Pa. R. C. P. Sec. 2253 is to protect the plaintiff from delay, *Clendenin v. Glise*, 20 Adams L.J. 97 (1978), and in considering whether or not to grant a late joinder the court may consider such factors as the prejudice a late joinder may work upon the parties involved, whether the defendant has acted in a reasonable manner, and whether the interests of justice will be served by joinder.

In the instant case, the plaintiffs have raised no objection to the proposal for a late joinder of the additional defendants and no evidence has been put forth to show that they will be prejudiced thereby. In fact, the late joinder could actually improve plaintiffs' position. Especially where the error is merely a procedural matter and does not affect the substantive rights of either party, the rules of civil procedure are to be construed liberally in order to ensure that justice is afforded the respective parties. *Pomerantz v. Goldstein*, 479 Pa. 175, 387 A.2d 1280 (1978).

Second, the borough and police officers have demonstrated no resulting prejudice to themselves which would occur from the late joinder other than the increased risk of liability. As noted in *Azcon Corp. v. Dual State Builders*, 8 D&C 3d 499 (1978), a joined defendant will always suffer a degree of prejudice from any kind of joinder due to the increased risk of

liability, but this is not a sufficient reason in and of itself to reject a late joinder.

Third, while it is true that the 60 day time period was not strictly complied with, here, the time period "in and of itself, is not determinative," upon the motion for late joinder. *Zakian v. Liljestrand*, 438 Pa. 249, 264 A.2d 638 (1970). Also, we consider that the period of delay was reasonable since motions for removal and consolidation were pending throughout this period.

Finally, we believe that concern for matters of judicial economy supports our position for permitting this late joinder. "We believe it is the Court's duty to direct the joinder . . . at this time in order to obviate any possibility of delay in the ultimate determination of the issues. It will avoid a multiplicity of suits, and (as it should be), compel every interested party to appear . . . in a single action." *Coppage v. Smith*, 381 Pa. 400, 113 A.2d 247 (1955). Pa. R. C. P. Sec. 126 provides the trial judge with broad discretion in such matters: "The rules shall liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." In addition, the joinder will serve to simplify and expedite the disposition of this matter involving numerous parties, *Zakian*, at 256.

Accordingly, since no prejudice will result to any of the parties from the late joinder, reasonable justification for the delay has been established, and a multiplicity of suits will be avoided, the defendant's petition for the late joinder of the Borough of Chambersburg, Officer Christman, and Officer Haldeman, is granted.

ORDER OF COURT

June 7, 1982, the rule issued upon the proposed additional defendants, the Borough of Chambersburg, Mark L. Christman and Chris L. Haldeman, to show cause why they should not be joined as additional defendants is made absolute and it is ordered that L.B.T. Corporation, doing business as Hoxie Bros. Circus may join the Borough of Chambersburg, Mark L. Christman and Chris L. Haldeman as additional Defendants, for indemnity and contribution.

FORDYCE FOOD DISTRIBUTORS V. VALLEY INN-KEEPER, INC., C.P. Franklin County Branch - A.D. 1082 - 106

Assumpsit - Attorney General's opinion - Levy on Liquor License

1. An opinion of the Pennsylvania Attorney General is binding on state officials, but it is not binding on others until ratified by the courts.
2. While it is unsettled whether a decision of the Commonwealth Court, sitting as a trial court, is binding on the trial courts as appellate court precedent, it does have precedential value to a trial court.
3. A liquor license is not a property right upon which a creditor may levy.

David C. Cleaver, Esq. Attorney for Valley Innkeeper, Inc.

Thomas J. Finucane, Esq., Attorney for Fordyce Food Distributors

OPINION AND ORDER

EPPINGER, P. J., June 11, 1982:

Fordyce Food Distributor, plaintiff, has a judgment against Valley Innkeeper, Inc., defendant. The latter has a liquor license that is posted on the wall of the padlocked premises where Valley formerly conducted its business. Fordyce directed the sheriff to levy on the license, breaking into the premises if necessary. The sheriff refused and Fordyce applied to this court for supplementary relief, asking that the court direct the sheriff to make the levy.

Earlier the Attorney General of the Commonwealth rendered an opinion holding that a liquor license is a property right and that creditors may levy on a judgment debtor's liquor license upon directions to the local sheriff to "seize and sell" the license, taking physical possession of the license and returning it to the Liquor Control Board within two working days. The license was then to be listed for sale. In a decision subsequent to the Attorney General's opinion, Judge Blatt, of the Commonwealth Court, sitting in equity granted a judgment/debtor, 1412 Spruce Street, Inc., a temporary injunction enjoining the Pennsylvania Liquor Control Board from issuing or transferring 1412's restaurant liquor license as the result of a public sale under the execution process. The court determined that a liquor license is not personal property which may be subjected to a judicial levy. *1412 Spruce Street, Inc., v. Com-*