Filed 11/24/2025

STEVEN ZELINGER, AS ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSE SICAJAU JACINTO, DECEASED	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
	:	No. 178 EDM 2025
NORTH POINT EXTERIORS, LLC, NEW SMART CONTRACTORS, LLC, MARVIC SUPPLY CO., INC. AND ABC CORPORATIONS	:	
	:	APGEN-Zelinger Vs North Point Exteriors, Llc Etal [MVR]
v.	:	 23120236900126
Y & J ARTHUR CORPORATION	:	
PETITION OF: SRS DISTRIBUTION INC., D/B/A MARVIC SUPPLY CO., INC.	:	

Appeal from the Order Entered June 13, 2025
In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 231202369

O R D E R

AND NOW, this 24th day of November, 2025, we DENY the petition for permission to appeal filed by SRS Distribution, Inc., d/b/a Marvic Supply Co., Inc. ("Petitioner"), following the trial court's denial of its request for certification, pursuant to 42 Pa.C.S.A. § 702(b), for interlocutory review of the court's June 13, 2025 order denying Petitioner's motion for judgment on the pleadings.

This case stems from the death of Jose Sicajau Jacinto ("Decedent") on July 20, 2022, while performing construction roofing work at a residential property in Southampton, PA. On December 20, 2023, Steven Zelinger, administrator of the decedent's estate ("Plaintiff"), filed a complaint against all of the defendants except Petitioner, asserting wrongful death claims owing to, inter alia, a lack of OSHA compliant safety railings to prevent accidental falls. Plaintiff included "ABC Corporations" as "doe defendants" because Plaintiff could not be certain without additional investigation which entities performing construction work at the property were responsible for safety obligations. ***See*** Pa.R.Civ.P. 2005 (plaintiff may designate unknown "doe defendant" in complaint where actual defendant has yet to be identified following reasonable search with due diligence). On October 22, 2024, during a deposition of defendant North Point Exteriors, LLC's owner, Plaintiff discovered for the first time that Petitioner did not just supply materials for the roof construction but was actively involved in the construction and operation of a boom truck crane to deliver the materials to the second floor of the subject property during the incident that caused Decedent's death.

The trial court granted Plaintiff's motion to amend the complaint to substitute Petitioner for one of the "ABC Corporations" pursuant to Rule 2005. Plaintiff thereafter filed an amended complaint and Petitioner moved for judgment on the pleadings, arguing that Plaintiff was improperly permitted to amend the complaint to add Petitioner as a defendant after the two-year statute of limitations expired. ***See*** 42 Pa.C.S.A. § 5524(7) (setting two-year

limitation on claims alleging negligence and fraud). Plaintiff filed an answer in opposition and the trial court entered the order denying Petitioner's motion for judgment on the pleadings. Petitioner requested certification pursuant to section 702(b), which the court denied. This timely petition followed.

In seeking permission to appeal an order for which section 702(b) certification was denied, Pa.R.A.P. 1312 requires a petitioner to show: (1) "[W]hy the order involves a controlling question of law as to which there is a substantial ground for difference of opinion"; (2) "that an appeal from the order may materially advance the ultimate termination of the matter"; and (3) "why the refusal of certification was an abuse of the trial court's . . . discretion that is so egregious as to justify prerogative appellate correction[.]" Pa.R.A.P. 1312(a)(5)(ii).

Here, Petitioner fails to identify a controlling question of law as to which there is a substantial ground for difference of opinion. Petitioner's petition for permission to appeal essentially attempts to relitigate the motion for judgment on the pleadings, focusing largely on Plaintiff's alleged failure to conduct a reasonable search to identify Petitioner as a "doe defendant" and the alleged "severe[] prejudice" suffered by Petitioner as a result of the untimely joinder. Petition for Permission to Appeal, 9/10/25, at 32. However, whether Plaintiff was reasonably diligent in its investigation and whether Petitioner suffered prejudice are factual determinations limited to the particular facts and circumstances of this case, which do not constitute a controlling question of law as to which there is substantial ground for difference of opinion. Moreover,

Petitioners' petition for permission to appeal contains no discussion whatsoever of the two remaining requirements set forth in Rule 1312(a)(5)(ii), i.e., that an immediate appeal may materially advance the ultimate termination of the matter[1] and why the trial court's denial of permission to appeal was an abuse of discretion so egregious as to justify prerogative appellate correction.

[1] As Plaintiff aptly notes in its answer in opposition to the petition for permission to appeal, Petitioner is not the sole defendant in this case. If an interlocutory appeal by permission were to be allowed, "proceedings in the trial court would grind to a halt, substantially delaying the final resolution of the case, instead of materially advancing it." Answer in Opposition to Petition for Permission to Appeal, 9/29/25, at 15.