written contract. However, where the obligor has not been identified, there can be no contract, no vested rights and no cause of action. In the instant case, no individual was obligated to compensate the plaintiff for his injuries at the time of the accident. Mr. Rotz had no pre-existing contract for insurance and thus no enforceable rights. As against I.N.A. his rights did not vest until his claim was assigned. The earliest date which that event could have occurred was October 26, 1979, when Mr. Rotz filed his application for no-fault benefits with the Assigned Claims Bureau. Since plaintiff filed his praecipe for a summons in this case approximately two years and eight months after he applied to the Assigned Claims Bureau for no-fault benefits, his claim for uninsured motorist benefits is not time barred.

ORDER OF COURT

NOW, this 8th day of June, 1984, the defendant's Motion for Summary Judgment is dismissed.

Exceptions are granted the defendant.

MONT ALTO BOROUGH v. UNIVERSITY HILL, INC., ET. AL., C.P. Franklin County Branch, Volume 7, Page 302

Contract - Covenant Running With Land - Corporate Identity - Pierce Corporate Veil

1. A person may not be held liable on a personal agreement which she never signed.

2. Where parties agree to replace a water line upon the happening of certain events, it is a covenant that runs with the land in that replacement could be required at any time.

3. Where there are two corporate entities which are merely instrumentalities of each other or closely entwined, the courts in piercing the corporate veil will hold each legally accountable for the acts and responsibilities of the other.

4. Where the corporate form prejudices innocent parties or where two corporations are something less than bona fide independent entities, the court may pierce the corporate veil.

E. Franklin Martin, Esquire, Counsel for Plaintiff

Timothy W. Misner, Esquire, Counsel for Defendants, University Hill, Inc. and University Hill Improvement Co., Inc.

John F. Nelson, Esquire, Counsel for Defendant, Evelyn L. Yohe

OPINION AND ORDER

EPPINGER, P.J., July 20, 1984:

John Yohe and Kathleen Corbett owned a tract of land just outside the Borough of Mont Alto. They also owned a two-inch water line approximately 4,000 feet long, extending into their tract. Under an agreement, the Borough was to supply water for the line at a cutoff valve inside the Borough limits and Yohe and Corbett were responsible for repairs to or replacement of the line, if the Borough decides it has so deteriorated as to require replacement. The parties anticipated growth in the development served by the line by requiring Yohe and Corbett to construct a six-inch line when there were thirty-five customers or more.

In June, 1973, Yohe and Corbett sold the remaining development property to the defendant University Hill, Inc., and the water line to University Hill Improvement Company, Inc. Under the instrument for the sale of the water line, the latter assumed "only to the extent required by any pertinent and enforceable rules and regulations of the Pennsylvania Public Utilities Commission, the burdens imposed on (Yohe and Corbett) in the . . . agreement with the Borough of Mont Alto."

The Borough has now filed a complaint against the three defendants for money damages in the amount of the alleged costs of replacing the water line, saying demands have been made on all of the defendants to pay the sums and they have refused to do so.

EVELYN YOHE

The complaint does not allege that Evelyn Yohe was ever record owner of the original tract and she was not a signator on the

agreement with the Borough. She is, however, the widow of John S. Yohe and joined as the wife of John S. Yohe in the deed conveying the property to University Hill, Inc. She also was a signator as the wife of John Yohe on the instrument that conveyed the Yohe and Corbett interest in the water line to University Hill Improvement Co., Inc.

Mrs. Yohe demurred to the complaint reasoning that the complaint does not state a cause of action against her because there is no allegation that she was a party to the agreement between the Borough and Yohe and Corbett or that at any time she owned any part of the tract of land through which the water line passes.

A demurrer accepts every well-pleaded fact as well as reasonable inferences, *Modesta v. Southeastern Pa. Transportation Authority,* 300 Pa. Super. 6, 7, 445 A.2d 1271, 1272 (1982), and should be sustained where the complaint indicates on its face that the claim cannot be sustained. *Id.,* at 7, 1272. The Borough argues, without support, that Mrs. Yohe is responsible in her status as the widow of John Yohe and because she signed the deed transferring the property to University Hill and signed the sales contract conveying the line of University Hill Improvement Co., Inc. We do not believe these circumstances alone create liability.

In preliminary objections filed by the other parties, the question is raised whether the duty to renew the water line is one that runs with the land or is personal. We will discuss them later. However, Mrs. Yohe has no liability whether the obligation runs with the land or is personal. If the obligation runs with the land, then University Hill (the party in possession of the land) has the duty of discharging the obligation. *Leh v. Burke,* 231 Pa. Super. 98, 108, 331 A.2d 755, 761 (1974).

On the other hand, if the obligation to replace the water line is personal, then it is personal to Yohe and Corbett, the parties to the original agreement with the Borough. *DeSanno v. Earle,* 273 Pa. 265, 270, 117 A. 200, 202 (1922). A person may not be held liable on a personal agreement which she never signed. See 21 C.J.S. §36, Persons Liable on Personal Covenants, p. 906. Thus, even if Mrs. Yohe had an ownership interest, she could not be held liable for the replacement. Signing the contract which transferred the benefits and obligations of the agreement to University Hill

Improvement Company, Inc., was an indication of her ownership interest, not an acceptance of the terms. So, Mrs. Yohe's demurrer will be sustained.

UNIVERSITY HILL IMPROVEMENT CO., INC.

The first preliminary objection of the improvement company as well as the fourth of University Hill, Inc., is that the amended complaint should be dismissed because it is not alleged the water line has deteriorated so as to require replacement. Actually, Paragraph 9 of the complaint does not adopt the language of Paragraph 7 of the agreement and does not allege that it is so deteriorated as to require replacement. The amended complaint is insufficient in this respect because this is a material fact that must be pleaded. Pa.R.C.P. 1019(a); *Baker v. Rangos,* 229 Pa. Super. 333, 349, 324 A.2d 498, 505 (1974). We are not required to dismiss the amended complaint as requested; the proper remedy is to permit the Borough to amend. Pa.R.C.P. 1033; *Glenn v. Point Park College,* 441 Pa. 474, 483, 272 A.2d 895, 900 (1971).

Next the improvement company argues Paragraph 10 of the complaint is impertinent. For an allegation to be impertinent, it must be entirely immaterial and irrelevant to the material issues and can have no influence in the result. *D.E.R. v. Peggs Run Coal Co.,* 55 Pa. Cmwlth. 312, 320, 423 A.2d 765, 769 (1980); *Naugle v. Washington Twp.,* 17 D&C3d 462, 466 (Franklin 1980).* Paragraph 10 alleges:

> T The agreement marked Exhibit "C" herein provides
> that that University Hill Improvement Company, Inc. "shall
> have have the right to assume any additional burden imposed by
> the S the Seller in the aforesaid agreement with the Borough of
> Mon Mont Alto dated August 9, 1979, that it may assume." Said
> agre agreement referred to is the agreement marked Exhibit
> "A" "A" herein.

This allegation is not impertinent and will not be stricken.

Paragraph 16 of the Borough's complaint states the fair and reasonable cost of replacing the water line is $138,000. We agree with the improvement company that this lump sum demand,

*Editor's note: Another opinion in same case, reported at 4 Franklin 64. NOT THIS OPINION.

unsupported by facts considered in its computation, does not enable defendant to prepare an adequate defense. *Baker,* supra, at 349, 505; *Price v. Pa. R.R. Co.,* 17 D&C.2d 518, 523, (Dauphin 1958). In its amendment, the Borough must allege the facts underlying the computation of the replacement costs.

UNIVERSITY HILL, INC.

University Hill's first three objections under its demurrer argue that the action must be dismissed because the agreeement between Yohe and Corbett and the Borough is not a covenant which runs with the land nor are sufficient facts alleged to support this conclusion. We do not agree.

The terms of the agreement demonstrate that taken as a whole it was to run with the land and bind subsequent owners of the property. The determinative factor is the intention of the parties found in the surrounding circumstances, including the words of the agreement. *DeSanno v. Earle,* 273 Pa. 265, 270, 117 A. 200, 202 (1922); *Finley v. Glenn,* 303 Pa. 131, 137, 154 A. 299, 301 (1931).

The language of Paragraphs 7 and 8 of the agreement, that if the water line deteriorates or when 35 or more customers receive water, Yohe and Corbett are required to replace the water line, does not create merely a personal covenant. It is obvious that replacement could be required at any time in the future, not just during the ownership of Yohe and Corbett.

Paragraph 9 of the agreement places the responsibility upon Yohe and Corbett in the first instance "to maintain adequate pressure for consumers being supplied by the water service." It is inconceivable that the parties intended these duties to be personal to Yohe and Corbett only, when those who purchased lots in the development will rely indefinitely upon the water service provided in the agreement.

Since the obligation for replacement runs with the land, when Yohe and Corbett transferred their interests to University Hill, the obligations followed. *Leh v. Burke,* supra, at 108, 761. Therefore, University Hill may be held responsible to replace the water line, *Id.,* 108.

Furthermore, when University Hill accepts the Borough's water service for its property, there is an implied promise it will

pay for the service. *Campbell v. Hand,* 49 Pa. 234, 240 (1865). This duty arises not from the language of the agreement, itself, but from the benefit conferred on University Hill as owner of the property being serviced. *Id.,* at 240. In this case, a cost of the service is the replacement of the water line.

University Hill next argues the amended complaint should be dismissed because a letter mentioned as an exhibit is mislettered and another is not attached. This can be cured by amendment.

Paragraph 13 of the complaint says University Hill still owns the property and Paragraph 14 that the Borough has demanded that University Hill replace the water line. These, University Hill says, are conclusions of law. If they are conclusions of law, they may be pleaded if plaintiff pleads the ultimate facts underlying such conclusions. *Cullings v. Farmers and Merchants Trust Company of Chambersburg,* 8 D&C3d 764, 767 (Franklin 1978).** Sufficient facts have been alleged within the complaint and the attached agreements to support these conclusions.

University Hill's request that plaintiff be required to file a more specific pleading as to the cost of replacing the water line has already been discussed. The lump sum demand is inadequate for the calculation.

As an end note, while we recognize that University Hill, Inc. and University Hill Improvement Co., Inc. may be separately incorporated, it is not clear that they are separate entities. While it is true that the validity of a corporate entity is not to be lightly disregarded, a court clearly has the power to "pierce the corporate veil" where the corporate form prejudices innocent parties, *Du Sesoi v. United Refining Co.,* 540 F.Supp. 1260, 1266 (W.D. Pa. 1982), or where the two corporations are something less than bona fide independent entities. *Donsco, Inc. v. Casper Corp.,* 587 F.2d 602 (3d Cir. 1978). See also *Bennett's Trailer v. Corinthian Builders,* 71 Del. Co. 120 (1984).

If University Hill Development Co., Inc., lacks the ability to pay for the replacement of the water line, it would be improper and unfair to place this burden on others when the development company may be nothing more than an instrumentality of University Hill. *Fanfan v. Berwind Corp.,* 362 F. Supp. 793, 795

**Editor's note: Reported, also, at 2 Franklin 172 (1978).

(E.D.Pa. 1973). We have noted that the president and secretaries of both corporations are the same persons. Any such factor which tends to show too close or too direct a relationship between two corporations increases the likelihood of piercing the corporate veil. *Commonwealth v. Pro-Pak Inc.,* 65 D&C2d 494, 496 (Dauphin 1974).

Where there are two corporate entities which are merely instrumentalities of each other or closely entwined, the courts in piercing the corporate veil will hold each legally accountable for the acts and responsibilities of the other. P.L.E. Corporations §4, pp. 103-4; C.J.S. Corporations §7(e), pp. 383-385; *Publicker Industries v. Roman Ceramics,* 603 F.2d 1065, 1069 (3d Cir. 1979).

ORDER OF COURT

July 20, 1984, in the Preliminary Objections filed in the above matter, IT IS ORDERED,

(1) that the demurrer of Evelyn Yohe is sustained and the suit against her is dismissed.;

(2) that the demurrer of University Hill Improvement Company, Inc. is overruled;

(3) that the demurrer of University Hill, Inc. is overruled;

(4) that the amended complaint is not specific enough in alleging facts relating to the deterioration of the water line;

(5) that the amended complaint is not specific enough in alleging the cost of replacing the water line;

(6) that the portions of the complaint alleged to be impertinent will not be stricken.

IT IS FURTHER ORDERED that the plaintiff is given twenty (20) days from this date to file an amended complaint as to University Hill Improvement Company, Inc. and University Hill, Inc.

TURNER V. LETTERKENNY FEDERAL CREDIT UNION, C.P. Franklin County Branch, No. 1982 - 66

Employment - Wrongful Discharge - At Will Employee

1. The doctrine of an employee at will allowed an employer to terminate employment for any reason or no reason absent a statutory or contractual provision to the contrary.

2. An exception to the general rule exists if the termination is intended to harm the employee or there is no plausible reason for discharge, and a clear mandate of public policy was violated.

3. Public policy concerning employee termination can be determined by balancing the employee's interest in making a living, the interest of the public in proscribing abusive discharges and the employers' interest in running the business efficiently and profitably.

Frederic G. Antoun, Esq., Counsel for Plaintiff

George F. Douglas, Jr., Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., August 14, 1984:

The complaint in trespass and assumpsit was filed on March 4, 1982. The causes of action alleged by the plaintiff in his five count complaint:

> Count I - In Assumpsit - Predicated on the theory that an oral year-to-year employment contract existed between plaintiff and defendant-Credit Union.
>
> Count II - In Assumpsit - Predicated on the theory that the conditions of plaintiff's employment required he be given notice of grounds for termination and an opportunity to respond.
>
> Count III - In Trespass - On the theory of wrongful discharge by reason of the intentionally damaging and defammatory method selected by the defendant for terminating plaintiff.
>
> Count IV - In Trespass and Assumpsit - On the theory that defendants violated the public policy against dis-