

Ellen Schroyer, Plaintiff vs. Darwyn Benedict, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch
Civil Action No. 2012 – 2638

HEADNOTES

Preliminary Objections; Legal Sufficiency of a Breach of Contract Claim; Legal Sufficiency of a Professional Negligence Claim; Legal Sufficiency of an Unjust Enrichment Claim

1. Pursuant to Pa. R. Civ. P. 1019(h), a complaint containing a claim for a breach of contract must state, specifically, whether the contract is written or oral even if it can be inferred from the averments.
2. A claim for professional negligence is legally insufficient where the complaint does not aver that the defendant acted within their professional capacity.
3. A claim for unjust enrichment requires a plaintiff to establish that benefits were conferred on the defendant by the plaintiff, the defendant appreciated those benefits, and that it would be inequitable for defendant to accept and retain the benefits without payment. *Lackner v. Glosser*, 892 A.2d 21, 34 (Pa. Super. 2006).
4. A party may plead a claim for breach of contract and, in the alternative, plead a claim for unjust enrichment in the same Complaint even though the basis of an unjust enrichment claim avers that no binding contract existed. Alternative pleading is permissible pursuant to Pa. R. Civ. P. 1020(a). *Lugo v. Farmer's Pride, Inc.*, 967 A.2d 963, 969-70 (Pa. Super. 2009).

Appearances:

James M. Stein, Esq., Attorney for Plaintiff
Peter M. Good, Esq., Attorney for Defendant
Ellen Schroyer, Plaintiff
Darwyn Benedict, Defendant

OPINION

Before Herman, J.

Procedural History and Factual Background

The Complaint in this matter was filed on June 22, 2012 by Plaintiff, Ellen Schroyer. The Complaint alleges four counts: Breach of Contract, Fraud, Professional Negligence, and Unjust Enrichment. These counts stem from a former romantic relationship between the parties which also developed into a business relationship; both relationships appearing to have dissolved. During the pendency of the personal and business relationships, Plaintiff alleges that she loaned or invested various sums of money on several occasions to the Defendant. Plaintiff alleges that Defendant has failed to pay her back for the loans. Additionally, Plaintiff alleges that Defendant used his expertise as a real estate broker to fraudulently induce her to invest in Defendant's business which he misrepresented as profitable.

Defendant, Darwyn Benedict, responded by filing Preliminary Objections on July 30, 2012. Plaintiff filed an answer to the Preliminary Objections on August 17, 2012. Both parties filed briefs and oral argument was held on January 3, 2012. The matter is now ready to be decided.

Discussion

Objection 1 – Legal Sufficiency of Breach of Contract Claim

Defendant objects to the legal sufficiency of the claim for breach of contract. There seems to be two main arguments. First, that the Plaintiff has failed to specifically plead, pursuant to Pa. R. Civ. P. 1019(h), whether the claims are based upon a written or oral agreement. Second, Defendant argues that Plaintiff has failed to plead elements and essential terms of the alleged contracts.

As to the first argument, it can likely be inferred from reading the complaint, in its entirety, that these were personal and informal loans which were not part of a written agreement. However, Pa. R. Civ. P. 1019(h) requires that the pleader indicate, *specifically*, whether the underlying agreement was oral or written. Therefore, pursuant to the rules of procedure and in the interest of clarity, we sustain this objection and will require that the Plaintiff clarify whether each of the alleged agreements were oral or written.

As to the second agreement, we find that Plaintiff has sufficiently pled each of the alleged breaches. Defendant argues that there are no averments establishing offer, acceptance, and consideration. Each averment indicates that these amounts were loaned. Paragraph 11 states that neither payment was ever intended to be a gift and that the parties agreed that Defendant would remit some form of repayment in consideration for the loans. Plaintiff has also averred the amounts of these loans and damages incurred. We find that Plaintiff has sufficiently pled the elements of a breach of contract and this objection will be overruled.

Objection 2 - Legal Sufficiency of Fraud Claim

Defendant objects to the legal sufficiency of the claim for fraud. Specifically, Defendant notes that Plaintiff has not alleged facts to support that Defendant intended for Plaintiff to be induced to act. We disagree. Not only is intent inferable from language such as "induce," and "misrepresentation," Plaintiff has pled that "Defendant *intentionally* misrepresented the financial stability of the company" in paragraph 17 (emphasis added). It is difficult to imagine how intent could be pled any clearer. Therefore, Defendant's second objection will be overruled.

Objection 3 – Legal Sufficiency of Professional Negligence Claim

Defendant objects to the Plaintiff's claim alleging professional negligence. This objection is based upon two arguments. First, that Plaintiff has not established a real estate broker-client relationship existed. Second, even if such a relationship existed, this involves a business investment and not a real estate transaction.

As to the existence of a real estate broker - client relationship, we find that Plaintiff has not sufficiently pled that any such relationship existed. Plaintiff does not allege that she retained Defendant's services as a broker or that Defendant acted as her broker. Rather, Plaintiff has averred that real estate brokers have a certain duty to not present knowingly false information and that Defendant breached that duty by not exercising the ordinary care and skill of a person in his

profession. Further, “Defendant knew, or should have known, that the Plaintiff would rely on his advice, especially considering the romantic relation of the parties at the time.”

Plaintiff has not established that a broker-client relationship existed. Defendant was not acting as Plaintiff’s real estate broker, and it has not been alleged that he was doing so. Defendant would have us accept that simply because Defendant is a real estate broker, he owes a broker’s duty of care to anyone with whom he interacts, even if the topic at hand is not real estate brokerage.

The second objection to this claim is that defendant only made representations regarding a business investment, not a real estate transaction. In addition to not establishing a broker-client relationship, we find that Plaintiff has also not established that any alleged transaction fell within the scope of Defendant’s duties as a real estate broker. From the Complaint, it appears that Defendant solicited investments for his business, not the sale or rental of real estate.

Because we find that Defendant did not owe any duty as a real estate broker to Plaintiff and, even if he did, no real estate transactions took place, the claim for professional negligence is legally insufficient. This objection will be sustained.

Objection 4 – Legal Sufficiency of Unjust Enrichment Claim

A claim for unjust enrichment requires a plaintiff to establish that benefits were conferred on the defendant by the plaintiff, the defendant appreciated those benefits, and that it would be inequitable for defendant to accept and retain the benefits without payment. Lackner v. Glosser, 892 A.2d 21, 34 (Pa. Super. 2006).

Defendant objects to the legal sufficiency of the claim for unjust enrichment on two grounds. First, the Complaint alleges that a contract exists which is in direct contrast to unjust enrichment which is only viable where no contract exists. Second, that Plaintiff has not alleged that Defendant appreciated any benefits.

“The doctrine of unjust enrichment applies only to situations where there is no legal contract.” Wilson Area School Dist. v. Skepton, 895 A.2d 1250 (2006). The Superior Court has held that where a complaint alleges the existence of a contract and the breach thereof, the complaint may, in the alternative, plead a claim for unjust enrichment. Lugo v. Farmer’s Pride, Inc., 967 A.2d 963, 969-70 (Pa. Super. 2009). Also, Pennsylvania Rule of Civil Procedure 1020(a) allows for pleading in the alternative, and that is precisely what Plaintiff has done. Defendant’s objection will be overruled.

As to the argument that Plaintiff has not alleged that the Defendant has appreciated any benefits, we find that Plaintiff has done so. Defendant cedes that Plaintiff has alleged that Defendant accepted the money, but has not alleged that the money was appreciated. We disagree. Plaintiff has alleged that the money was loaned. The very nature of a loan is one that infers that the receiver of the loan needs money for a certain purpose. Clearly, it can be inferred from reading the complaint that Defendant is alleged to have needed money, he received that money in the form of a loan from defendant, and then used the money for various purposes. One would be hard pressed to find someone who would not appreciate being lent a substantial sum of money during a time of need. By alleging that Defendant accepted the loan, Plaintiff has alleged “appreciation.” This objection will be overruled.

Conclusion

The objection to the legal sufficiency of the breach of contract claim will be sustained, in part, and overruled, in part. The objection to the claim for fraud will be overruled. The objection to the legal sufficiency of the professional negligence claim will be sustained. Finally, the objection to the unjust enrichment claim will be overruled.

ORDER

NOW THIS 27th day of March 2013, upon review and consideration of the Defendant’s *Preliminary Objections*, Plaintiff’s response thereto, and the briefs in support:

THE COURT HEREBY ORDERS:

1. Defendants’ objection to the legal sufficiency of the claim for breach of contract is SUSTAINED, in part, and OVERRULED, in part, pursuant to the attached Opinion.
2. Defendants’ objection to the legal sufficiency of the claim for fraud is OVERRULED pursuant to the attached Opinion.
3. Defendants’ objection to legal sufficiency of the claim for professional negligence is SUSTAINED pursuant to the attached Opinion.
4. Defendants’ objection to legal sufficiency of the claim for unjust enrichment is OVERRULED pursuant to the attached Opinion.

IT IS FURTHER ORDERED that Plaintiff will file an Amended Complaint in accordance with this order within twenty (20) days of receipt of this order.