

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

JOHN R. DEPHILLIPO and	:	August Term 2008
MARIA DEPHILLIPO,	:	
Plaintiffs,	:	No. 1128
v.	:	
GENELINK, INC. T/A GENELINK	:	COMMERCE PROGRAM
BIOSCIENCES, INC., ET. AL.	:	
Defendants.	:	Control Number 103329

**ORDER**

AND NOW, this 6<sup>TH</sup> day of May 2009, upon consideration of Defendants' Preliminary Objections to Plaintiffs' complaint, all responses in opposition, all matters of record, after oral argument and in accord with the contemporaneous Opinion issued forth with, it hereby is **ORDERED** that the preliminary objections are **Sustained** and Plaintiffs' complaint is dismissed.

**BY THE COURT,**

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**ARNOLD L. NEW, J.**

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Defendants.	:	Control Number 103329

**OPINION**

This is an action filed by plaintiffs to set aside a settlement agreement in a New Jersey action. Plaintiffs are John R. DePhillipo and Mary DePhillipo, husband and wife. The defendants are GeneLink, Inc., GeneWize, Inc.<sup>1</sup>, a subsidiary of GeneLink, Inc., Robert P. Ricciardi, shareholder and present Chairman of the Board of GeneLink, Inc., Monte E. Taylor, Jr., CEO and member of the Board of Directors of GeneLink, Inc. Kenneth Russ Levine, an investment banker with First Equity Capital Security, Inc. and shareholder of GeneLink, Inc., First Equity Capital Security, Inc., an investment banking firm and shareholder of GeneLink, Inc., and Tad K. Rosenfeld, an attorney retained to represent GeneLink, Inc. in an action filed against GeneLink, Inc. by John DePhillipo in New Jersey.

**I. John DePhillipo's tenure with and termination from GeneLink, Inc.**

John DePhillipo served as Chairman of the Board and Chief Executive Officer of GeneLink, Inc. t/a GeneLink Biosciences, Inc. (hereinafter "GeneLink")<sup>2</sup> from January 6, 1995 through October 14, 2005. GeneLink is a bioscience company originally organized

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<sup>1</sup> Plaintiffs interchangeably refer to GeneWize as GeneWise.

<sup>2</sup> GeneLink was incorporated in Pennsylvania on January 6, 1995 and has a principal place of business in Florida. DePhillipo transacted business for GeneLink at his home in New Jersey.

to offer to the public the safe collection and preservation of a family's DNA material for later use by the family to identify and potentially prevent inherited disease. In addition to serving as Chairman of the Board and Chief Executive Officer of GeneLink, DePhillipo was also a shareholder who owned 3,360,000 shares of stock in his own name and in trust for his children and grandchildren. Maria DePhillipo provided administrative services to GeneLink. Maria DePhillipo was also a shareholder who owned 393,000 shares of GeneLink.

Between January 1, 2005 and October 15, 2005, GeneLink hired defendant Kenneth Russ Levine (hereinafter "Levine"), an investment banker with defendant First Equity Capital Security, Inc. (hereinafter "FECS") to raise funds and provide consulting services to GeneLink. Levine and FECS are also shareholders of GeneLink. On or about October 14, 2005, defendants Taylor and Ricciardi at the direction of Levine informed John DePhillipo that he was terminated.

## **II. The Lawsuit and Settlement**

On or about November 16, 2005, as a result of this termination, John DePhillipo filed a lawsuit against GeneLink in the Superior Court of New Jersey, Law Division, Atlantic County for contract fees and severance (hereinafter "underlying action"). GeneLink retained Tab K. Rosenfeld (hereinafter "Rosenfeld") to act as their attorney and to represent them in the action filed by DePhillipo. Rosenfeld practices law in New York.

DePhillipo was deposed four times during the litigation. During one of the depositions, when DePhillipo was without counsel, Rosenfeld told DePhillipo that

GeneLink's future was in doubt because of lack of sales and that he did not know where GeneLink would get the money to pay his fees.

On April 14, 2008, during a settlement conference with the court, Rosenfeld represented to the court and DePhillipo the following: GeneLink was in dire financial straits, he did not know how GeneLink was going to pay his attorney fees, GeneLink had not made any significant sales during the past years and GeneLink's financial future was in doubt.

Based on these representations and the advice of his attorney, DePhillipo agreed, on April 16, 2008, to sign a release releasing GeneLink from all claims. As part of the settlement terms, DePhillipo agreed to the following: (1) to waive claims totaling \$1,584,000.00 in severance pay and salary; (2) to surrender approximately 3,360,000 shares of stock in his name and in trust for his children and grandchildren residing and (3) to have his wife surrender her shares of stock in exchange for four hundred sixty-seven thousand (\$467,000.00) dollars.

### **III. Formation of GeneWize.**

In the early part of 2007 and 2008, GeneLink, Ricciardi, Taylor, Levine formed GeneWize Life Sciences, Inc.(hereinafter "GeneWize"), a subsidiary corporation of GeneLink. GeneWize was formed to provide GeneLink's genetically customized products and services to the nutrition markets. GeneWize intended to launch its service offerings in the third quarter of 2008.

GeneLink, Ricciardi, Taylor and Levine began soliciting and signing two hundred fifty six (256) Presidential Founders in GeneWize for one thousand dollars (\$1,000.00) and solicited four thousand seven hundred (4,700) prospective GeneWize dealers

(marketed affiliates) for five hundred dollars (\$500.00) each.<sup>3</sup> On April 14, 2008, GeneLink filed its annual report which disclosed the existence of GeneWize as the subsidiary of GeneLink but did not disclose any financial information on GeneWize.

#### **IV. The DePhillipo's alleged problems with the Settlement.**

In August 2008, plaintiffs instituted the instant action against GeneLink, GeneWize, FECS, Rosenfeld, Ricciardi, Levine and Taylor alleging fraud in the inducement, fraud for failing to disclose, negligent misrepresentation, conspiracy to commit fraud, and negligent non disclosure. Plaintiffs also seek rescission of the settlement agreement, punitive damages as well as other damages.

Defendants filed preliminary objections seeking to dismiss the entire complaint. One of the preliminary objections avers lack of personal jurisdiction for defendants Rosenfeld, Levine, and FECS. On April 1, 2009, the court heard oral argument solely on the question of personal jurisdiction and accepted supplemental submissions on the issue.

### **DISCUSSION**

#### **I. The court lacks personal jurisdiction over defendants Rosenfeld, Levine and FECS.**

Pennsylvania courts may exercise two types of personal jurisdiction over a non-resident defendant. The first type is general jurisdiction, which is founded upon the defendant's general activities within the forum, as evidenced by systematic and continuous contacts with the state. The second type is specific jurisdiction, which is premised upon the particular acts of the defendant that gave rise to the underlying cause

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<sup>3</sup> Plaintiffs' are not alleging that they were unaware of the existence and activities of GeneWize when the final settlement order was entered on May 13, 2008 or the release dated June 13, 2008 was executed. Rather, Plaintiffs' allege that "neither they nor any other shareholder, except insiders, were aware of GeneWize's fantastic success in selling thousands of new marketing dealerships worth \$2,300,000.00 until August 4, 2008." See Plaintiffs' Response to Defendants' Consolidated Preliminary Objections p. 3. See also, Plaintiffs' Response to Defendants' Reply To Its Initial Answers to Defendants' Preliminary Objections p.2.

of action.<sup>4</sup> Regardless of whether general or specific *in personam* jurisdiction is asserted, the propriety of such an exercise must be tested against the Pennsylvania Long Arm Statute, 42 Pa.C.S.A. § 5322, and the Due Process Clause of the Fourteenth Amendment.

In evaluating an objection to personal jurisdiction, the objecting party initially bears the burden of proof.<sup>5</sup> However, "once the moving party supports its objections to personal jurisdiction, the burden of proving personal jurisdiction is upon the party asserting it."<sup>6</sup>

## **A. General Jurisdiction**

### **1. Rosenfeld and Levine**

General jurisdiction may be exercised over a nonresident individual defendant when (i) he is present in Pennsylvania when process is served; (ii) he is domiciled in Pennsylvania when process is served; or (iii) he consents to suit.<sup>7</sup> After review of plaintiffs' submissions and after oral argument, it is quite clear that this court lacks general jurisdiction over Rosenfeld and Levine.

Affidavits submitted and depositions conducted in conformance with this court's order dated February 24, 2009 demonstrate that Rosenfeld was not served in Pennsylvania, was not domiciled within Pennsylvania when served with the complaint

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<sup>4</sup> Nutrition Mgmt. Servs. v. Hinchcliff, 926 A.2d 531 (Pa. Super. 2007).

<sup>5</sup> Barr v. Barr, 749 A.2d 992, 994 (Pa.Super. 2000); Grimes v. Wetzler, 749 A.2d 535, 538 (Pa.Super. 2000); King v. Detroit Tool Co., 682 A.2d 313, 315 (Pa. Super. 1996) (the objecting party must "meet its burden of showing jurisdictional infirmities that are 'clear and free from doubt' ").

<sup>6</sup> Barr, 749 A.2d at 994. *See also* Grimes, 749 A.2d at 538 ("once the movant has supported its jurisdictional objection, . . . the burden shifts to the party asserting jurisdiction to prove that there is statutory and constitutional support for the court's exercise of *in personam* jurisdiction").

<sup>7</sup>42 Pa. C.S.A. § 5301(a)(1).

and did not consent to jurisdiction in this court.<sup>8</sup> Rosenfeld's affidavit, which is undisputed by plaintiffs, demonstrates that Rosenfeld is not a resident of Pennsylvania, does not practice law in Pennsylvania, is not licensed in Pennsylvania, does not own any property in Pennsylvania, and does not conduct any business in Pennsylvania.

Similarly, the affidavits and depositions further establish that general jurisdiction does not exist over Levine. Levine was not served with the complaint commencing this action within Pennsylvania, was not domiciled within Pennsylvania when served with the complaint and has not consented to jurisdiction in this court.<sup>9</sup> Accordingly, since the evidence in this matter demonstrates that the three statutory bases for general personal jurisdiction do not exist with respect to Rosenfeld and Levine, the court lacks general personal jurisdiction over Levine and Rosenfeld.

## **2. FECS**

General jurisdiction over corporations may be exercised if (1) the corporation is incorporated or qualifies as a foreign corporation under the laws of this Commonwealth; (2) the corporation consents; or (3) the corporation carries on a "continuous and systematic" part of its business in this Commonwealth.<sup>10</sup> The evidence submitted demonstrates that FECS is not a Pennsylvania corporation, has not consented to jurisdiction in this court and does not maintain "a continuous and systematic part of its general business within this Commonwealth".<sup>11</sup>

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<sup>8</sup> Affidavit of Tad Rosenfeld, Exhibit "D" ¶ 4, 7, 8.

<sup>9</sup> Affidavit of Kenneth Levine, Exhibit "F" ¶ 5, 7, 8.

<sup>10</sup> 42 Pa. C. S. A. § 5301(a)(2)(i)-(iii).

<sup>11</sup> Affidavit of Kenneth Levine, Exhibit "F" ¶¶ 17, 19.

FECS does not incur taxes in Pennsylvania, does not advertise or maintain offices in Pennsylvania, has no offices or employees in Pennsylvania and has no mailing address, bank account or telephone listing in Pennsylvania. FECS does not maintain a website which specifically targets Pennsylvania residents nor does it solicit any business over the internet.<sup>12</sup> Given the lack of evidence to establish continuous and systematic business on the part of FECS within Pennsylvania, the court finds that the court lacks general personal jurisdiction over FECS.

### **B. Specific Jurisdiction**

In the absence of general jurisdiction, the court may exercise specific jurisdiction over the defendants. For a court to exercise specific personal jurisdiction over a non-resident, "(1) the non-resident defendant must have sufficient minimum contacts with the forum state, and (2) the assertion of *in personam* jurisdiction must comport with fair play and substantial justice."<sup>13</sup>

To establish specific jurisdiction over Rosenfeld and Levine, plaintiffs rely exclusively upon the respective contacts that Rosenfeld and Levine entered into with GeneLink. It is well settled that a contract with an out-of-state party alone cannot automatically establish sufficient minimum contacts in the other party's home forum. Rather the totality of the parties' dealings, including the contract negotiations, contemplated future consequences of the contract and actual course of dealing must be

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<sup>12</sup> Levine Affidavit, Exhibit "F" ¶¶ 17, 25-33, 21; Levine supplemental affidavit Exhibit "F" ¶ 7; Ricciardi deposition, Exhibit "B" p. 45, Levine deposition, Exhibit "H" p. 56, 57, 81.

<sup>13</sup> Kubik v. Letteri, 614 A.2d 1110, 1114 (Pa. 1992), *citing* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985).

evaluated in order to determine whether Rosenfeld and Levine are subject to suit in this forum.<sup>14</sup>

Rosenfeld's only contacts with Pennsylvania relevant to the allegations in the complaint consist of correspondence via mail, e-mail, telephone and facsimile to plaintiffs' counsel Christopher P. Flannery, Esquire in the underlying action. At no time did Rosenfeld perform any legal services in Pennsylvania, nor was he ever present in Pennsylvania in connection with any of the work performed on behalf of GeneLink.

Merely representing a corporation incorporated in Pennsylvania, making several telephone calls and writing follow up letters on the client's behalf is insufficient for this court to find that Rosenfeld purposefully availed himself of Pennsylvania's benefits and protections such that he could reasonably anticipate being called to defend himself in Pennsylvania's courts.<sup>15</sup>

As to Levine and FECS, plaintiffs rely upon three press releases issued by GeneLink to impose jurisdiction. According to plaintiffs, FECS and Levine's name on the press releases as the person to contact for investor relations for GeneLink constitutes sufficient contacts for Levine and FECS to reasonably anticipate being haled into court here. The court does not agree. The press releases were not targeted to Pennsylvania residents, Levine rarely returned messages left as a result of the press releases and never returned any call from a Pennsylvania resident.<sup>16</sup> The telephone number and e mail

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<sup>14</sup> Kubik v. Letteri, 614 A.2d 1110, 1115 (Pa. 1992).

<sup>15</sup> *See, Nutrition Mgmt. Servs. v. Hinchcliff*, 926 A.2d 531(Pa. Super. 2007)( telephone calls and sent correspondence does not lead to the conclusion that defendants purposefully availed themselves of the privileges and benefits of our Commonwealth to the extent that they should have anticipated having to defend a lawsuit).

<sup>16</sup> *Id.* at 62.

address in the press releases belong exclusively to GeneLink.<sup>17</sup> The press releases, like a passive web site, do little more than make information available to those who are interested in it and therefore do not constitute grounds for this court to exercise personal jurisdiction.

Levine's only other contacts with Pennsylvania are an unspecified number of phone calls to GeneLink and a meeting to discuss scientific improvements of GeneLink. Like Rosenfeld, these contacts are insufficient for this court to find that defendants purposefully availed himself of Pennsylvania's benefits. Levine has not met with GeneLink's lawyers or accountants, never attended any fundraising in Philadelphia, never attended any GeneLink board meetings and has not advertised in Pennsylvania. Merely entering into a contract to act as an investor consultant without any other contacts is insufficient to impose jurisdiction.<sup>18</sup> Accordingly, defendants' preliminary objections in regard to lack of personal jurisdiction are sustained.

## **II. Plaintiffs' claims for Fraud and Negligence are dismissed.**

Plaintiffs' complaint alleges claims for fraud and negligence, the crux of which are (1) representations allegedly made by Rosenfeld at one of DePhillipo's depositions and during a settlement conference<sup>19</sup> and (2) omissions allegedly made about GeneWize's financial success. Plaintiffs have clearly stated that they are not bringing this lawsuit as shareholders of GeneLink. Rather, plaintiffs are bringing this action for

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<sup>17</sup> Levine deposition, Exhibit "H" p. 45-46.

<sup>18</sup> FEC and Levine's status as shareholders of GeneLink alone is also insufficient to establish jurisdiction. PSC Professional Services Group, Inc. v. American Digital Systems, Inc., 555 F. Supp. 788, 792 (E.D. Pa. 1983).

<sup>19</sup> Throughout the complaint, Rosenfeld is alleged to be an agent for GeneLink. As such his representations are being analyzed as an agent of GeneLink and not analyzed as to his individual liability since this court determined that it lacks personal jurisdiction over him.

individual harm they allegedly suffered as a result of the settlement in the underlying action. Defendants filed preliminary objections alleging the complaint fails to state a claim upon which relief can be granted. In order to determine whether plaintiffs have properly alleged claims for fraud and negligence, it is necessary to determine whether the elements of these claims are adequately pled.

**A. The claims for fraudulent omission, negligent failure to disclose and negligent misrepresentation fail because defendant GeneLink did not owe Plaintiffs any duty to disclose.**

In the complaint, plaintiffs purport to state claims against GeneLink for fraudulent nondisclosure and negligent failure to disclose. The complaint alleges that at the time plaintiffs agreed to sign the release, defendant Rosenfeld deliberately failed to disclose material facts relating to GeneLink's wholly owned subsidiary, GeneWize.<sup>20</sup>

An assertion of an omission may suffice as a misrepresentation under the standard for fraud. "To be actionable, a misrepresentation need not be in the form of a positive assertion but is any artifice by which a person is deceived to his disadvantage and may be by false or misleading allegations or by concealment of that which should have been disclosed, which deceives or is intended to deceive another to act upon it to his detriment."<sup>21</sup> However, "an omission is actionable as fraud only where there is an **independent** duty to disclose the omitted information . . . and such an **independent** duty exists where the party who is alleged to be under an obligation to disclose stands in a

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<sup>20</sup> Complaint p. 66.

<sup>21</sup> Wilson v. Donegal Mutual Insurance Co., 410 Pa. Super. 31, 41, 598 A.2d 1310, 1315 (1991).

fiduciary relationship to the party seeking disclosure . . . ."22 A duty to speak is also required in stating a claim for negligent failure to disclose and negligent misrepresentation. 23

Here, absent from the complaint are any allegations alleging the existence of a fiduciary relationship between plaintiffs and defendant GeneLink. Plaintiffs have clearly stated that this is not a suit against defendant GeneLink for fraud against the shareholders. As pled in the complaint, a fiduciary relationship clearly existed between Rosenfeld and GeneLink by virtue of their attorney client relationship. Rosenfeld's fiduciary duty however does not extend to plaintiffs who were and continue to be Rosenfeld's principals' adversaries.

A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.<sup>24</sup> The critical question is whether the relationship is characterized by "overmastering influence" on one side or "weakness, dependence, or trust, justifiably reposed" on the other side.<sup>25</sup> The relationship is marked by a disparity in position that the inferior party places complete trust in the superior party's advice and seeks no other counsel, so as to give rise to a potential abuse of power.<sup>26</sup>

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<sup>22</sup> In re Estate of Evasew, 526 Pa. 98, 105, 584 A.2d 910, 913 (1990)(emphasis added); Wilson, 410 Pa. Super. at 41, 598 A.2d at 1316; Smith v. Renault, 387 Pa. Super. 299, 306, 564 A.2d 188, 192 (1989).

<sup>23</sup> See, Althaus ex rel. Althaus v. Cohen, 562 Pa. 547, 756 A.2d 1166, 1168 (Pa. 2000).

<sup>24</sup> Restatement (Second) of Torts § 874, cmt. a (1979).

<sup>25</sup> See eToll, Inc. v. Elias/Savion Adver. Inc., 811 A.2d 10, 23 (Pa. Super. 2002).

<sup>26</sup> Id.

Here, the complaint fails to allege any "overmastering influence" or "weakness, dependence or trust justifiably reposed" by GeneLink over plaintiffs. On the contrary, the complaint alleges that plaintiffs were represented by their own counsel during the settlement negotiations and that plaintiffs accepted the settlement based on the advice of their counsel.<sup>27</sup> Accordingly, the claims for fraudulent non disclosure and negligent non disclosure fail based on a lack of duty to disclose and defendants' preliminary objections are sustained.

Additionally, the claims for fraudulent inducement and negligent misrepresentation also fail. One of the elements necessary to state a claim for fraudulent inducement and negligent misrepresentation is justifiable reliance. It is not enough simply to assert that a statement was "fraudulent" and that reliance upon it induced some action. Nor is it sufficient to aver that a knowingly false statement was made for the purpose of misleading another into reliance upon it. Before fraud will be found, a plaintiff must demonstrate that he justifiably relied on the false statement. Without a showing that it was justifiable for plaintiffs to rely on the statements by GeneLink through their agent, plaintiffs cannot prove fraud.<sup>28</sup>

Plaintiffs allege that they relied upon the following representations to settle the underlying action:

- (a) Defendant GeneLink, Inc. was in such dire financial straits that he (Rosenfeld) didn't know how they (defendants) were able to pay his attorneys fees.
- (b) Defendant GeneLink, Inc. had not made any significant sales during the past years.

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<sup>27</sup> Complaint ¶ 23.

<sup>28</sup> Blumenstock v. Gibson, 811 A.2d 1029 (Pa. Super. 2002).

(c) Defendant GeneLink, Inc.'s financial future was in doubt.<sup>29</sup>

Given the adversarial environment in which these statements were made, plaintiffs were not justified in relying upon these representations. The representations were made during settlement negotiations. The statements allegedly relied upon constitute vague exaggerations and overstatements regarding the financial worth of GeneLink which amount to nothing more than mere puffery for which no legal consequences exist.<sup>30</sup> Even the rules of professional conduct recognize that estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily not statements that can form the basis of a fraud claim.<sup>31</sup>

Moreover, plaintiffs could have independently tested the accuracy of GeneLink's statements by requesting to examine the books and records of GeneLink.

Each must trust his own judgment and neither is justified in relying upon the opinion of the other. The law assumes that the ordinary man has a reasonable competence to form his own opinion as to the advisability of entering into those transactions that form part of the ordinary routine of life. The fact that one of the two parties to a bargain is less astute than the other does not justify him in relying upon the judgment of the other. This is true even though the transaction in question is one in which the one party knows that the other is somewhat more conversant with the value and quality of the things about which they are bargaining.<sup>32</sup>

Plaintiffs were not justified in relying upon defendants' agent's statements regarding the financial security of the GeneLink to settle the claim. Accordingly,

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<sup>29</sup> Complaint ¶¶20, 22.

<sup>30</sup> Castrol Inc. v. Pennzoil Co., 987 F.2d 939, 945 (3d Cir. 1993).

<sup>31</sup> Pa. Rules of Professional Conduct Rule 4.1 Explanatory Comment [2].

<sup>32</sup> Restatement (Second) Torts § 542 (1977).

defendants' preliminary objections as to the fraudulent inducement and negligent misrepresentation claims are sustained.<sup>33</sup>

**C. The claims for Fraudulent Non disclosure and Negligent Non Disclosure against GeneWize are Dismissed.**

The complaint alleges that defendant GeneWize fraudulently and/or negligently failed to disclose its corporate existence and financial success to plaintiffs and the GeneLink shareholders which depressed the value of GeneLink's stock inducing plaintiffs to tender their shares in GeneLink at less than full value in connection with the settlement. Once again, plaintiffs fail to allege the existence of a duty on the part of GeneWize to disclose such information.

The complaint alleges that GeneWize is the subsidiary of GeneLink. A parent corporation possesses a separate existence and is treated separately from a subsidiary, unless there are circumstances justifying disregard of the corporate entity. Pennsylvania law allows the corporate form to be disregarded in certain situations. Here, plaintiffs allege that GeneWize's corporate form should be disregarded. However, even taking the allegations as true, the complaint is devoid of any duty on the part of GeneWize to disclose to plaintiffs its corporate existence and financial success. Accordingly, defendants' preliminary objections are sustained.

**III. The claims for conspiracy against Riccardi and Taylor also fail.**

Plaintiffs also purport to state claims for conspiracy against defendants Riccardi and Taylor for conspiring with defendants GeneLink and GeneWize in making certain representations and failing to disclose other information. To state a civil action for conspiracy, a complaint must allege: (1) a combination of two or more persons acting

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<sup>33</sup> These claims may also be barred by the doctrine of absolute judicial privilege.

with a common purpose to do an unlawful act or to do a lawful act by unlawful means or unlawful purpose; (2) an overt act done to further the common purpose, and (3) actual legal damage.<sup>34</sup> Since plaintiffs have failed to plead a cause of action for fraud and negligence, plaintiffs have failed to state the unlawful act required for a conspiracy claim. Accordingly, defendants' preliminary objections are sustained in this regard.<sup>35</sup>

### **CONCLUSION**

For the forgoing reasons, defendants' preliminary objections are sustained and the complaint is dismissed.

**BY THE COURT**

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**ARNOLD L. NEW, J.**

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<sup>34</sup> Pappert v. TAP Pharm. Prods. Inc., 868 A.2d 624 (Pa. Cmwlth. 2005).

<sup>35</sup> Moreover, the claim for punitive damages and rescission need not be discussed since the court has dismissed the underlying claims of fraud and negligence.

