

defendants for breach of contract, violation of the Uniform Condominium Act, breach of fiduciary duty, breach of statutory warranty, breach of implied warranty, fraud, negligent misrepresentation, professional negligence and violations of the Uniform Trade Practices Consumer Protection Law.

On August 23, 2011, declarant filed a joinder complaint against the current executive board members of the Condominium Association. The joinder complaint alleges that the board breached its fiduciary obligations to the condominium owners when they retained the law firm employing the Board President, Berman, without soliciting competitive bids; permitted the law firm to control the litigation, notwithstanding their financial interest to maximize fees, contrary to the best interests of the Association; and failed or refused to account to, and/or conceal from the Association and its members, the true amount of the legal and related fees being paid by the Association for the Belgravia litigation. Additional defendants have now filed preliminary objections to the joinder complaint seeking to dismiss the joinder complaint for improper joinder, lack of standing, ripeness and factual and legal insufficiencies.

DISCUSSION

Pennsylvania Rule of Civil Procedure 2252 provides that any party may join as an additional defendant any person not a party to the action who may be (1) solely liable on the underlying cause of action against the joining party, or (4) liable to or with the joining party on any cause of action arising out of the transactions or occurrence or series of transactions or occurrences upon which the underlying cause of action against the joining party is based.¹ This rule is to be "broadly construed to effectuate its purpose of avoiding multiple lawsuits by settling in one action all claims arising out of the transaction or occurrence on which plaintiff's

¹ Subparts (2) and (3) of Pa. R. Civ. P. 2252 (a) have been rescinded.

cause of action is based."² However, joinder is permitted only as long as the additional defendant's alleged liability is related to the claim which the plaintiff asserts against the original defendant.³

Here, declarant joined Additional Defendants pursuant to Pa. R. Civ. P. 2252 (a)(4). Declarant argues that joinder is proper because the claims asserted against Additional Defendants arise from the same factual background as the claims asserted in the underlying litigation. A review of the pertinent pleadings demonstrates that joinder is improper.

The second amended complaint filed by the Association seeks redress for harm caused by the declarant during and after the conversion of 1811 Chestnut Street to a condominium. The allegations concern the declarant's failure to maintain or repair the building during the conversion and transition periods, the declarant's misrepresentations regarding the buildings condition and structure to the perspective owners and the declarant's deceptive budgeting practices.

The joinder complaint, on the other hand, does not arise from alleged failures to repair and maintain the condominium nor does it arise from the alleged misrepresentations regarding the structure of the condominium. The joinder complaint arises from alleged breaches of fiduciary duty by the current executive board in retaining counsel to file the underlying action, payment of excessive legal fees and disagreement with the litigation strategy being utilized in the underlying action. The joinder complaint is unrelated to the Association's claims against defendants in the underlying action. As such since the joinder complaint involves transactions and occurrences which are factually different in time and nature from the underlying action, the joinder of additional defendants to this action is improper.

² Garrett Electronics Corp. v. Kampel Enterprises, Inc., 382 Pa. Super. 352, 555 A.2d 216, 217 (1989).

³ Olson v. Grutza, 428 Pa. Super. 378, 631 A.2d 191, 197 (1993).

CONCLUSION

Based on the foregoing, the preliminary objections are sustained as to improper joinder and the joinder complaint is dismissed.⁴

BY THE COURT,


PATRICIA A. McINERNEY, J.

⁴ Since joinder is improper, the court has not considered the remaining preliminary objections including but not limited to standing and ripeness.