

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

ARBOR ASSOCIATES, INC.	:	August Term, 2002
	:	
Plaintiff,	:	No. 03976
v.	:	
	:	Commerce Program
AETNA U.S. HEALTHCARE, et. al.	:	
	:	Control No. 112229
Defendants.	:	

ORDER and MEMORANDUM

AND NOW, this 28th day of February 2003, upon consideration of the Preliminary Objections of Aetna U.S. Healthcare (“Aetna”), all responses in opposition, the respective memoranda, all matters of record, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** as follows:

1. Aetna’s Preliminary Objection to Count I (breach of contract) is **sustained**;
2. Aetna’s Preliminary Objection to Count V (fraud) is **sustained**;
3. Aetna’s Preliminary Objection regarding attorney’s fees is **sustained** and all references to attorney’s fees hereby are stricken from the Complaint;
4. Aetna’s Preliminary Objection regarding punitive damages is **sustained** and all references to punitive damages hereby are stricken from the Complaint;
5. The remainder of Aetna’s Preliminary Objections are **overruled without prejudice**.

Plaintiff Arbor Associates, Inc. hereby is granted leave to amend its Complaint within twenty (20) days from the date of entry of this Order.

BY THE COURT:

C. DARNELL JONES, J.

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AETNA U.S. HEALTHCARE, et. al.	:	
	:	Control No. 112229
	:	
Defendants.	:	

MEMORANDUM OPINION

C. DARNELL JONES, J.

Before the Court are the Preliminary Objections of Aetna U.S. Healthcare (“Aetna”) to the Complaint of Arbor Associates, Inc. (“Arbor”). For the reasons fully set forth below, Aetna’s Preliminary Objections are **sustained in part** and **overruled in part**.

DISCUSSION

A. As Plead, Count I Fails To State A Valid Claim For Breach of Contract

Aetna has filed preliminary objections to Count I of the Complaint, arguing that Arbor has failed to plead its breach of contract claim with sufficient specificity. This Court agrees. To sustain a claim for breach of contract, the plaintiff must establish: (1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damages. CoreStates Bank, Nat’l Assn. v. Cutillo, 723 A.2d 1053 (Pa. Super. 1999). As plead, Arbor has failed to set forth sufficient facts to support the existence of a contract between itself and Aetna. Moreover, pursuant to Rule 1019(i), Arbor must identify whether such agreement was oral or in writing. If the agreement between the parties is in writing, Rule 1019(i) mandates that it

be attached to the Complaint. Pa.R.C.P. 1019(i). If the writing is not accessible, Arbor must explain the reasons therefore and aver the substance of the writing in its Complaint. Id. Arbor has failed to comply with these requirements.

In the event that Arbor is able to make allegations supporting a claim for breach of contract, Arbor hereby is granted leave to amend its Complaint within twenty (20) days from the date of entry of this Order.

B. Arbor's Fraud Claim (Count V) Is Insufficiently Plead (Count V)

Count V of the Complaint purports to state a claim against all defendants for fraudulent misrepresentation. To successfully aver a cause of action for fraudulent misrepresentation, plaintiff must establish: 1) a representation; 2) which is material to the transaction at hand; 3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; 4) with the intent of misleading another into relying on it; 5) justifiable reliance on the misrepresentation; and, 6) the resulting injury was proximately caused by the reliance. Gibbs v. Ernst, 538 Pa. 193, 207, 647 A.2d 882, 889 (1994). Based on the averments of the Complaint and giving Arbor all reasonable inferences deducible from the well-pleaded material facts of the Complaint, this Court finds that Arbor has failed to allege facts to support of its fraud claim with the requisite level of specificity required by Rule 1019(b).

In the event that Arbor is able to make allegations supporting a claim for fraudulent misrepresentation, Arbor hereby is granted leave to amend its Complaint within twenty (20) days from the date of entry of this Order.

C. Arbor Is Not Entitled To Attorney's Fees

Arbor has also requested an award of attorney's fees, which are not recoverable at bar.

"[T]he parties to litigation are responsible for their own fees unless otherwise provided by statutory authority, agreement of the parties or some other recognized exception." Equibank v. Miller, 422 Pa. Super. 240, 619 A.2d 336, 338 (1993). Arbor cites no statute, agreement or recognized exception authorizing an award of attorney's fees in this matter. Accordingly, the Court sustains Aetna's Preliminary Objection and strikes all demands for attorney's fees from the Complaint.

D. Arbor Is Not Entitled To Punitive Damages

Aetna has also moved to strike Arbor's request for punitive damages. Punitive damages may only be awarded under limited conditions. Pennsylvania has adopted Section 908(2) of the Restatement (Second) of Torts regarding the imposition of punitive damages and permits punitive damages only for conduct that is "outrageous because of the defendant's evil motives or his reckless indifference to the rights of others." Restatement (Second) of Torts § 908(2); Feld v. Merriam, 506 Pa. 383, 485 A.2d 742 (1984); Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355 (1963). A court may award punitive damages only if the described conduct was "malicious, wanton, reckless, willful, or oppressive." Chambers, 411 Pa. at 344-45, 192 A.2d at 358. The proper focus is on "the act itself together with all the circumstances including the motive of the wrongdoer and the relations between the parties" Id. at 345, 192 A.2d at 358.

Based on the averments of the Complaint and giving Arbor all reasonable inferences deducible from the well-pleaded material facts of the Complaint, this Court finds that Arbor has failed to sufficiently allege any facts which would warrant the imposition of punitive damages in this case. Accordingly, Aetna's Preliminary Objection regarding punitive damages is sustained and all references to punitive damages hereby are stricken from the Complaint.

CONCLUSION

For the above-stated reasons, Aetna's Preliminary Objections are **sustained in part** and **overruled in part**:

1. Aetna's Preliminary Objection to Count I (Breach of Contract) of the Complaint of Arbor Associates, Inc.'s ("Arbor") is **sustained**;
2. Aetna's Preliminary Objection to Count V (fraud) is **sustained**;
3. Aetna's Preliminary Objection regarding attorney's fees is **sustained** and all references to attorney's fees hereby are stricken from the Complaint;
4. Aetna's Preliminary Objection regarding punitive damages is **sustained** and all references to punitive damages hereby are stricken from the Complaint; and
5. The remainder of Aetna's Preliminary Objections are **overruled without prejudice**.

Arbor hereby is granted leave to amend its Complaint within twenty (20) days from the date of entry of this Order.¹ This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

C. DARNELL JONES, J.

Dated: February 28, 2003

¹The eventual success or failure of Arbor's tort claims may likely depend on how its breach of contract claim is plead in the Amended Complaint. This Court instructs Arbor to familiarize itself with the gist of the action and/or economic loss doctrines and to plead only those causes of action for which recovery is permitted under Pennsylvania law.

It should also be noted that, in Pennsylvania, absent an underlying breach of contract, no independent cause of action for breach of the implied duty of good faith exists. JHE, Inc. v. SEPTA, 2002 WL 1018941 (C.P. Phila. May 2002); Commonwealth v. BASF Corp., 2001 WL 1807788 (C.P. Phila. March 2001).

