

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

JOHN M. THOMPSON, et. al.	:	
	:	February Term, 2002
	:	
Plaintiffs,	:	No. 04428
v.	:	
	:	Commerce Program
THE GLENMEDE TRUST COMPANY	:	
	:	Control No. 101000
Defendant.	:	

ORDER and MEMORANDUM

AND NOW, this 18th day of February 2003, upon consideration of the Preliminary Objections of Defendant The Glenmede Trust Company (“Glenmede”), all responses in opposition, the respective memoranda, all matters of record, and in accordance with the contemporaneous Memorandum Opinion, it hereby is **ORDERED** and **DECREED** as follows:

1. Glenmede’s Preliminary ObjectionS to Counts I (fraud), IV (negligence), V (gross negligence) and VI (UTPCPL) are **SUSTAINED** and the claims dismissed.
2. Glenmede’s Preliminary Objections to Counts II (breach of contract) and III (breach of fiduciary duty) are **OVERRULED**.

Glenmede is directed to file an answer to the remainder of Plaintiffs’ Complaint within twenty (20) days from the date of entry of this Order.

BY THE COURT:

GENE D. COHEN, J.

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MEMORANDUM OPINION

GENE D. COHEN, J.

Before the Court are the Preliminary Objections of Defendant The Glenmede Trust Company (“Glenmede”). For the reasons fully set forth below, Glenmede’s Preliminary Objections are **sustained in part** and **overruled in part**.

DISCUSSION

A. Glenmede’s Preliminary Objections in the Nature of a Demurrer Are Sustained as to Counts I (Fraud) and VI (UTPCL)

Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure allows for preliminary objections based on legal insufficiency of a pleading or a demurrer. When reviewing such preliminary objections, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa. Super. 2000). However, the pleaders' conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinions are not considered to be admitted as true. Giordano v. Ridge, 737 A.2d 350, 352 (Pa. Commw.1999), *aff'd*. 559 Pa. 283, 739 A.2d 1052 (1999). Preliminary objections should be sustained only where

"it is clear and free from doubt from all the facts pleaded, that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazara, 746 A.2d 642, 643 (Pa. Super. 2000).

In Pennsylvania, in order to maintain a cause of action for fraud, the plaintiff must allege the following elements: (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. Bortz v. Noon, 556 Pa. 489, 499, 729 A.2d 555, 560 (1999). Here, Plaintiffs have plead insufficient facts to support a cause of action for fraud. Specifically, Plaintiffs have failed to set forth facts to support their allegation that Glenmede acted with the intent to deceive Plaintiffs. Accordingly, Count I fails as a matter of law.

Count VI of the Complaint purports to state a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. C.S.A. § 201-1 *et. seq.* In support of their claim, Plaintiffs rely upon two specific provisions of the UTPCPL: 1) § 201-2(4)(vii) which relates to claims for false advertising; 2) § 201-2(4)(ix) which is the "catch-all" provision of the UTPCPL. Plaintiffs' claim fails under both sections. First, Plaintiffs have failed to allege any facts which demonstrate that they heard or relied upon any of Glenmede's advertising. Individual representations made by Glenmede upon which Plaintiffs allegedly relied do not constitute "advertising" as intended by the UTPCPL. Moreover, to establish a claim under the catchall provision, a party must either prove the elements of common law fraud, or that defendant's deceptive conduct caused harm to the plaintiff. *See e.g. Zweircan v. General Motors*

Co., 2002 WL 31053838; Weiler v. SmithKline Beecham, 53 Pa. D. & C. 4th 449 (C.P. Phila. 2001)(Herron, J.). As fully discussed *infra*, plaintiffs have failed to satisfy their burden of pleading and therefore, their UTPCPL claims are likewise dismissed.

B. Plaintiffs' Negligence Claims (Counts IV and V) Are Barred By The Economic Loss Doctrine

Glenmede has filed Preliminary Objections to Plaintiffs' negligence claims on the basis of the economic loss doctrine. The Pennsylvania Superior Court has held that "...the economic loss doctrine precludes recovery in negligence action for injuries which are solely economic." David Pflumm Paving & Excavating, Inc. v. Foundation Services Co., 2003 WL 220475 (Feb. 3, 2003), As the sole damages alleged by Plaintiffs in Counts IV and V are purely economic in nature, these claims necessarily fail as a matter of law.¹

CONCLUSION

For the above-stated reasons, this Court hereby finds as follows:

1. Glenmede's Preliminary Objection to Counts I (fraud), V (gross negligence) and VI (UTPCPL) are **SUSTAINED** and the claims dismissed.
2. Glenmede's Preliminary Objections to Counts II (breach of contract) and III (breach of fiduciary duty) are **OVERRULED**.

Glenmede is directed to file an answer to the remainder of Plaintiffs' Complaint within twenty (20) days from the date of entry of this Order.

This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

¹This Court finds that, at least at this stage of the litigation, Plaintiffs have stated valid claims for breach of contract (Count II) and breach of fiduciary duty (Count III). This finding is not inconsistent with the applicable law, as the Pennsylvania Rules of Civil Procedure permit causes of action to be pled in the alternative. Pa.R.C.P. 1020 (c).

GENE D. COHEN, J.

Dated: February 18, 2003