

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

R. BLAKE EDMONDS, D.M.D. and	:	
GERALD A. DALY, D.M.D.	:	October Term 2004
	:	
Plaintiffs,	:	No. 1406
v.	:	
	:	Commerce Program
BRENDA ROYAL	:	
	:	Control Nos. 050388, 050198
Defendant.	:	

ORDER

AND NOW, this 22nd day of August, 2005, upon consideration of the Preliminary Objections of Plaintiffs R. Blake Edmonds, D.M.D., and Gerald A. Daly, D.M.D., to the New Matter and Counterclaims of Defendant Brenda Royal (Control No. 050388) and the responses thereto, the Defendant's Praecepto to Overrule Preliminary Objections (Control No. 050198) and the response thereto, and in accordance with the attached memorandum, it is hereby **ORDERED** and **DECREED** as follows:

- 1) Defendant's Praecepto to Overrule Preliminary Objections is **STRICKEN**;
- 2) Plaintiffs' Preliminary Objections to Counterclaim Counts II, III, IV, V, VI, VII, VIII, IX, and X are **SUSTAINED** and Counterclaim Counts II, III, IV, V, VI, VII, VIII, IX, and X are **DISMISSED**;
- 3) Plaintiffs' Preliminary Objections to New Matter paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, and 50 and the claim for relief are **SUSTAINED** and New Matter paragraphs 23, 24, 25, 26, 27, 28,

29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, and 50 and the claim for relief are **STRICKEN** from New Matter; and

- 4) Plaintiffs' remaining Preliminary Objections are **OVERRULED** and Plaintiffs are further **ORDERED** to file an answer to Count I of Defendant's Counterclaim within twenty (20) days of this Order.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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Defendant.	:	

MEMORANDUM

Presently before the court are the Preliminary Objections of Plaintiffs R. Blake Edmonds, D.M.D., and Gerald A. Daly, D.M.D., to the New Matter and Counterclaims of Defendant Brenda Royal.

This dispute arises out of a partnership agreement between Plaintiffs and Defendant's late husband. The partnership owned and controlled the building in which the three men had their dental practices. Plaintiffs contend that Defendant, subsequent to the passing of her husband, would not let them purchase the partnership interest of her late husband, leave the premises, and make the requisite payments for the building's upkeep. Plaintiffs filed their complaint to enforce specific performance of the partnership agreement.

Defendant asserts that Plaintiffs' failure to timely file their motion to determine the preliminary objections requires this court to overrule the preliminary objections in their entirety. Although Plaintiffs exceeded the time period established by Philadelphia County Civil Local Rule 1028(c) by a single day, Defendant has suffered no prejudice as a result. Therefore, in accordance with Pa. R.C.P. 126, which requires a court to liberally construe the rules, the Defendant's challenge fails and the praecipe shall be stricken.

Plaintiffs challenge all of Defendant's counterclaims, asserting the counterclaims lack specificity, are legally insufficient, and that Defendant lacks the capacity to sue. In several of the counterclaims, Defendant makes assertions without any supporting allegations. For this reason, Counts II, III, IV, VIII, IX, and X shall be dismissed. Although Defendant presents additional allegations in connection with Counts V, VI, and VII, Defendant fails to provide sufficient facts to establish each element of these causes of action, leading to the dismissal of these counts. Plaintiffs assert Count I lacks specificity, but this count is clear in the context of this matter since Plaintiffs concede in the complaint that they have not paid Defendant under the partnership agreement.

Plaintiffs contend Defendant's New Matter does not conform to the Rules of Civil Procedure, contains impertinent matter, and is legally insufficient. New Matter is a responsive pleading for affirmative defenses and material facts which, in this instance, are not "mere denials of the averments" in the complaint. Pa. R.C.P. 1030(a). Paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 42, and 43 in Defendant's New Matter fail to comply with Pa. R.C.P. 1030(a) because these paragraphs contain neither affirmative defenses nor the requisite material facts. Similarly, Defendant's claim for relief is inappropriate for inclusion in New Matter.

Impertinent matter is immaterial and inappropriate to the proof of the cause of action. Common Cause/Pa. v. Commonwealth, 710 A.2d 108, 115 (Commw. 1998). The information contained in paragraphs 37, 38, 44, 47, 48, 49, and 50 is not relevant to the causes of action in the pleadings because it has no bearing on the enforcement or breach of the partnership agreement.

Relying on the facts set forth in paragraphs 39 and 40 of the New Matter, Defendant sets forth the affirmative defense of res judicata in paragraph 41. Plaintiffs

contend that Defendant has failed to establish the applicability of res judicata in this instance. “The doctrine of res judicata applies when there exists an identity of issues, an identity of causes of action, identity of persons and parties to the action, and identity of the quality or capacity of the parties suing or being sued.” In re Iulo, 564 Pa. 205, 210, 766 A.2d 335, 337 (2001). Comparing the complaint to the contents of the New Matter and the disposition in the prior matter, it is clear that res judicata cannot be established. Therefore, paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, and 50 and the claim for relief are inappropriate for New Matter and shall be stricken. Paragraphs 45, 46, 51, 52, 53, 54, and 55 of New Matter survive Plaintiffs’ challenges.

BY THE COURT,

HOWLAND W. ABRAMSON, J.