

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

JOA CASE MANAGEMENT SOLUTIONS	:	April Term, 2005
	:	
v.	:	No. 2290
	:	
SCHOOL DISTRICT OF PHILADELPHIA, and SEDGWICK CLAIMS MAMAGEMENT SERVICES, INC.	:	Motion Control Nos. 011706, 010357

ORDER

AND NOW, this 13th day of March, 2006, upon consideration of Defendants School District of Philadelphia's and Sedgwick Claims Management Services, Inc.'s Preliminary Objections to the Complaint (Control No.011706), Plaintiff's Preliminary Objections to Defendant's Preliminary Objections to Plaintiff's Complaint (Control No. 010357), all responses in opposition, memoranda of law, all matters of record, and in accord with the Opinion filed herewith, it is hereby **ORDERED** as follows:

- 1) Defendants' Preliminary Objections to Count I (Fraud) and Count IV (Third Party Breach of Contract) are **Sustained** and those claims are **Dismissed**.
- 2) Defendants' Preliminary Objections to Count II (Breach of Contract) and Count III (Unjust Enrichment) are **Overruled**.
- 3) Plaintiff's Preliminary Objections to Defendant's Preliminary Objections to Plaintiff's Complaint are **Overruled**.

BY THE COURT

HOWLAND W. ABRAMSON, J.

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OPINION

Howland W. Abramson, J.March 13, 2006

BACKGROUND

Plaintiff, JOA Case Management Solutions, brought this action against the School District of Philadelphia and Sedgwick Claims Management Services, Inc. The complaint contains four counts: Fraud (Count I), Breach of Contract by the School District (Count II), Unjust Enrichment (Count III), and Third Party Breach of Contract by Sedgwick Claims Management Services, Inc. (Count IV).

The complaint alleges that in June 2003, JOA began to provide consulting services to the School District as a result of a contract between JOA personnel and a member of the School District's Risk Management Division. The complaint also alleges that JOA discontinued its consulting services in October 2004 upon written request from the School District. Finally, the complaint alleges that Defendant School District of Philadelphia failed to pay JOA under the terms of a contract dated November 2003, and that defendant Sedgwick Claims Management Services Inc., in breach of an agreement

between itself and the School District, not only failed to review and to submit JOA's invoices to the School District, but also failed to transmit payment to JOA.

DISCUSSION

As to Count I (Fraud), the Court finds that the alleged promise of future payments made to JOA by the agents of the Philadelphia School District does not constitute fraud.

“[A] promise to do something in the future, which promise is not kept, is not fraud.”

Krause v. Great Lakes Holdings, Inc., 387 Pa. Super. 56, 67, 563 A.2d 1182, 1187

(1989). In addition, the Court rejects Plaintiff's attempt to recast an alleged breach of contract into a tort claim. Under the “gist of the action” doctrine, “... courts are cautious about permitting tort recovery based on contractual breaches.” Hart v. Arnold, 884, A.2d 316, 339 (Pa. Super. 2005).

Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals... To permit a promisee to sue his promisor in tort for breaches of contract *inter se* would erode the usual rules of contractual recovery and inject confusion into our well-settled forms of actions.

Id.

As to Count IV (Third Party Breach of Contract), the Court finds that Plaintiff JOA was not a third party beneficiary of the contract between the School District and Sedgwick.

[A] party becomes a third party beneficiary only where both parties to the contract express an intention to benefit the third party in the contract itself ... *unless*, the circumstances are so compelling that recognition of the beneficiary's right is appropriate to effectuate the intention of the parties, and the performance satisfies an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

Scarpitti v. Weborg, 530 Pa. 366, 372-73, 609 A.2d 147, 150-51 (1992).

Finally, as to Plaintiff's Preliminary Objections to Defendant's Preliminary Objections to Plaintiff's Complaint (untimely filing of Pleadings), the Court chooses to "... disregard any error or defect of procedure which does not affect the rights of the parties." PA. R. CIV. P. 126.

CONCLUSION

For these reasons, Defendants' Preliminary Objections as to Counts I and IV are sustained and those claims are dismissed. Defendants' Preliminary Objections as to Counts II and III are overruled. Plaintiff's Preliminary Objections to Defendant's Preliminary Objections to Plaintiff's Complaint are overruled.

BY THE COURT:

HOWLAND W. ABRAMSON, J.