



preliminary objections of defendant George Karivalis are **OVERRULED**.<sup>1</sup>

III. The preliminary objection of plaintiffs to the preliminary objections of defendants, control No. 16090584, is **OVERRULED**.

**BY THE COURT,**

  
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**MCINERNEY, J.**

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<sup>1</sup> In the preliminary objections, defendant Karivalis asks the Court to strike an individual named Bibianne Choi as a party—plaintiff in this action. See preliminary objections, control No. 16072316, at ¶ 10. In their response to this challenge, Plaintiffs concede in their *memorandum* of law at ¶ III—F not only that the Second Amended Complaint does not name Bibianne Choi as a party—plaintiff, but also that Bibianne Choi is not a party altogether. This Court is satisfied that Bibianne Choi is not a party—plaintiff, and for this reason the preliminary objection which seeks an Order dismissing Bibianne Choi as a party—plaintiff is overruled as moot.

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

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<b>KJ CHOI CORPORATION</b>	:	March Term, 2016
and	:	
<b>KIJIN JAY CHOI</b>	:	Case No. 02756
	:	
<i>Plaintiffs</i>	:	
v.	:	Commerce Program
	:	
<b>GEORGE KARAVALLIS, ET AL</b>	:	Control Nos. 16072316,
	:	16082084, 16090584.
<i>Defendant</i>	:	

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**MEMORANDUM OPINION**<sup>2</sup>

Two sets of preliminary objections require this court to determine whether plaintiffs may maintain against defendants a claim asserting violation of the Unfair Trade Practices Act and Consumer Protection Law, where the transactions giving rise to the instant action were not entered into for personal, family, or household purposes. For the reason explained below, the court finds that plaintiffs may not maintain the claim asserting violation of the Unfair Trade Practices Act and Consumer Protection Law.

The Second Amended Complaint alleges that in 1999, an entity named “Silva—Rak” and an individual named “Karivalis,” (collectively, “Defendants”), obtained a loan from an entity named NWJ Management (“NWJ”). To secure this loan, Silva—Rak mortgaged its property (the “Property”), located at 1933—35 Spruce Street, in Philadelphia, Pennsylvania, in favor of NWJ (the “NWJ Mortgage”).<sup>3</sup>

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<sup>2</sup>Unless otherwise noted, the facts narrated below are gleaned from the allegations contained in the “Second Amended Complaint.”

<sup>3</sup> Second Amended Complaint filed June 27, 2016, ¶ 20.

On July, 7, 2005, Silva—Rak leased to plaintiff KJ Choi, Corp. (“Tenant”), a portion of the mortgaged Property, pursuant to the terms of a Lease Agreement and a Rider Agreement (together, the “Lease”).<sup>4</sup> Karivalis signed the Lease as president of lessor Silva—Rak, while another individual named Ki-Jin Jay Choi (“Choi”), signed the Lease on behalf of Tenant.<sup>5</sup> At some point after execution of the Lease, the Property was deeded from Silva—Rak to Karivalis for \$1.00 (one dollar).

On July 9, 2013, Karivalis, as landlord of the Property, executed a promissory note (the “Note”), which acknowledged his receipt of a loan from Choi in the amount of \$266,681.00.<sup>6</sup> Simultaneously, Karivalis mortgaged the Property to Choi as a security for the \$266,681.00 loan (the “Second Mortgage”).<sup>7</sup> Under the terms of the Second Mortgage, Karivalis covenanted that the Property was free of liens and encumbrances.<sup>8</sup> However, the Second Amended Complaint alleges that at the time the Second Mortgage was executed, Karivalis did not disclose to Choi the existence of the NWJ Mortgage.<sup>9</sup> In conjunction with the Note and Second Mortgage, Karivalis on one side, and Choi and Tenant on the other, entered into a Rider-to-Lease-Agreement (the “Lease-Rider”).<sup>10</sup> Pursuant to the Lease-Rider, Karivalis granted to Tenant and Choi the option to purchase the entire Property for a specific sum.<sup>11</sup>

On September 11, 2014, NWJ commenced in the Court of Common Pleas,

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<sup>4</sup> *Id.*, ¶ 5; Lease, Exhibit A to the Second Amended Complaint.

<sup>5</sup> The signature of Karivalis as president of Silva—Rak appears specifically on a document titled “Rider to Lease Agreement Between Silva—Rak Corporation, Lessor, and KJ Choi Corp, Lessee,” dated January 22, 2005, found at Exhibit B(A), pp. 58—59 of plaintiff’s response to the preliminary objections of Silva—Rak, motion control No, 16082084.

<sup>6</sup> Note Agreement, Exhibit B to the Second Amended Complaint.

<sup>7</sup> Mortgage Agreement,

<sup>8</sup> *Id.*, p. 1, sub-section a.

<sup>9</sup> Second Amended Complaint, ¶¶ 23, 53.

<sup>10</sup> Lease-Rider, Exhibit D to the Second Amended Complaint.

<sup>11</sup> *Id.*, ¶ 4.

Philadelphia County, a mortgage foreclosure action (the “NWJ Action”), against herein Silva—Rak and Karivalis. This action was initiated on the allegation that Silva—Rak and Karivalis had defaulted on the NWJ Mortgage.<sup>12</sup> At the conclusion of the NWJ Action, the Court entered judgment in favor of NWJ and against Silva—Rak and Karivalis in the amount of \$125,000.00, pursuant to a stipulation executed by the litigants.<sup>13</sup>

On March 29, 2016, Choi and Tenant commenced the instant action against Silva—Rak and Karivalis, and on June 27, 2016, Choi and Tenant filed the instant Second Amended Complaint. The Second Amended Complaint asserts against defendants Silva—Rak and Karivalis the claims of breach of the Lease-Rider (Count I), breach of the Note-and-Mortgage (Count II), breach of the Lease (Count III), specific performance (Count IV), intentional misrepresentation (Count V), and violation of the Unfair Trade Practices Act and Consumer Protection Law (Count VI). On July 20, 2016, individual defendant Karivalis filed preliminary objections to the Second Amended Complaint; on August 17, 2016, defendant Silva—Rak also filed its preliminary objections to the Second Amended Complaint.<sup>14</sup> On September 6, 2016, Tenant and Choi filed a motion to strike the preliminary objections of defendant Silva—Rak.<sup>15</sup>

## DISCUSSION

The standards for preliminary objections are well—settled. In Pennsylvania—

[t]he question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.... Accepting all material averments as true, [the court] must determine whether the complaint adequately

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<sup>12</sup> NWJ Management, Inc. v. Silva-Rak Corp. and George Karivalis, Case No. 1409-01608, attached as Exhibit E to the Second Amended Complaint.

<sup>13</sup> NWJ Management, Inc. v. Silva-Rak Corp. and George Karivalis, Case No. 1409-01608, Order dated April 11, 2016.

<sup>14</sup> The preliminary objections of defendant Silva—Rak were filed more than twenty days after the filing of plaintiffs’ preceding pleading, as required under Pa. R.C.P. 1026(a) (2016).

<sup>15</sup> Motion control No. 160290584.

states a claim for relief under any theory of law.<sup>16</sup>

In the preliminary objections, individual defendant Karivalis asserts that the provisions of 73 P.S. § 201–1 *et seq.*, also known as the Unfair Trade Practices Act and Consumer Protection Law (“UTPCPL”), are not applicable to the facts of this case. Specifically, Karivalis asserts that the provisions of the above-mentioned statute are meant “to prevent [only those] deceptive trade actions for which private consumers would suffer.”<sup>17</sup> In the response in opposition, Tenant and Choi deny this assertion. Specifically, Tenant and Choi argue that individual defendant Choi may maintain a claim based on the alleged violation of UTPACPL because he is contractually entitled to “take action” and collect “losses and expenses,” caused by the breaches of Silva—Rak and Karivalis.<sup>18</sup> The argument advanced by Tenant and Choi is rejected. In Pennsylvania—

[t]he Legislature sought by the Consumer Protection Law to benefit the public at large by eradicating, among other things, unfair or deceptive business practices.... [T]his law attempts to place on more equal terms **seller and consumer**.... Th[is] remedial statute... [is] ... predicated on a legislative recognition of the **unequal bargaining power** of opposing forces in the marketplace.<sup>19</sup>

The purpose of the UTPCPL is to protect the public from fraud and unfair or deceptive business practices. It is to be liberally construed in order to effectuate its purpose. In order for a private individual to bring a cause of action, that individual must first establish the following:

- 1) that he or she is a purchaser or lessee;
- 2) **that the transaction is dealing with goods or**

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<sup>16</sup> Donaldson v. Davidson Bros., 144 A.3d 93, 100 (Pa. Super. 2016), re-argument denied (Sept. 19, 2016).

<sup>17</sup> *Memorandum of law in support of preliminary objections of defendant Silva—Rak*, § C.

<sup>18</sup> *Memorandum of law*, at § D, in support of the answer of plaintiffs to the preliminary objections of Silva—Rak.

<sup>19</sup> Com., by Creamer v. Monumental Properties, Inc., 329 A.2d 812, 815–16 (Pa. 1974) (emphasis supplied).

- services;**
- 3) **that the good or service was primarily for personal, family, or household purposes;** and,
  - 4) that he or she suffered damages arising from the purchase or lease of goods or services.<sup>20</sup>

In this case, the Second Amended Complaint does not allege that Tenant and Choi entered into transactions with Defendants to purchase goods or services, or that Tenant and Choi transacted for personal, family, or household purposes. Furthermore, the Second Amended Complaint does not allege that Tenant and Choi suffered under an unequal bargaining position in the course of their transactions with Silva—Rak and Karivalis. The pleading alleging violation of the UTPCPL statute is legally insufficient, and for this reason Count VI of the Second Amended Complaint is dismissed in its entirety as against Silva—Rak and Karivalis.<sup>21</sup>

Finally, Tenant and Choi challenge the preliminary objections of defendant Silva—Rak as untimely, as they violate the Pennsylvania Rules of Civil Procedure requiring that “every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading.”<sup>22</sup> Tenant concludes that this court should strike the preliminary objections of defendants Silva—Rak because defendant has failed to show “just cause for the delay.”<sup>23</sup>

Preliminarily, the court notes that Plaintiffs’ instant filing has been captioned as a “Motion to Strike Preliminary Objections of Defendant Silva—Rak Corporation.” In Pennsylvania, however, “[a] party has a right to file a preliminary objection raising any

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<sup>20</sup> *Fazio v. Guardian Life Ins. Co. of Am.*, 62 A.3d 396, 409 (Pa. Super. 2012) (emphasis supplied).

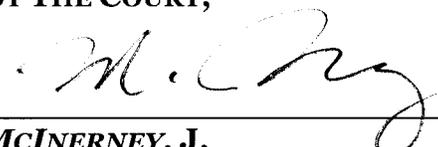
<sup>21</sup> The Court additionally notes that § 201-2(4)(i–xxi) of the UTPCPL enumerates the various violations giving rise to a claim under that statute. None of the listed violations in the statute can be likened to the actions allegedly committed by Silva—Rak and Karivalis.

<sup>22</sup> Pa. R.C.P. 1026(a) (2016).

<sup>23</sup> Motion to strike preliminary objections of defendant Silva—Rak, control No. 16090584, at ¶¶ 1–20 (citing *Peters Creek Sanitary Auth. v. Welch*, 681 A.2d 167, 170 (Pa. 1996)).

appropriate defenses or objections which that party might have to an adverse party's preliminary objection.”<sup>24</sup> In this case, the court chooses to treat the instant motion as a preliminary objection to the preliminary objections of defendant Silva—Rak. Turning to the substance of plaintiffs’ preliminary objections to the preliminary objections, this court chooses to disregard the untimeliness of Silva—Rak’s pleading because “[t]he rules [of Civil Procedure] shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding.... The court at every stage of any action or proceeding may disregard any error or defect of procedure which does not affect the substantial right of the parties.”<sup>25</sup> In this case, disregarding the untimeliness of the preliminary objections affords this court an opportunity to strike the claim based on violation of the Unfair Trade Practices Act and Consumer Protection Law, a claim which plaintiff, as discussed *supra*, could not maintain as a matter of law. For this reason, the court disregards Silva—Rak’s procedural error to assure the just, speedy and inexpensive determination of such a claim. Consequently, the preliminary objection of Tenant to the preliminary objections of defendant Silva—Rak is overruled.

**BY THE COURT,**

  
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**MCINERNEY, J.**

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<sup>24</sup> Ambrose v. Cross Creek Condominiums, 602 A.2d 864, 866 (Pa. Super. 1992).

<sup>25</sup> Pa. R.C.P. 126 (2016).