

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

JOSEPH M. RAFTER	:	January Term 2004
and JOHN T. WILLIAMS	:	
	:	
Plaintiffs,	:	No.: 03756
v.	:	
	:	Commerce Program
WILLIAM SHAW a/k/a WILLIAM	:	
SHAW, JR. and SHAW, INC.	:	Control Number: 031551
Defendants	:	

ORDER

AND NOW, this 27th day of May, 2004, upon consideration of Defendants' Preliminary Objections to Plaintiffs' Complaint and Plaintiffs' Response thereto, it is hereby **ORDERED** and **DECREED** as follows:

- 1) Defendants' Preliminary Objection to Count I is **OVERRULED**;¹
- 2) Defendants' Preliminary Objection to Count III is **SUSTAINED** and Count III is dismissed;
- 3) Defendants' Preliminary Objection to Plaintiffs' demand for attorney's fees is **SUSTAINED** and all references to attorney's fees are hereby stricken from the Complaint; and
- 4) The remaining Preliminary Objections are **OVERRULED**.

BY THE COURT,

C. DARNELL JONES, J.

¹ The court makes no finding as to the future viability of this count and enters this Order without prejudice so that Defendants may later file a motion challenging same, if warranted.

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Plaintiffs,	:	No.: 03756
vi.	:	
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WILLIAM SHAW a/k/a WILLIAM	:	
SHAW, JR. and SHAW, INC.	:	Control Number: 031551
	:	
Defendants	:	

MEMORANDUM OPINION

JONES, J.

Presently before the court are the Preliminary Objections of Defendants William Shaw and Shaw, Inc. to the Complaint of Plaintiffs Joseph M. Rafter and John T. Williams. For the reasons that follow, the court sustains in part and overrules in part Defendants' Preliminary Objections.

BACKGROUND

The conflict between Plaintiffs and Defendants involves commercial real estate and a liquor license. The parties dispute the existence of a contract requiring Defendants to sell the properties to Plaintiffs. Plaintiffs have brought causes of action against Defendants for specific performance (Count I) and breach of contract (Count II) and against Defendant William Shaw only for fraud (Count III). Plaintiffs seek attorney's fees under Counts I and II and punitive damages under Count III. Defendants move to strike Counts I and III, to strike the demands for both attorney's fees and punitive damages, and to dismiss all counts against Defendant Shaw, Inc.

DISCUSSION

Defendants have demurred to Count I on the basis that there is no valid agreement between the parties. Plaintiffs argue that the so-called letter of intent constitutes a contract for the sale of land, entitling them to specific performance.

According to Plaintiffs, the letter dated January 21, 2003 (the “Letter”), in conjunction with the check delivered to Defendants, serves as a valid contract. The Plaintiffs assert the Letter is signed by both parties, describes the properties to be sold, and identifies the price for the properties. The Plaintiffs allege that they accepted the counteroffer of William Shaw and that he accepted their deposit. Under Pennsylvania law, if “the parties agree upon essential terms and intend them to be binding, a contract is formed even though they intend to adopt a formal document with additional terms at a later date.” Shovel Transfer & Storage, Inc. v. Pennsylvania Liquor Control Board, 739 A.2d 133, 136 (Pa. 1999). For purposes of resolving the Preliminary Objections, Plaintiffs have sufficiently pled that a valid contract exists because the Letter identifies the essential terms and has been agreed to by both parties. Therefore, Defendants’ demurrer to Count I is denied.

Defendants move to strike Count III, arguing Plaintiffs have not complied with Pennsylvania Rule of Civil Procedure 1019(b) due to their failure to specifically plead the elements of fraud. Plaintiffs counter that they have identified the facts supporting the allegations of fraud with sufficient particularity.

The court finds the “gist of the action” doctrine to be controlling with respect to Count III. This doctrine “precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims. . . . 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.” Etoll, Inc.v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. 2002). A tort claim is barred where the duties allegedly breached were created and grounded in the contract itself . . . [or] the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of the contract.” Id. at 19.

According to Plaintiffs, William Shaw purposely misled them about his reasons for not completing the sale in order to find a buyer willing to pay a higher price. Defendant’s alleged conduct, if wrongful, is nothing more than a breach of contract. Plaintiffs’ complaint concurs: “Plaintiffs agreed to these delays on the condition that the Letter of Intent would remain binding.” (Complaint, ¶13). Thus, the gist of any claim arising out of the delay in concluding the transaction lies in contract and not tort, so Plaintiffs’ claim for fraud must be dismissed.

Defendants seek to strike Plaintiffs’ demand for punitive damages in connection with Count III, contending Plaintiffs have not provided sufficient facts to support their damages request. Plaintiffs assert they have shown enough “outrageous conduct” to merit the imposition of punitive damages. Since the court has dismissed Count III, no punitive damages can be awarded. DiGregorio v. Keystone Health Plan East, 840 A.2d 361, 370 (Pa. Super. 2003). Therefore, Defendants’ motion to strike punitive damages is moot.

Defendants move to strike Plaintiffs’ request for attorney’s fees under Counts I and II because such fees cannot be recovered absent statutory authorization or contractual

agreement. Although Plaintiffs concur with this analysis, they assert a draft agreement supports their request.

To recover attorney's fees from the adverse party requires clear statutory authorization or clear agreement of the parties. Snyder v. Snyder, 620 A.2d 1133, 1138 (Pa. 1993). For purposes of resolving the Preliminary Objections, the court accepts Plaintiffs' allegations that the Letter constituted a contract, but that document makes no mention of attorney's fees. Therefore, Plaintiffs' demand for attorney's fees has no basis and shall be stricken.

Defendants have demurred to Counts I, II, and III on the basis that Defendant Shaw, Inc. is not a party to any alleged agreement between the parties. Plaintiffs assert a draft agreement supports their inclusion of Defendant Shaw, Inc. in this matter.

Plaintiffs' argument is not well-founded, as the Letter makes no mention of Shaw, Inc. Defendants, however, concede that Shaw, Inc. holds the liquor license at issue and Plaintiffs allege William Shaw owns and exclusively controls Shaw, Inc. Without disclosing to Plaintiffs that Shaw, Inc. held the liquor license, William Shaw's signature on the Letter represented his ownership of the license. Therefore, Defendants cannot claim that Shaw, Inc. should not be party to this suit and their demurrer to Counts I, II, and III is overruled.

BY THE COURT,

C. DARNELL JONES, J.