

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

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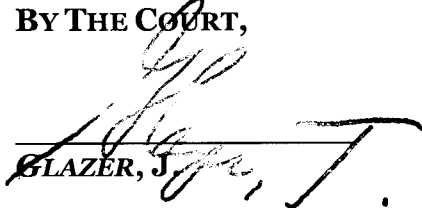
BETHPAGE FEDERAL CREDIT UNION : March Term, 2017
: Case No. 01592
Plaintiff :
: **v.** : Commerce Program
: **ABRAHAM BHATTI and TAJ & SONS CORP.** :
: *Defendants* : Control No. 18072460

ORDER

AND NOW, this 17th day of October, 2019, upon consideration of the preliminary objections of plaintiff to the counterclaims of defendants Abraham Bhatti and Taj & Sons Corp., it is **ORDERED** that the preliminary objections are **SUSTAINED-IN-PART** and **OVERRULED-IN-PART** as follows:

- I. The preliminary objections to the counterclaims of fraud and negligent misrepresentation are **SUSTAINED** and those claims are **DISMISSED**.
- II. The remainder of plaintiff's preliminary objections are **OVERRULED**.

BY THE COURT,


GLAZER, J.

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R. POSTELL
COMMERCE PROGRAM

Bethpage Federal Credit-ORDOP



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OPINION

The instant action commenced in March 2017, as plaintiff, Bethpage Federal Credit Union (hereinafter, “Lender”), filed a complaint against individual defendant Abraham Bhatti (the “Borrower”), and corporate defendant Taj & Sons Corp., (the “Guarantor”). Borrower and Guarantor are engaged in the taxicab business. In the complaint, Lender asserts claims of breach-of-contract respectively against Borrower and Guarantor. Specifically, Lender alleges that Borrower and Guarantor defaulted on a document titled “Balloon Note.”¹ The Balloon Note had been executed by Borrower in his dual capacities –as the individual borrower of a loan in the amount of \$150,000.00, and as the sole owner of Guarantor.²

On June 29, 2018, Borrower and Guarantor filed an answer with new matter and counterclaim to the complaint. The counterclaim asserts three claims against Lender: fraud, negligent misrepresentation, and breach-of-contract or breach of the duty of good faith and fair dealing. On July 19, 2019, Lender filed preliminary objections to the three counterclaims; subsequently, on August 8, 2018, Borrower and Guarantor filed their answer to the preliminary objections of Lender. The objections are ripe for a resolution.

DISCUSSION

Preliminary objections ... test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer

¹ Complaint, ¶ 9.

² Balloon Note, Exhibit A to the complaint, p. 4 (un-numbered).

should be sustained, it should be resolved in favor of overruling the preliminary objections.³

I. **Borrower and Guarantor may not maintain the counterclaims of fraud and negligent misrepresentation.**

In the preliminary objections, Lender argues that the counterclaims of fraud and negligent misrepresentation should be dismissed because the averments therein are not asserted with particularity, in violation of Pa. R.C.P. 1019(b).⁴ To determine whether the counterclaims of fraud and negligent misrepresentation have been pled with particularity, the court turns its attention to some of the paragraphs that most pointedly assert such claims. These paragraphs assert the following:

[Lender] represented to ... [Borrowers] that, by borrowing through ... [Lender], the borrowers would be assured of continued financial success and ... [Lender] would continue its practice of refinancing the loans at issue.⁵

* * *

[Lender] wrote down borrowers' loans **to induce** them to continue making payments and lull them into a false sense of security that they could keep their [taxicab] medallions....⁶

* * *

[Lender] made these misrepresentations **with the intent to induce** ... [Borrower and Guarantor] into acting in reliance upon them.⁷

The court finds that these allegations lack the degree of particularity necessary to preserve the claims of fraud and negligent misrepresentation. The Pennsylvania Supreme Court has explained that—

averments of fraud or mistake shall be averred with

³ *Feingold v. Hendrzak*, 15 A.3d 937, 941 (Pa. Super. 2011).

⁴ "Averments of fraud or mistake shall be averred with particularity." Pa. R.C.P. 1019(b).

⁵ Answer, new matter and counterclaim at ¶ 60

⁶ *Id.*, at ¶¶ 60-61 (emphasis supplied).

⁷ *Id.*, at ¶¶ 66, 72 (emphasis supplied).

particularity. Averments of fraud are meaningless epithets unless sufficient facts are set forth which will permit an inference that the claim is not without foundation or offered simply to harass the opposing party and to delay the pleader's own obligation. In satisfaction of the particularity requirement we have required that two conditions must always be met: the pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense, and they must be sufficient to convince the court that the averments are not merely subterfuge.⁸

In this case, the counterclaims of fraud and negligent misrepresentation conflate several vague averments: first, Borrower and Guarantor allege to have been misled into believing that the Balloon Note would be refinanced indefinitely; however, they assert that they were induced to believe this prediction on the unrealistic assumption that their taxicab business would enjoy “continued financial success,” and that their loans would continue to be re-financed.⁹ In addition, Borrower and Guarantor aver to have been misled into believing that in the event of a default, their obligations would be written-down, and they would be able to keep their taxicab medallion; however, they fail to explain how a sophisticated businessperson borrowing \$150,000.00 could be lulled by any lender “into such a false sense of security.”¹⁰

The averments made by Borrower and Guarantor do not adequately explain the nature of their counterclaims, do not allow Lender to prepare a defense, and do not permit this court to infer that the claims of fraud and negligent misrepresentation have any foundation. Since the averments of fraud and negligent misrepresentation fail to meet the particularity requirements of Pa. R.C.P. 1019(b), the preliminary objections thereto are sustained, and these two counterclaims are dismissed.

II. The claims of fraud and negligent misrepresentation are unavailable

⁸ *In re Estate of Schofield*, 477 A.2d 473, 477 (Pa. 1984).

⁹ *Id.*, ¶ 60.

¹⁰ *Id.*, ¶ 61.

pursuant to the gist-of-the-action doctrine.

Under Pennsylvania law—

[t]he gist of the action doctrine bars a plaintiff from recasting 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.... 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.

* * *

The important difference between contract and tort actions is that the latter lie from the breach of duties imposed as a matter of social policy while the former lie for the breach of duties imposed by mutual consensus. In other words, a claim should be limited to a contract claim when the parties' obligations **are defined by the terms of the contracts, and not by the larger social policies embodied by the law of torts.**¹¹

In this case, the obligations of the parties are defined by the terms of the Balloon Note and not by larger social policies embodied by the tort laws of fraud and negligent misrepresentation. Borrower and Guarantor may not maintain the claims of fraud and negligent misrepresentation under the gist-of-the-action doctrine, and for this additional reason, those claims are dismissed. The third counterclaim asserted by Borrower and Guarantor, breach of contract or breach of good faith and fair dealing, is allowed to survive these preliminary objections.

BY THE COURT,


GLAZER, J.

¹¹ Knigh t v. Springfield Hyundai, 81 A.3d 940, 950 (Pa. Super. 2013) (emphasis added).