

EDWIN WAGNER,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 03-01,394
	:	
PAUL RYAN	:	
KIM ROTHERMEL,	:	
	:	
Defendants	:	PRELIMINARY OBJECTIONS

Date: May 11, 2004

OPINION and ORDER

Before the Court for determination are the Preliminary Objections of Defendant Paul Ryan to Plaintiff's Amended Complaint filed January 29, 2004. The original Complaint had been filed on August 26, 2003. Ryan filed Preliminary Objections to the Complaint on October 21, 2003. On December 8, 2003, this Court issued an Order dismissing the allegations against Ryan and provided Plaintiff Wagner the opportunity to file an amended complaint within twenty days. On January 14, 2004, more than twenty days following the notice of the December 8, 2003 Order, Plaintiff filed an Amended Complaint alleging that Defendant Ryan as legal counsel breached a contract with Plaintiff to provide legal services.

Ryan raises five preliminary objections. The Court will address each preliminary objection *seriatim*. The first preliminary objection is that the Amended Complaint must be dismissed because it was filed after the twenty day time period referenced in the December 8, 2003 Court Order. This preliminary objection must be denied. Ryan failed to take any action to obtain a judgment of non-pros or dismissal. Therefore, Ryan cannot object to the late filing of the Amended Complaint. *See, Goodrich-Amram 2d §1028(e);2* (citing *Ceccoli v. Bayo*, 43 Pa. D & C 3d 270 (Luzerne Cty. 1985)).

The second preliminary objection is a demurrer to the breach of contract claim against Ryan. Ryan argues that the Amended Complaint fails to set forth a breach of contract claim against him because the Amended Complaint fails to establish that there was a direct contract between the Plaintiff and him or that the Plaintiff was a third party beneficiary of the contract between him and Defendant Kim Rothermel.

The essence of the cause of action against Ryan arises out of the alleged failure of Ryan to properly perform his work as an attorney. The Plaintiff's allegations assert Rothermel went to Ryan to arrange for a deed to be prepared by Ryan whereby Plaintiff would convey his residence to Rothermel with Plaintiff reserving a life estate. Plaintiff also asserted Rothermel was to arrange for Ryan to prepare a power of attorney from Plaintiff to Rothermel so that Rothermel could act on behalf of and for the benefit of Plaintiff.

The Amended Complaint states a cause of action for breach of contract against Ryan. The allegations in the Amended Complaint are sufficient, if true, to establish that there was a direct contract between Plaintiff and Ryan and that Plaintiff was a third party beneficiary of the contract between Ryan and Rothermel. The allegations are sufficient to assert that Ryan made representations to Plaintiff that he had prepared the deed and power of attorney for him in accordance with Plaintiff's intentions. The assertions also collectively as a whole claim that Ryan presented he was acting for Plaintiff and that the deed included the life estate provision, when in fact, it did not. The Amended Complaint also sufficiently pleads that Ryan was aware that he was doing this work for the benefit of Plaintiff, as well as, perhaps for the benefit of Rothermel. Accordingly, the preliminary objection must be denied.

The third preliminary objection is that the Amended Complaint lacks specificity as to the nature of Plaintiffs allegations. Ryan argues that Paragraph 1 of the Amended Complaint, which expands upon paragraph 17 of the original, alleges that the papers Ryan allegedly presented to the Plaintiff included a deed with a life estate provision in it. Ryan argues that this is inconsistent with the Plaintiff's claim that Ryan had failed to include the life estate provision in the deed, and thereby creates confusion. The Court will deny the preliminary objection. The assertion in paragraph 1 of the Amended Complaint is not that the life estate provision was actually included in the deed, rather, the assertion is that Ryan and Rothermel presented to Plaintiff that it was. Paragraph 15 (of the original Complaint, which is retained through the Amended Complaint) clearly asserts as a fact that the life estate was not included in the deed. Accordingly, the preliminary objection will be denied.

The fourth preliminary objection is that the Amended Complaint runs afoul of several of the Rules of Civil Procedure, specifically:

- a) Rule 1020(a) as to identifying which claim is asserted against which Defendant;
- b) Rule 1019(h) and (i) stating if the contract was written as verbal and attaching a copy.
- c) The fourth preliminary objection also moves to strike the claims for attorney fees because the action is filed *in forma pauperis*.

The Court will deny in part and grant in part this Preliminary Objection. The facts alleged, the nature of the causes of action and the relief requested make it clear as to what claim is asserted against what Defendant. A fair reading of the Amended Complaint as a whole

indicates that the contract between Ryan and Rothermel was an oral contract. A copy of a written contract between Ryan and Rothermel does not need to be attached to the Amended Complaint. The request for attorney's fees will be stricken from the Amended Complaint. There is no basis asserted for recovery of attorney's fees. Accordingly, the fourth preliminary objection is denied in part and granted in part.

The fifth preliminary objection is a motion for a more specific pleading. This preliminary objection shall be denied. The Court has addressed the issues raised by this preliminary objection while addressing the other four preliminary objections Ryan.

For the reasons set forth in this Memorandum Opinion and Order, the Preliminary Objections are granted in part and denied in part.

ORDER

The Preliminary Objections of Defendant Paul Ryan to Plaintiff's Amended Complaint are GRANTED IN PART and DENIED IN PART.

The Preliminary Objections are GRANTED IN PART in so far as the request for attorney's fees is stricken from the Amended Complaint.

The Preliminary Objections in all other respects are DENIED.

Defendant Ryan shall proceed to file an Answer to the Amended Complaint within twenty days of the date of this Order.

BY THE COURT:

William S. Kieser, Judge

cc: Marc S. Drier, Esquire
Craig P. Miller, Esquire
J. David Smith, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)