

JAMES T. WOLYNIEC, SR.,  
Individually and as an Officer  
of WOLYNIEC REAL ESTATE,  
INC. and VALLEY PETROLEUM,  
INC.,

Plaintiffs

vs.

FRANK P. WOLYNIEC, JR.,

Defendant

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 05-00,036

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: PRELIMINARY OBJECTIONS

*Date: December 23, 2005*

### **OPINION and ORDER**

Before the court for determination are the Preliminary Objections of Defendant Frank P. Wolyniec, Jr. (hereafter “Frank”) filed January 26, 2005. The preliminary objections will be denied in part and granted in part.

### **I. BACKGROUND**

#### **A. Facts**

On January 6, 2005, Plaintiff James T. Wolyniec, Sr. (hereafter “James”) filed a complaint alleging five counts against Frank. In support of those counts, James alleges the following facts.

Wolyniec Real Estate, Incorporated (hereafter “WRE”) is a Pennsylvania corporation. Valley Petroleum, Incorporated (hereafter “VPI”) is also a Pennsylvania corporation. James and Frank are stockholders of WRE and VPI. James and Frank are also officers in both

companies. James is the president of WRE and the vice-president of VPI. Frank is the president of VPI and the vice-president of WRE.

WRE was formed to own and lease real property on behalf of its stockholders. WRE owned a parcel of property located at 2000 East Third Street, Williamsport, Pennsylvania. Prior to July 2003, Valley Petroleum operated a business on the property, but since then the property has remained idle. Located on the property were an old garage, docks, storage tanks, and three vehicles. WRE owned the realty and appurtenances. VPI owned the vehicles.

On or about June 2003, James negotiated with representatives from the Fairfield Auto Group/Wilfred Associates to lease the 2000 East Third Street property. On June 26, 2003, James sent a letter to Frank regarding this potential deal. In the letter, James advised Frank that he had a party willing to rent the property for \$1,395.00 per month, provided the holes in the drive were repaired. On June 27, 2003, Frank responded by making a handwritten note on the bottom of the June 26, 2003 letter requesting from James a copy of the proposed lease. James sent Frank a copy of the proposed lease.

On July 9, 2003, James faxed Frank a note providing Frank with more information regarding the possible lease of the Third Street property. James informed Frank that the prospective tenant wanted the three vehicles removed; that the tenant wanted to tear down the garage, at his expense; and the tenant might want to remove the storage tanks at his expense as well. In reply, Frank sent James a fax stating that Frank would not agree to a lease of the property until after July 25, 2003.

On July 11, 2003, Frank sent James a letter stating that he would not agree to any new leases for WRE property. Frank expressed to James his desire to dissolve WRE due to the

circumstances and ongoing litigation between the two parties. Frank stated that he would only agree to dissolution of the company.

On July 17, 2003, Frank sent James a letter instructing him to disregard the July 11, 2003 letter. Frank also stated that it was important for him and James to agree on any lease that would affect WRE.

Also on July 17, 2003, Frank sent a letter to William Manos of the Fairfield Auto Group, the proposed lessee of the property. Frank advised Manos that he would be willing to enter into a lease or sale of the Third Street property so long as both he and James signed the paperwork. Frank also advised Manos that it was his desire to dissolve WRE and swap or sell all of its holdings. He also cautioned Manos that he and James were engaged in litigation at the time.

On July 21, 2003, Frank sent James a letter. In it, Frank advised James that he would be renting the Third Street property using the same lease that James had his attorney prepare, with the exception that Frank increased the monthly rent to \$1400. Frank also advised James that he would be starting renovations, lot clean up, and tank removal on the property. Frank enclosed a check for \$1400 payable to WRE with the letter as payment for the August 2003 rent. Frank also stated that the new business which would occupy the property would be owned by Frank himself.

The lease of the Third Street property was between WRE as landlord and Frank as tenant.

In mid-September 2003, James received an undated letter from Frank. In the letter, Frank stated that he deposited a check in the amount of \$1400 for the September 2003 rent in

one of WRE's bank accounts. Frank also informed James that he would shortly begin removing and salvaging the above ground tanks, piping, and loading docks from the property. James responded to this letter with a letter dated September 18, 2003. In the letter, James stated that he had no objection to the removal of the docks and storage tanks, but requested that he be present when they were removed. James also reminded Frank that the tanks and docks were the property of WRE so any money received from their salvage belonged to WRE. James also brought to Frank's attention that he had yet to fulfill his insurance obligations regarding the property under the lease. James stated that under the terms of the lease no work may be performed at the property until the insurance requirements were met.

On October 28, 2003, Frank sent James a fax stating that he was going to remove the storage tanks at his own expense. He also stated that if James wanted to share in the salvage proceeds from the tanks, then he would have to share in the removal expenses. James responded the same day via fax to Frank again stating that he did not oppose the removal of the storage tanks. James also again stated that WRE owned the storage tanks and that WRE expected to receive the proceeds of the salvage. At some point, Frank removed and salvaged the four storage tanks that were on the property. Frank failed to deliver the proceeds of the storage tank salvage to WRE.

On October 10, 2003, Frank sent a fax to James regarding the three VPI vehicles that were on the property. Frank gave James the option of removing the vehicles within ten days or Frank would remove the vehicles. James responded by agreeing to have Frank remove the vehicles and splitting the salvage money. On October 16, 2003, Frank was sent the titles to the

three VPI vehicles. Frank has not sent the proceeds of the sale or salvage of these vehicles to VPI.

Frank also removed seven barrels of waste oil from the property. Frank billed WRE \$210.00 for the disposal of this oil.

### **B. Claims**

In the complaint, James has alleged five counts against Frank. The first is a breach of contract cause of action. James alleges that Frank has breached the lease regarding the Third Street property. James alleges Frank did this by having waste oil removed and then having WRE billed \$210.00 for the removal; by failing to account for or deliver the proceeds of the salvage of the three vehicles that VPI stored on the property; and by failing to account for or deliver the proceeds of the salvage of the storage tanks that were located on the property.

The second count is an ejectment cause of action. James alleges that the lease provides that the landlord may enter and take possession of the property. James alleges that Frank has breached the lease as noted above and despite a written demand to cure the breach Frank still remains in breach of the lease. Accordingly, James asserts that Frank should be ejected from the property and that he is entitled to immediate possession.

The third count is a conversion cause of action. James alleges that that WRE and VPI owned the storage tanks and three vehicles respectively that were on the property. James alleges that Frank exercised possession over the tanks and vehicles by having them salvaged and retaining the proceeds of the salvage.

In Count 4, James seeks an accounting from James regarding rents collected on two WRE properties. James alleges that Frank had managed and collected the rents regarding a

Bridge Street and farm properties. James alleges that he requested from Frank information regarding the leases of these properties and an accounting of the rents collected from November 2002 to May 2003. James contends that Frank has withheld \$4,225.00 in rents owed to WRE.

In Count Five, James alleges that Frank converted WRE funds to his personal use. James alleges that Frank took checks out of a WRE checkbook, acquired information regarding WRE accounts, and was able to obtain checks and checkbooks for WRE accounts. James alleges that this enabled Frank to remove WRE assets and place them in accounts that Frank had exclusive control over. James alleges that Frank did this without permission or authority.

### **C. Preliminary Objections**

Frank raises five preliminary objections. The first is that James has no individual cause of action against Frank. Frank argues that under Pennsylvania law neither a shareholder nor a corporate officer has an individual cause of action against a third party for damages that result indirectly to him because of an injury to the company.

The second preliminary objection is that James lacks the capacity to bring the asserted causes of action on behalf of WRE and VPI. Frank argues that James cannot bring the asserted causes of action on behalf of the corporations in his capacity as a shareholder because there are no factual allegations that demonstrate that James made a demand upon the corporation to obtain the desired action. Frank also argues that James cannot bring the asserted causes of action on behalf of the corporations in his capacity as a corporate officer in both corporations because a corporate officer may only institute a suit on behalf of the corporation after the corporation's board has made a determination following a legal meeting of the board. Frank

asserts that there are no factual allegations demonstrating that the boards of WRE and VPI meet to discuss, let alone authorize, the present suit.

The third preliminary objection is a demurrer to the breach of contract cause of action in Count I and to the ejectment action in Count II of the complaint. Frank argues that the factual averments alleged to support the breach of contract cause of action do not constitute a breach of the lease; therefore, Frank argues that James has failed to plead facts that could establish a breach of contract cause of action against him. With regard to the ejectment claim, Frank argues that James has failed to plead facts that could establish his right to eject Frank from the property because James has failed to plead facts that could establish Frank breached the lease.

The fourth preliminary objection is a demurrer to the conversion cause of action in Count III of the complaint. Frank argues that James did not have an individual ownership interest in the property Frank allegedly converted. As such, Frank argues that since James did not individually own the property at issue James cannot assert an individual conversion cause of action against Frank.

The fifth preliminary objection asserts that the complaint lacks the requisite specificity. Specifically, Frank focuses on James' allegation in Paragraph 71 that Frank "has breached his fiduciary duties to WRE and JTW [(James)]" and the allegation in Paragraph 71 that Frank "has committed a fraud on WRE and JTW [(James)]." Frank argues that the complaint lacks the specific factual averments to support these allegations and requests a more specific pleading.

## **II. ISSUES**

There are four issues before the court. They are:

- (1) Whether James has standing as an individual stockholder and/or corporate officer to bring the asserted causes of action when the alleged injuries were suffered by the WRE and VPI corporations?
- (2) Whether Frank's billing of WRE for removal of waste oil; removal of and failure to account for or relinquish funds from the salvage of the VPI vehicles located on the Third Street property; removal of and failure to account for or relinquish funds from the salvage of storage tanks constitutes a breach of the lease agreement?
- (3) Whether James as a stockholder and/or corporate officer may assert a conversion cause of action against Frank when the property at issue was corporate property in which James had no individual property interest?
- (4) Whether the complaint pleads sufficient facts to support allegations that Frank "breached his fiduciary duties to WRE and JTW" and that Frank "has committed fraud on WRE and JTW"?

## **III. DISCUSSION**

The discussion will be divided into four main parts. The first part will address James' standing to bring the asserted causes of action. That part will be divided into four subparts. The first subpart will set forth general rules and principles regarding standing. The second subpart will set forth general rules and principles regarding shareholder standing. The third subpart will set forth why James' has standing as a shareholder to bring the asserted causes of action. The fourth subpart will set forth why James does not have standing as a corporate officer to bring the asserted causes of action.



The second main part of the discussion will set forth why the demurrers to the breach of contract and ejectment causes of action will be denied. The third main part will address the demurrer to the conversion cause of action. That part will be divided into three subparts. The first subpart will set forth the standard of review for the demurrer. The second subpart will set forth the elements of a conversion cause of action. The third subpart will set forth why James has set forth a conversion cause of action against Frank.

The fourth main part of the discussion will address the specificity challenge to Paragraphs 71 and 72. It will set forth why both paragraphs will be stricken from the complaint.

#### **A. James' Standing to Bring Suit**

##### **1. Standing General Rules and Principles**

In order to bring a cause of action, the party must have standing. Standing is a legal concept which assures that "... the interest of the party who is suing is really and concretely at stake to a degree where he or she can properly bring an action before the court." *In re Milton Hershey Sch.*, 867 A.2d 674, 683 (Pa. Cmwlth. 2004). The standing requirement "... stems from the principle that judicial intervention is appropriate only when the underlying controversy is real and concrete, rather than abstract." *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003).

"'Standing' requires that the person bringing a cause of action be adversely affected by the matter in order to assure that the person is the appropriate party to bring the matter to judicial resolution." *Koresko v. Farley*, 844 A.2d 607, 616 (Pa. Cmwlth. 2004), *app. denied*, 857 A.2d 680 (Pa. 2004), *cert. denied*, 125 S. Ct. 967 (U.S. 2005). A party is aggrieved by the

actions complained of if his interest in the outcome of the litigation is substantial, direct, and immediate. *City of Philadelphia v. Schweiker*, 858 A.2d 75, 83 (Pa. 2004).

A “substantial” interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A “direct” interest requires a showing that the matter complained of caused harm to the party’s interest. An “immediate” interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it, and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.

*Hydropress Envtl. Servs. v. Twp. of Upper Mount Bethel*, 836 A.2d 912, 916 (Pa. 2003).

“Thus, the fact that a party may be affected in a general way does not alone give him standing.” *City of Philadelphia*, 838 A.2d at 577.

Standing is determined by the type of interest the party is asserting. *In re Milton Hershey Sch.*, 867 A.2d at 677.

## **2. Shareholder Standing**

Generally, a shareholder of a corporation does not have standing to assert a direct cause of action to redress an injury to the corporation. *Burdon v. Erskine*, 401 A.2d 369, 370 (Pa. Super 1979). While an injury to the corporation may result in an injury to the corporation’s shareholders, the injury the shareholders suffer is indirect and insufficient to give rise to a direct cause of action. *Fitzpatrick v. Shay*, 461 A.2d 243, 246 (Pa. Super. 1983); *Burdon*, 401 A.2d at 370.

‘While an injury to the plaintiff as a stockholder and to him individually, and not to the corporation, as where the action is based on a contract to which he is a party, or on a right belonging severally to him, or on a fraud affecting him directly, it is an individual action. On the other hand, if the wrong is primarily against the corporation, the redress for it must be sought by the

corporation, except where a derivative action by a stockholder is allowable, and a stockholder cannot sue as an individual. The action is derivative, i.e., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock or property without any severance or distribution among individual holders, or if it seeks to recover assets for the corporation or to prevent the dissipation of its assets.’

*Hendrickson v. Vandling*, 41 D. & C. 3d 568, 571 (Cumberland Cty. 1983) (quoting W. Fletcher, *Cyclopedia of Corporations* § 5911, at 309 (1980)). Thus, in determining whether an action sets forth a direct or a derivative claim, a court must determine whether the corporation or the stockholder was the directly injured party. *Id.* at 572.

In order for a shareholder to seek redress in court for an injury to the corporation, he must bring a shareholder derivative action. A shareholder derivative action is an action or proceeding brought to enforce a secondary right on the part of one or more shareholders of a corporation because the corporation refuses to enforce rights that may be properly asserted by it. *See*, 15 P.S. §1782(a); *see also*, Pa.R.C.P. 1506(a). The right of an individual shareholder to act for the corporation through a shareholder derivative action is exceptional. *Evans v. Diamond Alkali Co.*, 172 A. 678, 679 (Pa. 1934); *Levin v. Schiffman*; 54 D. & C. 4<sup>th</sup> 152, 165 (Philadelphia Cty. 2001). It is the exceptional nature of the shareholder derivative suit that Pennsylvania courts have required, as a prerequisite to bringing the suit, that a demand be made upon the corporation’s board of directors to enforce the corporation’s rights. *Levin*, 54 D. & C. 4<sup>th</sup> at 165.

Before a shareholder may file a suit to enforce the corporation’s rights, he must exhaust intracorporate remedies. *Drain v. Covenant Life Ins Co.*, 712 A.2d 273, 278 (Pa. 1998). “The shareholder must make a written demand upon the corporation’s board of directors and request

it to prosecute the action or take corrective measures.” *Ibid.* The demand on the board will be excused “... only if the shareholder shows that irreparable injury to the corporation would otherwise result, then demand should be made promptly after the commencement of the action.” *Ibid.*

Things are a bit different when dealing with a closely held corporation.<sup>1</sup> When dealing with a closely held corporation, a shareholder’s suit to remedy an injury to the corporation may be treated as a direct action of the shareholder. *Levin*, 54 D. & C. 4<sup>th</sup> at 167; *Baron v. Pritzker*, 52 D. & C. 4<sup>th</sup> 14, 18 (Philadelphia Cty. 2001). In order for a shareholder’s cause of action to be treated as a direct claim, the shareholder must demonstrate that treating the cause of action as a direct claim will not: (1) unfairly expose the corporation or the defendants to a multiplicity of actions; (2) materially prejudice the interests of the corporation’s creditors, or (3) interfere with a fair distribution of the recovery among all interested parties.<sup>2</sup> *Levin*, 54 D. & C. 4<sup>th</sup> at 166 (citing American Law Institute, Principles of Corporate Governance: Analysis

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<sup>1</sup> A closely held corporation is a “business corporation that: (1) has not more than 30 shareholders; or (2) is a statutory close corporation.” 15 Pa..C.S.A. §1103.

<sup>2</sup> In *Cuker v. Mikalauskas*, the Pennsylvania Supreme Court adopted the ALI Principles with regard to standing necessary to maintain a shareholder derivative suit, specifically §§ 7.02-7.10 and §7.13 692 A.2d 1042, 1049 (Pa. 1997). With regard to the ALI Principles, the Supreme Court noted in a footnote that:

Our adoption of these sections is not a rejection of other sections not cited. We have identified and studied the sections which apply to this case and have adopted those which appear most relevant.

The entire publication, all seven parts, is a comprehensive, cohesive work more than a decade in preparation. Additional sections of the publication, particularly procedural ones due to their interlocking character, may be adopted in the future. Issues in future cases or, perhaps, further proceedings in this case might implicate additional sections of the ALI Principles. Courts of the Commonwealth are free to consider other parts of the work and utilize them if they are helpful and appear to be consistent with Pennsylvania law.

and Recommendations, §7.01(d) (1994)); *Baron*, 52 D. & C. 4<sup>th</sup> at 16 (citing ALI Principles, §7.01(d)).

### **3. James has Standing as a Shareholder to Bring A Direct Claim**

James has standing as a shareholder to seek redress in court for the injuries suffered by WRE and VPI because his claims will be treated as a direct claim by him as a shareholder. The court is convinced that the complaint satisfies the three criteria that would permit the causes of action to be treated as direct claims.

Treating the asserted causes of action as direct claims would not unfairly expose WRE or VPI to a multiplicity of suits. James and Frank are the only stockholders and corporate officers of WRE and VPI. There is no indication that treating the causes of action as direct claims would materially prejudice the interests of WRE and VPI's creditors. Treating the asserted causes of action as direct claims would not interfere with a fair distribution of the recovery among all interested persons as the named parties are the parties in interest.

### **4. James does not have Standing as a Corporate Officer to Bring a Direct Cause of Action**

James does not have standing as a corporate officer to seek redress in court for the injuries suffered by WRE and VPI. His claims cannot be treated as direct claims by a corporate officer. Section 7.03 of the ALI Principles is silent with regard to treating a corporate officer's claims as direct claims. Section 7.03 only addresses suits by a shareholder or director. A corporate officer's actions must be properly authorized by the corporation and when so authorized he must act in the name of and in the best interests of the corporation.

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*Ibid.*, n.5. The courts in *Levin*, 54 D. & C. 4<sup>th</sup> at 176, and in *Baron*, 52 D. & C.4<sup>th</sup> at 17, adopted §7.01(d) of the ALI Principles determining that it was helpful and consistent with Pennsylvania law.

Accordingly, James has no standing to bring the asserted causes of action in his individual capacity as a corporate officer and all claims asserted in this capacity are dismissed.

### **B. Demurrers to Breach of Contract and Ejectment Causes of Action**

The demurrer to the breach of contract cause of action will be denied. The demurrer raises factual issues that are better addressed by a motion for judgment on the pleadings or a motion for summary judgment. Since the demurrer to the ejectment cause of action is based upon the granting of the demurrer to the breach of contract cause of action, it is also denied. Accordingly, the demurrers are denied.

### **C. Demurrer to Conversion Cause of Action**

#### **1. Standard of Review**

A preliminary objection in the form of a demurrer tests the legal sufficiency of a pleading. *Ins. Adjustment Bureau, Inc. v. Allstate Ins. Co.*, 860 A.2d 1038, 1041 (Pa. Super. 2004). A demurrer will be granted where the challenged pleading is legally insufficient. *Williams v. Nationwide Mut. Ins. Co.*, 750 A.2d 881, 883 (Pa. Super. 2000). That is, a demurrer will be granted when it is clear from the facts that the party has failed to state a claim upon which relief may be granted. *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 781 A.2d 1185, 1191 (Pa. 2001).

The demurrer must be resolved solely on the basis of the pleading; no testimony or evidence outside of the pleading may be considered. *Williams*, 750 A.2d at 883. Furthermore, the court may not address the merits of the matter presented in the pleading. *In re S.P.T.*, 783

A.2d 779, 781 (Pa. Super. 2001). All material facts set forth in the pleading as well as all inferences reasonably deducible therefrom shall be admitted as true for purposes of deciding the demurrer. *Willet v. Pennsylvania Med. Catastrophe Loss Fund*, 702 A.2d 850, 853 (Pa. 1997); *Ins. Adjustment Bureau*, 860 A.2d at 1041. “The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the demurrer.” *Ins. Adjustment Bureau*, 860 A.2d at 1041 (quoting *Vulcan v. United of Omaha Life Ins. Co.*, 715 A.2d 1169, 1172 (Pa. Super. 1998)).

## **2. Elements of a Conversion Cause of Action**

Conversion is a tort where “... the defendant deprives the plaintiff of his right to a chattel or interferes with the plaintiff’s use or possession of a chattel without the plaintiff’s consent and without lawful justification.” *Pittsburgh Constr. Co.*, 843 A.2d at 581. In order to assert a conversion cause of action, the plaintiff must have had actual or constructive possession of the chattel or an immediate right to possession of the chattel at the time of the alleged conversion. *Chrysler Credit Corp. v. Smith*, 643 A.2d 1098, 1100 (Pa. Super. 1994), *app. denied*, 652 A.2d 834 (Pa. 1994). Conversion requires that the exercise of control over the chattel must be intentional, but it does not require specific intent to commit a wrong. *L.B. Foster Co. v. Charles Caracciola Steel and Metal Yard Inc.*, 777 A.2d 1090, 1095 (Pa. Super. 2001); *Underhill Coal Mining Co. v. Hixon*, 652 A.2d 343, 345 (Pa. Super. 1994). The requisite intent is the “... intent to exercise dominion or control over the goods which is in fact inconsistent with the plaintiff’s rights ....” *Shonberger v. Oswell*, 530 A.2d 112, 114 (Pa. Super. 1987).

### **3. James has Pleaded a Conversion Cause of Action**

James' lack of an individual property right in the three vehicles and storage tanks does not defeat the conversion cause of action asserted in the complaint. The court has already determined that James' causes of actions will be treated as direct claims by him as a shareholder. By treating James' causes of action as direct claims, the court must treat the situation as if James, and not the corporation, has suffered the alleged injuries. With regard to the conversion cause of action, this means that the court must create a legal fiction that Frank has interfered with James' property rights with regard to the VPI vehicles and the WRE storage tanks. At least for the purposes of the conversion cause of action, VPI and WRE's property rights become James' property rights.

As such, the complaint alleges facts that could establish a conversion cause of action against Frank. The complaint alleges that James had a right to possession of the vehicles and storage tanks at the time of the alleged conversion. The complaint alleges that VPI owned the vehicles and the WRE owned the storage tanks. The complaint alleges that Frank interfered with James property right to the vehicles and storage tanks without legal justification. The complaint alleges that Frank disposed of or salvaged the vehicles and storage tanks without remitting to VPI or WRE the proceeds of the salvage. The complaint also alleges facts that could establish the requisite intent. The alleged facts demonstrate that Frank exercised dominion and control over the vehicles and the storage tanks inconsistent with VPI and WRE's interests therein by disposing of them or salvaging them without remitting the proceeds of the salvage. He treated the property as if it were his own. Accordingly, the complaint alleges sufficient facts that could establish a conversion cause of action against Frank.



## **D. Lack of Specificity**

### **1. Standard of Review Regarding Specificity Objection**

Pennsylvania is a fact pleading state. *Miketic v. Baron*, 675 A.2d, 324, 330 (Pa. Super. 1986). A complaint must set forth the material facts upon which the cause of action is based in a concise and summary form. Pa.R.C.P. 1019(a). The complaint must apprise the defendant of the claim being asserted and summarize the material facts needed to support the claim. *Cardenas v. Schober*, 783 A.2d 317, 325 (Pa. Super. 2001), *app. denied, app. granted*, 797 A.2d 907 (Pa. 2002); *Alpha Tau Omega Fraternity v. Univ. of Pennsylvania*, 464 A.2d 1349, 1351 (Pa. Super. 1993).

The amount of detail or level of specificity required is "... incapable of precise measurement." *Pike County Hotels Corp. v. Kiefer*, 396 A.2d 677, 681 (Pa. Super. 1978). However, the complaint must set forth enough material facts to allow the defendant to prepare a defense to the allegations contained within the complaint. *Weiss v. Equibank*, 460 A.2d 271, 274 (Pa. Super. 1983); *Dep't of Transp. v. Shippley Humble Oil Co.*, 370 A.2d 438, 439 (Pa. Cmwlth. 1977). Based on *Connor v. Allegheny Hospital*, 461 A.2d 600, 602-03 n.3 (Pa. 1983), and its progeny, the language used in the complaint must also be specific enough as not to allow the plaintiff to assert new causes of action or theories of liability at a later date under the guise of merely amplifying what has been timely pleaded. In examining the complaint, the focus is not upon one particular paragraph in isolation. *Yacoub v. Lehigh Valley Med. Assocs. P.C.*, 805 A.2d 579, 589 (Pa. Super. 2001). The paragraph at issue must be read in conjunction with the complaint as a whole to determine if there is the requisite level of specificity. *Ibid.*

### **2. Paragraphs 71 and 72 Shall be Stricken**

The breach of fiduciary duty allegation in Paragraph 71 and the fraud allegation in Paragraph 72 shall be stricken. It is not clear what is being alleged by these allegations. The allegations may be a characterization of the alleged conversion of corporate checks and checking accounts or it could be an attempt to raise two causes of action based upon the alleged conduct with regard to the checks and checking accounts. This uncertainty prevents Frank from preparing an adequate defense to the allegations. Accordingly, Paragraphs 71 and 72 are stricken from the complaint.

#### **IV. CONCLUSION.**

Frank's preliminary objections will be denied in part and granted in part.

**ORDER**

It is hereby ORDERED that the Preliminary Objections of Defendant Frank P. Wolyniec, Jr. filed January 26, 2005 will be DENIED IN PART and GRANTED IN PART.

The preliminary objections are GRANTED IN PART in that James T. Wolyniec, Sr. does not have standing as a corporate officer to assert the individual causes of action. All causes of action asserted by James T. Wolyniec, Sr. in his individual capacity as a corporate officer are DISMISSED.

The preliminary objections are GRANTED IN PART in that Paragraphs 71 and 72 shall be stricken from the complaint.

The preliminary objections are DENIED in all other respects.

Plaintiffs shall have twenty (20) days from notice of this order to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Garth D. Everett, Esquire  
Marc F. Lovecchio, Esquire  
James N. Bryant, Esquire  
107 East Main Street, P.O. Box 551  
Millheim, PA 16854

Judges

Christian J. Kalas, Esquire

Gary L. Weber, Esquire (Lycoming Reporter)