

THE PARK HOME, INC.,
t/d/b/a, THE MEADOWS,

Plaintiff

vs.

J.B. GIBBONS CONSTRUCTION, INC.,
WALLACE, ROBERTS & TODD, LLC,

Defendants

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

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: NO. 04-00,919

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: PRELIMINARY OBJECTIONS

Date: March 6, 2006

OPINION and ORDER

Before the court for determination are the Preliminary Objections of Defendant Wallace, Roberts & Todd, LLC filed August 16, 2005 to Plaintiff's second amended complaint. The preliminary objections will be granted in part and will be denied in part.

I. BACKGROUND

A. Facts

The second amended complaint alleges the following facts. The case arises out of a construction project involving two buildings that were intended to house nursing care facilities. One building was to be a single story sixty bed personal care residential facility of approximately 30,000 square feet. This was to be The Meadows Building. The second building was to be a single story two hundred and forty bed skilled nursing facility of approximately 85,000 square feet. This was to be The Valley View Building.

The Lycoming County Nursing Home Association, Incorporated (hereafter “the Nursing Home Association”) was a Pennsylvania non-profit organization. It was formed for two purposes. The first was to construct and own The Meadows and The Valley View Buildings. The second was to own all the assets of and operate The Meadows Personal Care Facility and The Valley View Skilled Nursing Facility within the two buildings.

The Lycoming County Institutional District (hereafter “the Institutional District”) was a body corporate and politic established by Lycoming County. The Institutional District owned the real estate upon which the two buildings were to be constructed. The Institutional District leased that real estate to the Nursing Home Association.

On November 28, 1990, the Nursing Home Association entered into a contract with Wallace, Roberts & Todd, LLC (hereafter “WRT”). WRT is a Pennsylvania limited liability corporation with its principle place of business in Philadelphia, Pennsylvania. WRT is an architectural design firm. Under the contract with the Nursing Home Association, WRT was to provide architectural services for the construction of the two buildings. WRT was to provide design, planning, development, construction contract administration, and project representation.

On August 15, 1991, the Nursing Home Association entered into a contract with J.B. Gibbons Construction, Incorporated (hereafter “Gibbons”). Gibbons is a Pennsylvania corporation with its principal place of business in Williamsport, Pennsylvania. Gibbons was engaged in the business of general commercial and residential construction, building, and design. Gibbons agreed to serve as the general construction contractor, builder, and project manager for the construction of the two buildings.

On August 16, 1991, construction of The Meadows and The Valley View Buildings began. On November 28, 1992, construction on both buildings was substantially completed.

The construction of The Meadows Building's exterior walls is at issue. The walls were to be constructed as follows. Below the frieze board, the exterior wall was to consist of gypsum board covered with a plastic weather barrier and vinyl siding. Above the frieze board, the exterior wall was to consist of plywood boards covered with vinyl siding. The frieze board itself was to be covered in aluminum. All flashing was to be aluminum.

Following the completion of construction, the Nursing Home Association assigned its lease of the real estate and transferred ownership of The Meadows Building and all assets related to The Meadows Personal Care Facility to Lycoming Community Care, Incorporated (hereafter "Community Care"). Community Care is a Pennsylvania non-profit corporation. Community Care continued to operate The Meadows Personal Care Facility out of The Meadows Building.

On August 29, 2002, the Institutional District transferred to Lycoming County, by recorded deed, title to the real estate upon which The Meadows Building sat. On the same date, Lycoming County transferred that same piece of real estate by recorded deed to Community Care. Also on August 29, 2002, Community Care then sold the real estate, The Meadows Building and all assets related to The Meadows Personal Care Facility to The Park Home, Incorporated (hereafter "Park Home"). From that date to the present, Park Home has continuously owned and operated The Meadows Personal Care Facility.

Around April – May 2004, Park Home discovered that the gypsum board and plywood behind the exterior wall had rotted over a substantial portion of The Meadows Building. This

was discovered during the course of remodeling, routine maintenance, and making cosmetic repairs. Park Home has alleged that improper installation of materials and equipment and improper workmanship at the time of original construction allowed water to penetrate behind the exterior wall finish of the building and rot the gypsum board and plywood. With regard to the installation of the materials and equipment and the workmanship of the construction, Park Home has specifically alleged the following:

- (1) the aluminum covered plywood boards were not properly flashed or sealed;
- (2) the aluminum covered rake board ends and horizontal plywood band ends towards the eaves were not adequately protected by the aluminum covering leaving “coin slot” type openings exposed to the weather and were never sealed;
- (3) windows were improperly installed;
- (4) drain systems for the air conditioning were not installed; and
- (5) the building site was improperly graded.

Park Home contends that it will cost in excess of \$99,954.00 to remedy the condition of the exterior wall of The Meadows Building.

B. Park Home's Claims

Park Home has asserted three claims against WRT in the second amended complaint. The first is a breach of contract cause of action in Count IV. Park Home alleges that WRT breached the November 28, 1990 contract (hereafter “the WRT Agreement”) for architectural services by failing to properly administer the construction agreement, which resulted in improper installation of materials and equipment and deficient workmanship. The second

claim is a professional negligence cause of action in Count V. Park Home alleges that WRT failed to exercise the degree of skill and competence ordinarily exercised by an architect/architectural firm by failing to administer the construction contract, failing to supervise and inspect the construction work so as to insure that it conformed with the design plans and specifications, and failing to supervise and inspect the construction work so that it was performed in a workmanlike manner. The third claim is a breach of warranty cause of action asserted in Count VI. Park Home alleges that WRT breached the implied warranty of merchantability and the implied warranty of fitness for a particular purpose by failing to inspect or supervise the construction work to ensure that the material and equipment was installed properly and that the work was done in a workmanlike manner so that The Meadows Building was fit for its intended purpose as a residential personal care facility.

C. WRT's Preliminary Objections

WRT asserts four preliminary objections to Park Home's second amended complaint. The first is a demurrer to the breach of contract cause of action in Count IV. WRT argues that Park Home has failed to establish a breach of contract cause of action because Park Home has failed to establish that it was a party to the WRT Agreement between WRT and the Nursing Home Association. WRT asserts that Park Home was not a named party to the WRT Agreement, Park Home could not become a party to the WRT Agreement by assignment because the WRT agreement was not assignable, and Park Home was not a third party beneficiary to the agreement because the WRT Agreement explicitly stated that it did not create third party beneficiary status upon anyone. WRT also argues that Park Home has failed to set forth a breach of contract cause of action because the alleged actions do not constitute a breach

of the WRT Agreement. WRT contends that it had no contractual duty under the WRT Agreement to construct, supervise, or inspect any materials or work performed regarding The Meadows Building.

The second preliminary objection is a demurrer to the professional negligence cause of action in Count V. WRT argues that Park Home has failed to allege a cause of action for professional negligence because it has failed to establish that WRT owed a duty to Park Home. WRT argues it had no duty to Park Home requiring it to construct, supervise, or inspect any materials or work performed regarding The Meadows Building because the WRT Agreement created no such duty.

The third preliminary objection is a demurrer to the implied warranty cause of action asserted in Count VI. WRT asserts that Park Home cannot assert an implied warranty cause of action against WRT arising out of either the WRT Agreement or the rendition of professional services by WRT. With regard to the WRT Agreement, WRT argues that Park Home cannot benefit from any implied warranty created by that contract since it was not a party to the WRT Agreement. In the alternative, WRT argues that even if Park Home was a party to the contract the implied warranties of merchantability and fitness for a particular purpose do not apply to design construction contracts. With regard to the rendition of professional services, WRT argues that, as a matter of law, a professional does not implicitly warrant his services. A professional only agrees that he will provide his services in a non-negligent manner. With respect to both the WRT Agreement and the rendition of professional services, WRT also argues that even if the implied warranties were applicable, Park Home has failed to plead facts which demonstrate that a breach of those warranties has prevented or impeded the The

Meadows Building's use as a residential care facility, especially when Park Home has alleged that it and its predecessors have been operating The Meadows Building as a residential care facility for more than ten years since the construction was completed in 1991.

The fourth preliminary objection alleges that the second amended complaint lacks the requisite specificity. WRT argues that the second amended complaint lacks the material facts to establish the alleged causes of action. WRT contends that the second amended complaint merely contains vague and conclusory allegations without factual support. WRT also argues that the vague and conclusory nature of the allegations in the second amended complaint prevent an adequate answer and impedes its ability to prepare a defense.

II. ISSUES

There are four issues before the court.

- (1) Whether Park Home has pleaded facts that could establish a breach of contract cause of action against WRT based upon the WRT Agreement when Park Home was not a named party to that agreement?
 - (a) Whether Park Home is a third party beneficiary of the WRT Agreement thereby permitting it to bring a breach of contract cause of action based upon that agreement?
 - (b) Whether the alleged assignment of all of Community Care's rights and assets in The Meadows Building and The Meadows Personal Care Facility permits Park Home to assert a breach of contract cause of action against WRT based upon the WRT agreement?
- (2) Whether WRT owed Park Home a duty of care regarding the rendition of professional architectural services as would relate to the construction of The Meadows Building when Park Home did not hire WRT to perform those architectural services and is a subsequent purchaser of the building WRT designed and of which WRT was to have supervised and inspected the construction?

- (3) Whether WRT impliedly warranted that The Meadows Building would be fit for use as a residential personal care facility when it agreed to perform professional architectural services for the construction of The Meadows Building?
- (4) Whether Park Home has pleaded sufficient material facts to establish the alleged causes of action and permit WRT to answer the pleading and prepare an adequate defense?

III. DISCUSSION

The discussion will be divided into four main parts. Firstly, we will address the demurrer to the breach of contract cause of action asserted in Count IV of the second amended complaint. We will determine if Park Home is a third party beneficiary of the WRT Agreement and if Community Care's assignment by conveyance of all its assets in The Meadows Building and The Meadows Personal Care Facility included a right to enforce the WRT Agreement.

Secondly, we will address the demurrer to the professional negligence cause of action asserted in Count V of the second amended complaint to examine WRT's duty as an architectural firm and if it owed a duty to Park Home.

The third point to be discussed will be the demurrer to the implied warranty cause of action asserted in Count VI of the second amended complaint. Specifically, we will determine if the holding of *Bloomsburg Mills Incorporated v. Sordoni Construction Company, Incorporated*, 164 A.2d 210 (Pa. 1960), applies.

Finally, we will address the specificity challenge to the second amended complaint. We will examine the second amended complaint to determine if it sets forth sufficient facts to support the causes of action so as to permit WRT to prepare a defense.

A. Demurrer to the Breach of Contract 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. Breach of Contract Cause of Action Elements

In order to assert a cause of action for breach of contract, a plaintiff must plead: (1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damages. *Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 580 (Pa. Super. 2003); *Presbyterian Med. Ctr. v. Budd*, 832 A.2d 1066, 1070-71 (Pa. Super. 2003). A complaint does not need to plead every term of the contract in complete detail, but every element must be specifically pleaded. *Presbyterian*, 832 A.2d at 1071; *Corestates Bank, N.A. v. Cutillo*, 723 A.2d 1053, 1058 (Pa. Super. 1999). “A contract is formed when the parties to it 1) reach a mutual understanding, 2) exchange consideration, and 3) delineate the terms of their bargain with sufficient clarity.” *Weavertown Transp. Leasing, Inc. v. Moran*, 834 A.2d 1169, 1172 (Pa. Super. 2003), *app. denied*, 849 A.2d 242 (Pa. 2004). “Generally, a party to a contract does not become liable for a breach thereof to one who is not a party thereto.” *Evans v. Otis Elevator Co.*, 168 A.2d 573, 575 (Pa. 1961).

3. Park Home’s Status as a Third Party Beneficiary of the WRT Agreement

a. Third Party Beneficiary General Rules and Principles

A third party beneficiary of a contract has the same rights and limitations as those of the original contracting parties. *Chen v. Chen*, 840 A.2d 355, 359 (Pa. Super. 2003), *app. granted in part*, 853 A.2d 1011 (Pa. 2004); *Miller v. Allstate Ins. Co.*, 763 A.2d 401, 405 n.1 (Pa. Super. 2000). As such, a third party beneficiary may bring suit based on the contract. *Chen*, 840 A.2d at 359. The determination of whether an individual is a third party beneficiary of a contract is a question of law that must be decided by a court. *Hicks v. Metro. Edison, Co.*, 665 A.2d 529, 536 (Pa. Cmwlth. 1995).

A party becomes a third party beneficiary of a contract if the two parties to the contract express an intention to benefit the third party in the contract itself. *Scarpitti v. Weborg*, 609 A.2d 147, 150 (Pa. 1992). If the contract expresses no such intention, then the party must satisfy a two part test to be recognized as a third party beneficiary of the contract. The party seeking to establish third party beneficiary status by implication must show that:

the circumstances are so compelling that recognition of the beneficiary's right is appropriate to effectuate the intention of the parties, and the performance satisfies an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

Id. at 150.

The first part of the test to establish implied third party beneficiary status is a standing requirement that gives the court discretion to determine whether "... recognition of third party beneficiary status would be appropriate." *Scarpitti*, 609 A.2d at 150; *Clifton v. Suburban Cable TV Co., Inc.*, 642 A.2d 512, 514 (Pa. Super. 1994). The second part of the test "... defines the two types of claimants who may be intended third party beneficiaries." *Scarpitti*, 609 A.2d at 150; *Clifton*, 642 A.2d at 514. Third party beneficiary status will not be conferred to the public at large, but only to a specific, limited group intended to benefit from the contract. *Hicks*, 665 A.2d at 536. Therefore, a party who fails to satisfy the *Scarpitti* test is an incidental beneficiary without the right to enforce the contract. *Weaverton*, 834 A.2d at 1173.

b. Park Home is Not a Third Party Beneficiary of the WRT Agreement

Park Home is not a third party beneficiary of the WRT Agreement. Paragraph 9.7 of the WRT Agreement states, "Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or

Architect.” The explicit language of the WRT Agreement clearly demonstrates the intent of the Nursing Home Association and WRT to limit the contract to those two entities.

By contract, the Nursing Home Association has eliminated the possibility of there ever being a third party beneficiary of the WRT Agreement. The contract language negates the first part of the *Scarpitti* test because the contract limitation of rights establishes that there are no compelling reasons to consider a subsequent owner of The Meadows Building to be a third party beneficiary of the WRT Agreement. Accordingly, in order to give effect to the intent of the parties, the court determines that Park Home is not a third party beneficiary of the WRT Agreement.

4. Effect of Community Care’s Assignment of Assets to Park Home

a. Assignment General Rules and Principles

“ ‘An assignment is a legal transfer of property or some other right from one person to another, and unless in some way qualified, it extinguishes the assignor’s right to performance by the obligor and transfers that right to the assignee.’” *Legal Capital, LLC v. Med. Prof’l Liability Catastrophe Loss Fund*, 750 A.2d 299, 302 (Pa. 2002) (quoting *Horbal v. Moxham Nat’l Bank*, 697 A.2d 577, 583 (Pa. 1997)). An assignee stands in the shoes of the assignor and assumes the rights of the assignor. *Texas Keystone, Inc. v. Pennsylvania Dep’t of Conservation and Natural Resources*, 851 A.2d 228, 238 n. 12 (Pa. Cmwlth. 2004). An assignment does not confer upon the assignee any greater rights than those possessed by the assignor. *Etter v. Indus. Valley Bank Trust Co.*, 515 A.2d 6, 9-10 (Pa. Super. 1986), *app. denied*, 524 A.2d 494 (Pa. 1987).

b. Community Care's Assignment of All Its Assets in The Meadows Building and The Meadows Personal Care Facility Did Not Include a Right to Enforce the WRT Agreement

Community Care could only assign the rights and interests it possessed in The Meadows Building and The Meadows Personal Care Facility. In order to determine what rights and interests Community Care had, the court must look at the rights and interests that the Nursing Home Association had in The Meadows Building and The Meadows Personal Care Facility since it was from the Nursing Home Association that Community Care acquired its rights and interests. As with Community Care, the Nursing Home Association could only assign the rights and interests it possessed.

The Nursing Home Association could not assign its right to enforce the WRT Agreement to Community Care. Paragraph 9.5 of the WRT Agreement states:

The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither owner nor Architect shall assign this Agreement without the written consent of the other.

The clear language of the WRT Agreement limited the Nursing Home Association's ability to assign the contract as part of its rights, interests, and assets. The second amended complaint contains no factual allegation that WRT provided written consent for the Nursing Home Association to assign its interest in the WRT Agreement to Community Care. Thus, when the Nursing Home Association assigned its assets and interests in The Meadows Building and The Meadows Personal Care Facility to Community Care it could not have transferred its right to enforce the WRT Agreement as part of those assets. Accordingly, Community Care could not have transferred any right to enforce the WRT Agreement to Park Home, because it did not

possess such an interest. Therefore, Community Care’s assignment of assets in The Meadows Building and The Meadows Personal Care Facility to Park Home did not include any standing to enforce the “Owners” interest in the WRT Agreement.

5. The Breach of Contract Cause of Action in Count IV is Dismissed

Park Home asserted the breach of contract cause of action in Count IV of the second amended complaint in its own right as a third party beneficiary of the WRT Agreement and as a successor in interest to the Nursing Home Association. Having determined that neither theory permits Park Home to assert the breach of contract cause of action in its own right, the court must dismiss the cause of action. Having dismissed the breach of contract cause of action, the court finds it unnecessary to determine whether WRT’s alleged failure to supervise and inspect the construction of The Meadows Buildings constituted a breach of the WRT Agreement.

B. Demurrer to the Professional Negligence Cause of Action

1. Standard of Review

The standard of review that will guide the determination of the demurrer to the professional negligence cause of action is the same which guided the determination of the demurrer to the breach of contract cause of action.

2. Negligence Cause of Action Elements

In order to establish a negligence cause of action, a plaintiff must prove: (1) the existence of a duty or obligation recognized by law requiring the actor to conform to a certain standard of conduct; (2) a failure on the part of the defendant to conform to that duty, or breach thereof; (3) a causal connection between the defendant’s breach and the resulting injury; and (4) actual loss or damage suffered by the complainant. *Actovitz v. Gulph Mills Tennis Club*,

812 A.2d 1218, 1222 (Pa. 2002); *Rabutino v. Freedom State Realty Co.*, 809 A.2d 933, 938 (Pa. Super. 2002). “The primary element in any negligence cause of action is that the defendant owes a duty of care to the plaintiff.” *Althaus by Althaus v. Cohen*, 756 A.2d 1166, 1168 (Pa. 2000); *Gutteridge v. A.P. Green Servs., Inc.*, 804 A.2d 643, 655 (Pa. Super. 2002), *app. denied*, 829 A.2d 1158 (Pa. 2003). Whether a duty should be imposed is a question of law for the court to determine. *Sharpe v. St. Luke’s Hosp.*, 821 A.2d 1215, 1219 (Pa. 2003); *Brisbine v. Outside In Sch. of Experimental Educ., Inc.*, 799 A.2d 89, 95 (Pa. Super. 2002), *app. denied*, 816 A.2d 1101 (Pa. 2003).

The lack of privity of contract¹ between Park Home and WRT is not determinative of whether WRT owed Park Home a duty for purposes of negligence liability. Privity of contract is not an essential prerequisite to the existence of a duty. *Sharpe*, 821 A.2d at 1220 n.3. The source of a duty for purposes of negligence liability is public policy. *See, Etoll, Inc. v. Ellias/Savion Advertising, Inc.*, 811 A.2d 10, 14 (Pa. Super. 2002). It is from this public policy that a court determines whether to impose a duty of care upon an individual. *Althaus*, 756 A.2d at 1168-69. Thus, a duty for purposes of negligence liability may exist in the absence of a contract creating such duty.

3. WRT’s Duty of as an Architectural Firm

WRT had a duty to render professional architectural services in accordance with the standards of architects in the community. A person who renders professional services, unless he represents that he has greater or less skill or knowledge, is required to exercise the skill and

¹ Privity is the “... connection or relationship which exists between two or more contracting parties. It was traditionally essential to the maintenance of an action on any contract that there should subsist such privity between the plaintiff and defendant in respect of the matter sued on .” *Williams v. West Penn Power Co.*, 467 A.2d 811, 184 n.11 (Pa. 1983) (quoting Black’s Law Dictionary, 1079 (rev. 5th ed. 1979)).

knowledge normally possessed by members of that profession or trade in good standing in similar communities. *Robert Woller Co. v. Fidelity Bank*, 479 A.2d 1027, 1031 (Pa. Super. 1984), *app. denied*, 528 A.2d 957 (Pa. 1987). As a professional, an architect has a duty to exercise the skill and knowledge of an architect in rendering professional services. *See, Bloomsburg Mills*, 164 A.2d at 203; *Henon v. Vernon*, 68 Pa. Super. 608, 611 (1918). As such, WRT had a duty to reasonably exercise the skill and knowledge possessed by an architect in rendering professional architectural services concerning the construction of The Meadows and The Valley View Buildings. The question then becomes to whom is that duty owed.

4. WRT Owed Park Home a Duty of Care to Render Professional Architectural Services with Regard to the Construction of The Meadows Building

It is well settled that:

‘In determining the existence of a duty of care, it must be remembered that the concept of duty amounts to no more than "the sum total of those considerations of policy which led the law to say that the particular plaintiff is entitled to protection" from the harm suffered...To give it any greater mystique would unduly hamper our system of jurisprudence in adjusting to the changing times. The late Dean Prosser expressed this view as follows:

These are shifting sands, and no fit foundation. There is a duty if the court says there is a duty; the law, like the Constitution, is what we make it. Duty is only a word with which we state our conclusion that there is or is not to be liability; it necessarily begs the essential question. When we find a duty, breach and damage, everything has been said. The word serves a useful purpose in directing attention to the obligation to be imposed upon the defendant, rather than the causal sequence of events; beyond that it serves none. In the decision whether or not there is a duty, many factors interplay: The hand of history, our ideas of morals and justice, the convenience of administration of the rule, and our social ideas as to where the loss should fall. In the end the court will decide whether there is a duty on the basis of the mores of the

community, "always keeping in mind the fact that we endeavor to make a rule in each case that will be practical and in keeping with the general understanding of mankind.'

Althaus, 756 A.2d at 1168-69 (Pa. 2000) (quoting *Sinn v. Burd*, 404 A.2d 672, 681 (Pa. 1979)). "Thus, the legal concept of duty of care is necessarily rooted in often amorphous public policy considerations, which may include our perceptions of history, morals, justice and society." *Id.*, at 1169. In determining the existence of a duty, a court should consider the following factors: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequence of imposing a duty on the actor; and (5) the overall public interest in the proposed solution. *Ibid.*; *Stephens v. Paris Cleaners, Inc.*, 885 A.2d 59, 67 (Pa. Super. 2005).

In applying the *Althaus* factors, the court finds that WRT owed Park Home a duty of care with regard to the rendition of professional architectural services concerning the construction of The Meadows Building. A sufficient relationship exists between Park Home and WRT to impose a duty upon WRT. WRT provided professional architectural services for the design and construction of a building that Park Home subsequently purchased. While Park Home did not engage WRT to perform those services, as a purchaser of The Meadows Building, it was going to benefit or suffer from those services as if it had.

The risk of harm posed to a subsequent purchaser of a building which an architect provided professional services for the design and construction of is great if those services were negligently performed. In providing professional services for the design and construction of a building, an architect not only uses his knowledge and expertise to ensure that the esthetic needs of the project are met, but also to ensure that the building is structurally sound. A failure

to see that a building is structurally sound could result in significant property damage and personal injury to individuals who use or are even near the building.

It is foreseeable that a subsequent purchaser of a building which an architect provided professional services for the design and construction of could suffer an injury from negligently performed architectural services. Generally speaking, a building is designed and intended to stand for a number of years. As such, it is reasonable to conclude that the ownership of that building might change hands during the life of the building. Because of this, an architect must realize that when he performs professional services for the design and construction of a building it is likely that the building will not be owned or used by the entity that hired him.

It may be true that a rule which extends the duty of an architect to every owner of a building he designs may increase the cost of an architect's services, thereby making them more difficult to obtain. But, if such a requirement ensures that such services will be rendered in accordance with the standards of the profession, then such a rule is worth the cost in light of the expense in property damage and personal injury that negligently rendered architectural services could produce. Therefore, the court finds that WRT owed a duty of care to Park Home with regard to the rendition of professional architectural services as would relate to the construction of The Meadows Building.

Accordingly, the demurrer to the professional negligence claim is denied.

C. Demurrer to the Implied Warranty Causes of Action

1. Standard of Review

The standard of review that will guide the determination of the demurrer to the professional negligence cause of action is the same that guided the determination of the demurrers to the breach of contract and professional negligence causes of action.

2. WRT did not Impliedly Warrant that The Meadows Building Would Be Fit for use as a Residential Personal Care Facility

The demurrer to the breach of implied warranty cause of action is granted. Under Pennsylvania law, the scope of what an architect warrants with regard to the rendition of professional services is limited. In *Bloomsburg Mills, Incorporated v. Sordoni Construction Company, Incorporated*, the plaintiff corporation hired the defendant architects to design and prepare plans for the construction of a rayon and nylon weaving mill. 164 A.2d at 202. The temperature and humidity in the mill had to be maintained at a certain level so that the product's desired level of quality could be achieved. *Ibid.* To help do this, a roof with "... a vapor seal was required, which would prevent leakage of moisture from the outside and condensation from the inside." *Ibid.* The construction of the mill was completed, and a few years following the completion the roof's insulation material became soggy and inefficient resulting in high condensation of the inner ceiling of the building. *Ibid.*

The plaintiff corporation sued the defendant architects alleging that the plans they had prepared were deficient in that the plans "... contained an improper vapor seal, faulty drain flushings, and fiberglass insulation material [which was] inadequate for the use intended." *Bloomsburg Mills*, 164 A.2d at 202. The Pennsylvania Supreme Court held that an architect impliedly warrants that the plans and specifications he is hired to prepare "... will give the

structure so designed reasonable fitness for its intended use.” *Id.* at 203. That is an architect warrants that if the plans and specifications he prepares are followed, then a structure fit for the intended use will result.

The clear language and facts of *Bloomsburg Mills* limits an architect’s implied warranty to the plans and specifications he prepares and not the structure itself. In determining whether there has been a breach of this implied warranty, the focus is on the plans. If the looking at the plans alone they would produce a structure fit for the intended use, then there is no breach of the implied warranty. Conversely, if the looking at the plans alone they would not produce a structure fit for the intended use, then there is a breach of the implied warranty.

Park Home has not found fault with WRT’s architectural services regarding the preparation of the plans and specifications for The Meadows Building. Park Home has not challenged the adequacy of the plans and specifications in any manner. Park Home has not alleged that the plans and specifications would not have produced the intended sixty bed personal care residential facility of approximately 30,000 square feet. Park Home has not alleged that the plans and specifications were deficient, but that The Meadows Building was not constructed according to the plans. As such, the holding of *Bloomsburg Mills* is not applicable.

Accordingly, the implied warranty cause of action is dismissed.

D. Specificity Challenge

1. Standard of Review

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); *Commonwealth, Dep’t of Transp. v. Shipley 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. The Second Amended Complaint Sets Forth Sufficient Material Facts That Could Establish the Remaining Cause of Action and Permits WRT to Prepare a Defense

The second amended complaint sets forth sufficient material facts that could establish the professional negligence cause of action and permit WRT to prepare a defense. WRT’s

challenge to the specificity of the breach of contract and implied warranty causes of action have been mooted by the dismissal of those causes of action.

The second amended complaint alleges that WRT was negligent in providing professional architectural services by failing to supervise and inspect the construction work being done at The Meadows Building site. The second amended complaint alleges that this failure led to: the aluminum covered plywood boards not being properly flashed or sealed; the aluminum covered rake board ends and horizontal plywood band ends towards the eaves not being adequately protected by the aluminum covering leaving “coin slot” type openings exposed to the weather and never being sealed; windows not being properly installed; drain systems for the air conditioning not being properly installed; and the building site being improperly graded. The second amended complaint alleges, that as a result of the deficiencies in the construction, moisture was allowed to penetrate the exterior wall finish and rot the gypsum board and the plywood. The second amended complaint alleges that it will cost \$99,954 to repair the damage and correct the deficiencies in the work.

The second amended complaint puts WRT on notice that its alleged breach of duty was its alleged failure to supervise and inspect the construction of The Meadows Building. The second amended complaint puts WRT on notice as to what this alleged failure caused and how it has damaged Park Home. As such, the second amended complaint pleads sufficient material facts that will allow WRT to prepare a defense to the professional negligence cause of action.

Accordingly, the specificity challenge is denied.

IV. CONCLUSION

WRT’s preliminary objections are granted in part and denied in part.

ORDER

It is hereby ORDERED that the Preliminary Objections of Defendant Wallace, Roberts & Todd, LLC filed August 16, 2005 will be GRANTED IN PART and DENIED IN PART.

The Preliminary Objections are GRANTED IN PART in that the breach of contract cause of action asserted in Count IV is DISMISSED.

The Preliminary Objections are GRANTED IN PART in that the implied warranty cause of action asserted in Count V is DISMISSED.

The Preliminary Objections are DENIED in all other respects.

Plaintiff, The Park Home Inc., t/d/b/a, The Meadows, shall have twenty (20) days after notice of this Order in which to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

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