

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM A. CAPOUILLEZ, t/d/b/a	:	
GEOLOGICAL ASSESSMENT & LEASING,	:	DOCKET NO. 12-00,005
Plaintiff	:	CIVIL ACTION – LAW
	:	
vs.	:	JURY TRIAL DEMANDED
	:	
LAUREL HILL GAME AND FORESTRY CLUB;	:	PRELIMINARY
WILLIAMSON TRAIL RESOURCES, LP; GREAT	:	OBJECTIONS
LAKES ENERGY PARTERNS, LLC; and RANGE	:	
RESOURCES – APPALACHIA, LLC,	:	
Defendants	:	

**OPINION AND ORDER**

The above-captioned matter comes before the Court on Defendants’ preliminary objections to Plaintiff’s complaint. On March 9, 2012, Defendants Laurel Hill Game and Forestry Club (Defendant Laurel Hill) and Williamson Trail Resources, LP (Defendant Williamson Trail) filed one set of preliminary objections. Also that date, Defendants Great Lakes Energy Partners, LLC (Defendant Great Lakes) and Range Resources – Appalachia, LLC (Defendant Range Resources) filed a second set of preliminary objections. After oral argument and a post-argument briefing period, the Court hereby ORDERS and DIRECTS as follows.

**I. Legal Standards**

Defendants filed a majority of their objections pursuant to Pa. R.C.P. 1028(a)(4). Pa. R.C.P. 1028(a)(4) provides that a party may file a preliminary objection based on the legal sufficiency, or insufficiency, of a pleading (demurrer). A demurrer tests the legal sufficiency of the complaint. *Sullivan v. Chartwell Inv. Partners, LP*, 873 A.2d 710, 714 (Pa. Super. Ct. 2005). A demurrer should be granted only in situations that are clear and free of doubt. *Bourke v. Kazaras*, 746 A.2d 642, 642 (Pa. Super. Ct. 2000). When sustaining a demurrer, the trial court must be satisfied that the claims on the face of the complaint cannot be sustained. *Sullivan*, 873

A.2d at 714. If doubt or uncertainty exists, the trial court should overrule the demurrer. *Id.* Defendants also raised objections pursuant to Pa. R.C.P. 1028(a)(2) (failure to conform to law or rule of court) and Pa. R.C.P. 1028(a)(3) (insufficient specificity in a pleading).

## **II. Preliminary Objections**

Both sets of Defendants' preliminary objections are identical with one exception: Defendants Great Lakes and Range Resources filed an additional objection relating to the dismissal of Defendant Great Lakes from the above-captioned matter. This Court will address this objection first.

### **i. Defendants' Preliminary Objections Asserting Legal Insufficiency of Plaintiff's Complaint against Defendant Great Lakes are Sustained.**

Defendants Great Lakes and Range Resources filed an objection pursuant to Pa. R.C.P. 1028(a)(4) based on Defendant Great Lakes' name change filed in August 2007. Defendants Great Lakes and Range Resources claim that Defendant Great Lakes should be dismissed from the above-captioned litigation because Defendant Great Lakes changed its name to Range Resources. Thus, Defendant Great Lakes is not a proper party to this action. This Court agrees.

On August 31, 2007, Great Lakes Energy Partners, L.L.C., changed its name from Great Lakes Energy Partners, L.L.C., to Range Resources – Appalachia, LLC. *See* Def. Prelim. Object. Ex. B. In fact, Plaintiff pleads in his Complaint that Defendant Great Lakes changed its name to Range Resources – Appalachia, LLC in late-August 2007. Complaint, ¶ 28. Therefore, Range Resources – Appalachia, LLC is the proper party to the litigation and Defendant Great Lakes is hereby DISMISSED from the above-captioned matter.

All of the remaining objections have been made by all of the remaining Defendants. Therefore, this Court will address each of the objections in turn.

**ii. Defendants' Preliminary Objections Asserting Legal Insufficiency of Plaintiff's Complaint Based on the Unauthorized Practice of Law are Overruled.**

Defendants allege that Plaintiff's complaint should be dismissed because he has engaged in the unauthorized practice of law. This Court does not agree. Our Supreme Court has long held that the unauthorized practice of law cannot be defined by an all-encompassing statement. *Harkness v. Unemployment Compensation Board of Review*, 920 A.2d 162, 166 (Pa. 2007); *Shortz v. Farrell*, 193 A. 20, 21 (Pa. 1937). Therefore, the Court instructs us to determine this issue on a case-by-case basis. *Harkness*, 920 A.2d at 166. However, the Court has long held three categories of activities that may constitute the practice of law:

(1) the instruction and advising of clients in regard to the law so that they may pursue their affairs and be informed as to their rights and obligations; (2) the preparation of documents for clients requiring familiarity with legal principles beyond the ken of ordinary laypersons; and (3) the appearance on behalf of clients before public tribunals in order that the attorney may assist the deciding official in the proper interpretation and enforcement of the law.

*Harkness*, 920 A.2d at 167. Additionally, the Court has recently added a fourth category: "the holding out of oneself to the public as competent to exercise legal judgment and the implication that he or she has the technical competence to analyze legal problems and the requisite character qualifications to act in a representative capacity." *Id.* However, the underlying actions taken by the individual accused of the unauthorized practice of law is critical to the inquiry. *Id.*

In this instance, the record is insufficient to determine whether or not Plaintiff engaged in the unauthorized practice of law. Defendants allege that Plaintiff's representation and consultation with Defendants Laurel Hill and Williamson Trail in the negotiation, execution, and performance of the underlying lease agreement constitutes the unauthorized practice of law. Court holds that Defendants' claim is not a proper issue to be addressed by preliminary objections because it is a fact-intensive inquiry. Additionally, this Court holds that the record

before it is incomplete to adequately address this issue in the preliminary injunction phase. Therefore, since it is not clear from doubt that Plaintiff did in fact engage in the practice of law, Defendants' objections pursuant to that issue are OVERRULED.

**iii. Defendants' Preliminary Objections Asserting Failure to Conform Law or Rule of Court of Plaintiff's Breach of Contract Claims are Sustained.**

Defendants allege that Plaintiff's breach of contract claims must fail because they fail to conform to Pa. R.C.P. 1019(h)-(i). This Court agrees. The Pennsylvania Rules of Civil Procedure provide that if a claim is based upon an agreement, the pleading must state if that agreement is oral or written. Pa. R.C.P. 1019(h). If that agreement is written, the rules provide that a copy of the agreement must be attached to the complaint. Pa. R.C.P. 1019(i).

In this instance, Plaintiff's breach of contract claims are partially based upon an alleged representation agreement between Plaintiff and Defendants Laurel Hill and Williamson Trail. This agreement is specifically alleged in Plaintiff's Count III. Complaint, ¶ 78, pg. 15. Thus, the Court believes that that agreement should be attached to the underlying complaint in this matter. Therefore, Defendants' objections to Count I and Count II are SUSTAINED for failure to conform to law or rule of court. Plaintiff shall file an amended complaint within twenty (20) days, attaching a copy of the Plaintiff's consultant contract with Defendants Laurel Hill and Williamson Trail.

**iv. Defendants' Preliminary Objections Asserting Legal Insufficiency of Plaintiff's Complaint Based on the Contradiction of the Complaint with the Attached Contract are Overruled.**

Defendants allege that Plaintiff's complaint should be dismissed because the allegations in his complaint are contradicted by the attached contract. This Court believes that Defendants'

claims are premature. Due to the failure of Plaintiff to attach his representation agreement, this Court does not believe that it can fully address this issue on the current record. Therefore, since it is not clear from doubt that Plaintiff did in fact engage in the practice of law, Defendants' objections pursuant to that issue are OVERRULED.

**v. Gist of the Action Doctrine**

Initially, the Court will address Defendants' claims under the "gist of the action" doctrine. Both the Superior and Commonwealth Courts have recognized that the gist of the action doctrine addresses the problems faced when plaintiffs plead both contract and tort theories of recovery for damages occurring while the parties were involved in a contractual relationship. *Reardon v. Allegheny College*, 926 A.2d 477, 485-86 (Pa. Super. Ct. 2007), *appeal denied*, 947 A.2d 738 (Pa. 2008); *Pratter v. Penn Treaty Am. Corp.*, 11 A.3d 550, 559 (Pa. Cmwlth. Ct. 2010). Essentially, the "gist of the action" doctrine precludes plaintiffs from bringing claims in tort when the parties' relationship is contractual and the damages alleged arise from that contractual relationship. *Pratter*, 11 A.3d at 559. Our Superior Court has implemented a four-prong test for the lower courts to apply when determining if the gist of the action doctrine applies. *Reardon*, 926 A.2d at 486. The doctrine forecloses tort claims:

1) arising solely from the contractual relationship between the parties; 2) when the alleged duties breached were grounded in the contract itself; 3) where any liability stems from the contract; and 4) when the tort claim essentially duplicates the breach of contract claim or where the success of the tort claim is dependent on the success of the breach of contract claim.

*Id.*<sup>1</sup>

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<sup>1</sup> Our Commonwealth Court has implemented a different test when assessing the merits of tort claims under this doctrine; however, the Commonwealth Court has held that the Superior Court's four-pronged test achieves the same results as its test. *Pratter*, 11 A3d at 559 n.9; *Yocca v. Pittsburgh Steelers Sports, Inc.*, 806 A.2d 936, 944 (Pa. Cmwlth. Ct. 2002), *rev'd on other grounds*, 854 A.2d 425 (Pa. 2004).

In the above-caption matter, Plaintiff alleges various tort claims in addition to his breach of contract claims. Defendants allege that Plaintiff's claims for tortious interference, unjust enrichment, and conspiracy, must fail under the gist of the action doctrine. This Court will address each of these claims in turn.

**a. Defendants' Preliminary Objections Asserting Legal Insufficiency of Plaintiff's Tortious Interference with Contractual Relations Claims are Sustained.**

Wrongfully inducing a breach of a contract is an actionable tort. *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 470 (Pa. 1979). One commits this tort when, without privilege, he wrongfully causes a third person not to perform a contract with another or enter into or continue a business relationship with another. *Id.*; *Glazer v. Chandler*, 200 A.2d 416, 418 (Pa. 1964). Typically, these instances are divided into those acts causing an alleged interference with existing contractual relationships and with prospective contractual relationships. *Thompson*, 412 A.2d at 470.

In this case, Plaintiff alleges in his second count that he had contractual relationships with Defendants Laurel Hill and Williamson Trail that Defendant Range Resources interfered with. Additionally, Plaintiff alleges in his fourth count that he had contractual relationships with Defendant Range Resources that Defendants Lauren Hill and Williamson Trail interfered with. Therefore, Plaintiff is alleging that all Defendants, in one way or another, have tortiously interfered with his business relationships with one another. Defendants allege that Plaintiff's claims are barred by the gist of the action doctrine. This Court agrees with Defendants.

In this instance, the doctrine's four-pronged test requires an analysis of the parties' relationship, duty to one another, and liability to one another. *Reardon*, 926 A.2d at 486. In this

instance, Plaintiff's tortious interference claim arises solely out of the contractual relationship of all three parties. Additionally, Plaintiff alleges that Defendants breached a duty based in this underlying contract, i.e. by negotiating and executing a subsequent lease. Complaint, ¶ 74.a., pg. 14; Complaint, ¶ 86, pg. 16. Plaintiff claims liability out of the underlying contract, i.e. royalty payments. Complaint, ¶ 76, pg. 14; Complaint, ¶ 86, pg. 16. Lastly, the interference claim is one in the same. Therefore, Defendants' objections to Count II and IV must be SUSTAINED because Plaintiff's tortious interference with contractual relations claims fail under the gist of the action doctrine.

**b. Defendants' Preliminary Objections Asserting Insufficient Specificity and Legal Insufficiency of Plaintiff's Civil Conspiracy Claim are Sustained.**

Additionally, civil conspiracy is an actionable tort. Civil conspiracy is committed when two or more individuals agree to perform an unlawful act or a lawful act through unlawful means. *Thompson*, 412 A.2d at 472. One must prove malice to prevail in a civil conspiracy claim; additionally, one's intent cannot be justified. *Id.* In determining the justification issue, our Supreme Court has long held:

Assume that what is done is intentional, and that it is calculated to do harm to others. Then comes the question, was it done with or without "just cause or excuse"? If it was bona fide done in the use of a man's own property \* \* \* such legal justification would \* \* \* exist not the less because what was done might seem to others to be selfish or unreasonable. \* \* \* But such legal justification would not exist when the act was merely done with the intention of causing temporal harm, without reference to one's own lawful gain, or the lawful enjoyment of one's own rights.

*Id.* (citing *Rosenblum v. Rosenblum*, 181 A. 583, 585 (Pa. 1935)).

In the above-captioned matter, there are no facts that indicate Defendants acted solely to injure Plaintiff. In fact, Plaintiff has not alleged that Defendants acted to injure Plaintiff at all. The only injury that Plaintiff alleges is his deprivation of potential royalty payments. Complaint,

¶ 92, pg. 17. This injury is one in the same with Plaintiff's alleged injury under his breach of contract claims in Counts I and III. Complaint ¶ 65, pg. 12; Complaint ¶ 81, pg. 15. Therefore, Defendants' objections to Count VI must be SUSTAINED because Defendants' civil conspiracy claim fails for insufficiency and as a matter of law.<sup>2</sup>

**c. Defendants' Preliminary Objections Asserting Legal Insufficiency of Plaintiff's Unjust Enrichment Claim are Overruled.**

Defendants allege that Plaintiff's unjust enrichment claim must fail because of the underlying contract on which the litigation is based. This Court disagrees. A claim for unjust enrichment lies in quasi-contract; in order to prove such a claim, the following elements must be plead: (1) Plaintiff conferred a benefit on Defendants, (2) Defendants appreciated this benefit, and (3) Defendants' acceptance and retention of this benefit, without payment, created an inequity. *J.F. Walker Co., Inc. v. Excalibur Oil Group, Inc.*, 792 A.2d 1269, 1273 (Pa. Super. Ct. 2002).

Additionally, the Pennsylvania Rules of Civil Procedure provide that causes of action may be pleaded in the alternative. Pa. R.C.P. 1020(c). Unjust Enrichment is a proper alternative cause of action for a breach of contract claim. *See Birchwood Lakes Community Association, Inc. v. Comis*, 442 A.2d 304, 308 (Pa. Super. Ct. 1982). Additionally, the gist of the action doctrine does not bar alternative pleading; the doctrine bars recasting contract claims into tort claims.

In this instance, Plaintiff alleged that Defendants breached their contract with him. In the alternative, Plaintiff brought a claim against Defendants in quasi-contract, i.e. unjust enrichment. This Court holds that Plaintiff may plead as an alternative to his breach of contract claim a claim

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<sup>2</sup> Additionally, this Court believes that Plaintiff's civil conspiracy claim would fail under the gist of the action doctrine. However, since Plaintiff's claim fails as a matter of law, the Court will not address the doctrine as it relates to this claim.



for unjust enrichment. At the least, this Court believes that discovery make take place on this issue. Therefore, Defendants' objections to Count V on the basis of insufficiency are OVERRULED because unjust enrichment is a quasi-contract claim and may be plead in the alternative to Plaintiff's breach of contract claims.

**vi. Defendants' Preliminary Objections Asserting Legal Insufficiency of Plaintiff's Accounting Claim are Sustained.**

Defendants argue that Plaintiff's claim for an equitable accounting is not proper. This Court agrees. The Pennsylvania Rules of Civil Procedure provide that an accounting may be demanded. Pa. R.C.P. 1021(a). In *Rock v. Pyle*, 720 A.2d 137 (Pa. Super. Ct. 1998), our Superior Court held that:

[a]n equitable accounting is improper where no fiduciary relationship exists between the parties, no fraud or misrepresentation is alleged, the accounts are not mutual or complicated, or the plaintiff possesses an adequate remedy at law. Equitable jurisdiction does not exist simply because the petitioner desires information.

*Id.* at 142 (citations omitted).

In instance, Plaintiff did not plead any facts alleging a fiduciary relationship, fraud or misrepresentation, or mutual accounts. Additionally, Plaintiff has an adequate remedy at law in either breach of contract or in unjust enrichment. Therefore, Plaintiff's claim for an equitable accounting must also fail. Defendants' objections to Count IX must be SUSTAINED because Plaintiff's claim for an equitable accounting fails as a matter of law.

**vii. Defendants' Preliminary Objections Asserting Legal Insufficiency of Plaintiff's Punitive Damages Claim are Sustained.**

Defendants argue that Plaintiff failed to plead any specific acts of outrageous conduct, evil motive, or reckless indifference to support his claim for punitive damages. This court agrees. The underlying policy behind awarding punitive damages is well-settled within the

Commonwealth. See *Hutchison v. Luddy*, 870 A.2d 766, 770 (Pa. 2005). In that case, our Supreme Court held that:

[p]unitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. As the name suggests, punitive damages are penal in nature and are proper only in cases where the defendant's actions are so outrageous as to demonstrate willful, wanton, or reckless conduct. The purpose of punitive damages is to punish a tortfeasor for outrageous conduct and to deter him or others like him from similar conduct.... When assessing the propriety of the imposition of punitive damages, *the state of mind of the actor is vital. The act, or failure to act, must be intentional, reckless or malicious.*

*Id.* at 770 (citations omitted) (emphasis added).

In this case, Plaintiff did not plead any specific acts of outrageous conduct, evil motive, or reckless indifference to the rights of others. Plaintiff pleaded only the elements required for conspiracy and tortious interference claims. As previously held, Plaintiff's claims for conspiracy and tortious interference cannot be sustained. Therefore, Plaintiff's claim for punitive damages must also fail. Defendants' objections to Count X must be SUSTAINED because Defendants' punitive damages claim fails as a matter of law.

## **ORDER**

AND NOW, this 15<sup>th</sup> day of June, 2012, based upon the above-stated reasoning, it is hereby ORDERED and DIRECTED as follows:

1. **Dismissal of Defendant Great Lakes.** Defendants' objection pursuant to Pa. R.C.P. 1028(a)(4), relating to Defendant Great Lakes' dismissal from the above-caption matter, is hereby SUSTAINED. Defendant Great Lakes is hereby DISMISSED from the above-captioned matter.

2. **Unauthorized Practice of Law.** Defendants' objection pursuant to Pa. R.C.P. 1028(a)(4), relating to the unauthorized practice of law by Plaintiff, is hereby OVERRULED.
3. **Complaint Contradicted by Attached Contract.** Defendants' objection pursuant to Pa. R.C.P. 1028(a)(4), relating to the complaint being contradicted by an attached contract, is hereby OVERRULED.
4. **Count I – Breach of Contract.** Defendants' objection pursuant to Pa. R.C.P. 1028(a)(4) is SUSTAINED. Plaintiff shall file an amended complaint within twenty (20) days, attaching a copy of the Plaintiff's consultant contract with Defendants Laurel Hill and Williamson Trail.
5. **Count II – Tortious Interference with Contractual Relations.** Defendants' objection pursuant to Pa. R.C.P. 1028(a)(2) is hereby SUSTAINED. Plaintiff's Count II is hereby DISMISSED and STRICKEN.
6. **Count III – Breach of Contract.** Defendants' objection pursuant to Pa. R.C.P. 1028(a)(2) is hereby SUSTAINED. Plaintiff shall file an amended complaint within twenty (20) days, attaching a copy of the Plaintiff's consultant contract with Defendants Laurel Hill and Williamson Trail.
7. **Count IV – Tortious Interference with Contractual Relations.** Defendants' objection pursuant to Pa. R.C.P. 1028(a)(2) is hereby SUSTAINED. Plaintiff's Count IV is hereby DISMISSED and STRICKEN.
8. **Count V – Unjust Enrichment.** Defendants' objection pursuant to Pa. R.C.P. 1028(a)(4) is hereby OVERRULED.

9. **Count VI – Conspiracy.** Pursuant to Pa. R.C.P. 1028(a)(3) and Pa. R.C.P. 1028(a)(4), Defendants’ objection is hereby SUSTAINED. Plaintiff’s Count VI is hereby DISMISSED and STRICKEN.
10. **Count IX – Accounting.** Defendants’ objection pursuant to Pa. R.C.P. 1028(a)(4) is hereby SUSTAINED. Plaintiff’s Count IX is hereby DISMISSED and STRICKEN.
11. **Count X – Punitive Damages.** Defendants’ objection pursuant to Pa. R.C.P. 1028(a)(4) is hereby SUSTAINED. Plaintiff’s Count X is hereby DISMISSED and STRICKEN.

BY THE COURT,

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Date

\_\_\_\_\_  
Richard A. Gray, J.

RAG/abn

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