

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TURKEY RUN PROPERTIES, L.P.,	:	NO. 12 – 00,675
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
MARKEL INSURANCE COMPANY,	:	
Defendant	:	Preliminary Objections

**OPINION AND ORDER**

Before the court are the preliminary objections filed by Defendant on May 23, 2012. Argument was heard July 2, 2012.

In its Complaint, Plaintiff alleges it is the owner of real property that was leased to Soccer Dome, LLC, that the terms of the lease required Soccer Dome to purchase and maintain liability insurance with “Landlord” as a named insured, that Soccer Dome purchased such insurance from Defendant but “Turkey Run Partners, LP”, rather than “Turkey Run Properties, LP”, was named as an additional insured, that an incident on the property in February 2011 led one Jeffrey Moose to sue Plaintiff for damage to personal property and that Defendant has refused to defend the suit based on its position that Plaintiff is not a named insured. Plaintiff has brought claims of Breach of Contract, Declaratory Judgment, Reformation of Contract, Unjust Enrichment/Implied Contract/Quantum Meruit, and Bad Faith. Defendant raises several issues in preliminary objections, many of which are dependent on others. The court will therefore discuss the objections as a whole, rather than individually.

Defendant objects to the breach of contract claim on the basis that Plaintiff is not a named insured and thus not a party to the contract. It objects to the declaratory judgment claim and the reformation claim on two bases: that Jeffrey Moose and Soccer Dome are indispensable parties and without them the court lacks jurisdiction, and that since plaintiff is not a named insured it cannot sue for breach of contract and thus there are no rights to declare, and that Plaintiff lacks standing to bring the claim for reformation. Defendant objects to the claim for unjust enrichment (and the related claims) on the basis that Plaintiff has not alleged it conferred

a benefit on Defendant. Finally, Defendant objects to the claim for bad faith on the basis that Plaintiff is not an insured under the policy.

It appears that the claim for reformation is central in this dispute. If Plaintiff is able to reform the contract, the other objections fall away. Defendant is correct that Soccer Dome is an indispensable party to such a claim, however, as Soccer Dome is a party to the contract which Plaintiff seeks to reform, and it is Soccer Dome's intent which will be at issue.<sup>1</sup> Defendant also objects to the claim for reformation on the basis that Plaintiff has not alleged a mutual mistake, that any mistake in naming the landlord was a unilateral mistake, made by Plaintiff's representative in the lease, but the court does not agree with that assessment. When Defendant issued a policy naming as an insured an entity which does not exist, it also made the same mistake. It is assumed (but yet to be proven) that neither party intended that an entity which does not exist be named; the fact that Plaintiff's representative was responsible for the error to begin with does not make Defendant's use of the name any less a mistake. Therefore, it may be possible for Plaintiff to obtain reformation and the claim should not be dismissed at this stage of the proceedings.

**ORDER**

AND NOW, this 3<sup>rd</sup> day of July 2012, for the foregoing reasons, the objections filed by Defendant are sustained in part and overruled in part. Within twenty (20) days of the date of this Order, Plaintiff shall file an amended complaint which adds Soccer Dome, LLC as a defendant.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph Musto, Esq.  
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Hon. Dudley Anderson

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<sup>1</sup> The court fails to see why Moose would be an indispensable party to either the claim for reformation (he is not a party to that contract) or declaratory judgment (which seeks a declaration of rights and responsibilities under the contract).