

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TROY GUENOT,	:	DOCKET NO. 16-0432
Plaintiff,	:	
	:	CIVIL ACTION
vs.	:	
	:	
MOTIS ENERGY, LLC.,	:	
Defendant.	:	PRELIMINARY OBJECTIONS

OPINION AND ORDER

Before the Court are preliminary objections filed by defendant on April 20, 2016.

Defendant demurs to plaintiff's claim for invasion of privacy appropriation of name and likeness and to plaintiff's claim for fraud. Defendant also objects for insufficient specificity of the complaint as to the privacy appropriation claim.

This matter arises from an employment dispute. Plaintiff contends that in February 2015 defendant enticed plaintiff to change employment by offering a signing bonus, favorable base salary and benefits. The parties executed an employment agreement. On December 29, 2015 defendant purported to terminate employment for cause under the agreement. Plaintiff brought suit for breach of contract, invasion of privacy/appropriation of name and likeness, non-compliance with the wage payment and collection law and fraud. As plaintiff agreed to the dismissal of the claim for invasion of privacy appropriation of name and likeness, the only remaining issue is the demurrer to the fraud claim based upon the gist of the action doctrine and the economic loss doctrine.

A party may file preliminary objections based on the legal sufficiency or insufficiency of a pleading (demurrer) pursuant to Pa. R.C.P. 1028(a)(4). A demurrer tests the legal sufficiency of the complaint. Sullivan v. Chartwell Inv. Partners, LP, 873 A.2d 710, 714 (Pa.Super. 2005). When reviewing preliminary objections in the nature of a demurrer, the court must "accept as

true all well-pleaded material facts set forth in the complaint and all inferences fairly deducible from those facts.” Thierfelder v. Wolfert, 52 A.3d 1251, 1253 (Pa. 2012), *citing*, Stilp v. Commonwealth, 940 A.2d 1227, 1232 n.9 (Pa. 2007). In deciding a demurrer “it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer.” Melon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. 1994) (citations omitted).

“The economic loss doctrine generally precludes recovery in negligence actions for injuries which are solely economic.” Excavation Techs., Inc. v. Columbia Gas Co., 604 Pa. 50, 985 A.2d 840, 841 (Pa. 2009). Our Pennsylvania Supreme Court noted that there is an exception to the economic loss doctrine for negligent misrepresentation. *Id.*, *citing*, Bilt-Rite Contractors, Inc. v. Architectural Studio, 581 Pa. 454, 866 A.2d 270 (Pa. 2005). The present claim of fraud in the inducement does not allege negligence. It is akin to negligent misrepresentation. In the absence of a Pennsylvania Appellate Court decision applying the doctrine to fraud in the inducement of a contract, this Court will not apply the economic loss doctrine to bar the claim as to fraud in the inducement of a contract at issue in the present case.

The gist of the action doctrine precludes the recasting of ordinary breach of contract claims into tort claims. *See, e.g.*, Bruno v. Erie Insurance Co., 106 A.3d 48 (Pa. 2014); Knight v. Springfield Hyundai, 81 A.3d 940 (Pa. Super. 2013). Reardon v. Allegheny College, 926 A.2d 477 (Pa. Super. 2007); Etoll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10 (Pa. Super. 2002)(gist-of-the action doctrine barred fraud claim that arose from the performance of a contract). “The gist of the action 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." Reardon, supra. at 486. (citations omitted). Pennsylvania courts have recognized that tort claims for fraudulent inducement of contractual relations is not necessary barred by the gist of the action doctrine. *See, e.g., Bruno, supra, citing, Mendelsohn Drucker v. Titan Atlas Mfg.*, 885 F. Supp. 2d 767, 790 (E.D. Pa. 2012); Etoll, supra, J.J. Deluca Co. v. Toll Naval Assocs., 2012 PA Super 222, 56 A.3d 402 (Pa. 2012).

In the present case, plaintiff alleged that the termination was fraudulent because plaintiff gave a false reason for terminating plaintiff. This claim essentially amounts to a claim for an intentional breach of contract. As such, the gist of the action doctrine bars that portion of the claim. However, plaintiff also alleged that defendant made misrepresentations to fraudulently induce plaintiff to enter the employment agreement. That claim falls outside the obligations of the contract itself and if properly plead may constitute a viable claim.

ORDER

AND NOW, this 1st day of **June 2016**, upon consideration of Defendants' Preliminary Objections filed on April 20, 2016, it is hereby ORDERED and DIRECTED as follows.

1. By agreement of the parties, the demurrer to plaintiff's claim for invasion of privacy appropriation of name and likeness is SUSTAINED and that claim is DISMISSED.¹
2. Defendant's demurrer to the fraud claim based upon the gist of the action doctrine and the economic loss doctrine is SUSTAINED in part and OVERRULED in part as follows.
 - a. The demurrer to the fraud claim based upon the economic loss doctrine is
OVERRULED.

¹ This ruling renders MOOT the objection under Pa. R.C.P. No. 1028(a)(3) for insufficient specificity of the complaint as to that claim.

- b. The demurrer based upon the gist of the action doctrine is SUSTAINED as to the claim for fraud in the performance of the contract, including but not limited to, the termination of plaintiff.
- c. The demurrer based upon the is of the action doctrine is overruled as to the claim for fraud in the inducement of the contract; plaintiff is granted leave to file an amended complaint setting forth that claim. Plaintiff shall file the amended complaint within TWENTY (20) days.

BY THE COURT,

June 1, 2016
Date

Richard A. Gray, J.

cc: Joseph M. Scipione, Esq. (for Plaintiff)
SCIPIONE & KOVALCIN, PC, 169 Gerald Street, State College, PA 16801
Jonathan Vender, Esq. & Brian J. Bluth, Esq. (for Defendant)