

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

<b>MARCO RANDAZZO,</b>	:	
Plaintiff	:	<b>NO. CV-20-0942</b>
	:	
vs.	:	<b>CIVIL ACTION</b>
	:	
<b>ATLANTIC STATES INSURANCE</b>	:	
<b>COMPANY,</b>	:	<b>Preliminary Objections</b>
Defendant	:	

**I. Factual and Procedural History**

This case arises out of a 2017 motor vehicle accident that occurred in New York State. Plaintiff sustained several injuries as a result of the accident which required extensive medical treatment. At the time of the accident, Plaintiff and his wife, Silvana Randazzo, were named insureds on a Pennsylvania automobile policy issued by Defendant. Defendant rescinded Plaintiff's policy due to "misrepresentations in the automobile insurance application concerning 'the residence of Silvana Randazzo, the place of garage of [her] vehicles, as well as the use of [her] vehicle.'" *Plaintiff's Complaint at Paragraph 14*. The basis for the rescission was that the Randazzo's indicated on their insurance application that they were Pennsylvania residents and housed the vehicles listed on the policy in Pennsylvania. However, according to Plaintiff, Silvana Randazzo lives in Brooklyn, New York while Plaintiff resides in Pennsylvania. Defendant submitted information to the PA Attorney General's Office alleging that Plaintiff committed insurance fraud.

Plaintiff's Complaint includes four counts: Breach of Contract, Bad Faith, Defamation, and Unfair Trade Practices and Consumer Protection Law (UTCPL). Defendant filed Preliminary Objections on November 13, 2020 to which Plaintiff replied. Oral argument was held on December 18, 2020.

## II. Standard of Review

Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;

(4) legal insufficiency of a pleading (demurrer);

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;

(6) pendency of a prior action or agreement for alternative dispute resolution .

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Pa.R.C.P. 1028(a)(1), (4), (5), and (6).

Because Pennsylvania is a fact-pleading state, a complaint must “formulate the issues by summarizing those facts essential to support the Plaintiff’s claim as well as give the defendant notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. 2008). “Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.” *Richmond v. McHale*, 35 A.3d 779, 783 (Pa. Super. 2012). Pursuant to the rules of civil

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<sup>1</sup> Defendant cites to Pa.R.C.P 1028(a)(6) relating to its second issue and title it “Legal Insufficiency of Pleading (Demurrer) Pursuant to Pa.R.Civ.P. 1028(a)(6).” However, based upon the contents of the argument, the Court believes correct statutory section is Pa.R.C.P. 1028(a)(4).

procedure, the Court has the authority to allow the Plaintiff to file an amended complaint if the preliminary objections are sustained. Pa.R.C.P. 1028(e).

### III. Analysis

Defendant filed two Preliminary Objections. The first is a Motion to Dismiss for Failure to Join Necessary or Indispensable Party Pursuant to Pa.R.C.P. 1028(a)(1) and (a)(5). Defendant argues that Plaintiff's wife, Silvana Randazzo, is a necessary party to this action because she is a party to the Application for Automobile Insurance, the Automobile Policy, and a subject of the notice to the Attorney General's Insurance Fraud Unit. *Defendant's Preliminary Objections at Paragraph 6.*

The determination of whether a party is *indispensable* involves at least the following considerations:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

*Mechanicsburg Area Sch. Dist. v. Kline*, 431 A.2d 953, 956 (Pa. 1981).

On the other hand, "a *necessary* party is one whose presence, while not indispensable, is essential if the court is to resolve completely a controversy and to render complete relief." *York-Adams County Constables Assoc. v. Court of Common Pleas of York County*, 474 A.2d 79, 81 (Pa. Cmwlth. 1984) (emphasis added). Joinder of a necessary party may be warranted to avoid multiple suits. *Murray v. Haggerty*, 2006 WL 5534079 (Pa. Com. Pl. Oct. 19, 2006), *citing*

*Emerald Enterprises Ltd. v. Upper Mt. Bethel Township*, 39 Pa. D. & C.3d 536, 539 (Northhamp. Cty. 1985). A court may proceed with jurisdiction over a case only if the merits can be determined without prejudice to the rights of the absent party. *Mechanicsburg, supra*. “[W]here there are parties jointly interested in a contract—that is, where the contract is a joint one—all joint contractees or obligees who are living not only may but **must join as parties plaintiff where action is brought to enforce the contract or rights arising out of it**. Separate actions are not maintainable by the individual obligees. The underlying reason of the rule is that the plaintiff suing is not entitled to the whole recovery and knows who is joined in interest with him . . . . **An insurance policy is no exception to the general rule** requiring joint contractees to join as parties plaintiff in an action on the contract.” *Hess v. Harleysville Mut. Cas. Co.*, 15 Pa. D. & C.2d 313, 321 (Pa. Com. Pl. 1959) (emphasis added).

Defendant asserts in its Brief that the policy rescission is the main issue in Plaintiff’s Complaint. The Court agrees that this is the primary root of the cause of action when Plaintiff did not allege that Defendant ever actually denied coverage. Because a policy rescission relates back to the date of issuance, it is as if the policy was never issued in the first place. The basis upon which Defendant rescinded the policy was specifically related to Silvana Randazzo’s alleged misrepresentations.

In support of his counter argument, Plaintiff cites to *Reed, Wertz, Ordman, Inc. v. Farabaugh Chevrolet*<sup>2</sup> in which the Court held that a party was not indispensable simply because she and the Defendant jointly owned realty that

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<sup>2</sup> Non-precedential.

was the subject of the suit when the insurance policies were issued. However, this case is distinguishable and inapplicable here. In *Reed*, Defendant was arguing that his ex-wife, Carol, should also be joined as his co-Defendant. However, the Court rejected Defendant's argument because Carol had already settled her claims with the Plaintiff and therefore, had no rights that were implicated by Plaintiff's claims. *Reed, Wertz, Roadman Inc. v. Farabaugh Chevrolet Olds, Inc.*, 2016 WL 689005, at \*5 (Pa. Super. 2016).

Here, both Plaintiff and his wife are listed as insureds on the policy at issue which was later rescinded due by Defendant to the Plaintiff and his wife's alleged misrepresentations. Plaintiff argues that any right or interest that Silvana Randazzo has in the policy is wholly unrelated to the Plaintiff's claim for damages. However, even if Mrs. Randazzo is not found to be indispensable, she can nevertheless be a necessary party to the cause of action. The case law is clear that, in a dispute over an insurance policy, all parties to the contract must be joined.

Defendant's Preliminary Objection in the nature of a Motion to Dismiss is SUSTAINED. The Court finds that Silvana Randazzo is a necessary party and must be joined as a Plaintiff in this matter. Pursuant to Pa.R.C.P. 2232(c), the Court directs the Plaintiff to join Silvana Randazzo as a party to this action. All proceedings in this action shall be stayed until Silvana Randazzo is joined as a party to this action.

Defendant's second Preliminary Objection is legal insufficiency (demurrer) as to Count III, Defamation. Defendant argues that Plaintiff's defamation claim must be dismissed because reports made to the PA Attorney General's office

pursuant to the PA Automobile Fraud Reporting Immunity Act, 75 Pa.C.S.A. § 1795, are “absolutely privileged” pursuant to common law. *Defendant’s Preliminary Objections at Paragraph 19*. “[S]tatements complained of were made to law enforcement officials, as required by law, for law enforcement purposes, and are thus absolutely privileged.” *Defendant’s Preliminary Objections at Paragraph 21*. In other words, Defendant asserts that Plaintiff’s defamation count should be dismissed because he is absolutely barred from bringing such a claim. Defendant does *not* argue that Plaintiff’s defamation claim is insufficiently pled.

Section 1795 of Title 75 states as follows:

An insurance company, and any agent, servant or employee acting in the course and scope of his employment, shall be immune from civil or criminal liability arising from the supply or release of written or oral information to any duly authorized Federal or State law enforcement agency, including the Insurance Department, upon compliance with the following:

(1) The information is supplied to the agency in connection with an allegation of fraudulent conduct on the part of any person relating to the filing or maintenance of a motor vehicle insurance claim for bodily injury or property damage.

(2) The insurance company, agent, servant or employee has **probable cause** to believe that the information supplied is **reasonably related** to the allegation of fraud.

75 Pa.C.S.A. § 1795(a)(1) and (2) (emphasis added).

In his Complaint, Plaintiff specifically pled that the information given to the Pennsylvania Attorney General’s Office was “done so without probable caused [sic] to believe that it was reasonably related to an allegation of fraud . . . .” *Plaintiff’s Complaint at Paragraph 45*. Plaintiff has pled almost the exact language of the statute and there is no language contained in the statute that grants absolute immunity to an insurance

company for reports made pursuant to section 1795. Since Defendant does not argue that the facts set forth in the Complaint are insufficient to support a cause of action for defamation, the Court will not address the sufficiency of the pleading itself. Therefore, Defendant's Preliminary Objection to Count III is OVERRULED.

**ORDER**

**AND NOW**, this 5<sup>th</sup> day of **January, 2021**, upon consideration of Defendant's Preliminary Objections and Plaintiff's responses thereto, Defendant's first Preliminary Objection in the nature of a Motion to Strike is **SUSTAINED** and Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint. Defendant's Preliminary Objection in the nature of a demurrer is **OVERRULED**.

BY THE COURT,

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Ryan M. Tira, Judge

RMT/ads

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