

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOSEPH STACKHOUSE and LORI	:	No. 21-00967
STACKHOUSE, Husband and Wife,	:	
Plaintiffs	:	
vs.	:	CIVIL ACTION – LAW
	:	
ROSE GOUGH and BRIAN GOUGH,	:	
Individually and d/b/a BRG ENTERPRISES,	:	
Defendants	:	

OPINION AND ORDER

AND NOW, following argument on Defendants’ Preliminary Objections to Plaintiffs’ Amended Complaint, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiffs commenced this action on September 22, 2021 by filing a Complaint. Plaintiffs alleged that they hired Defendants to renovate real property at 636 Myers Road, Muncy Valley, PA (the “Property”), but Defendants failed to complete portions of the work, completed other portions of the work in an unworkmanlike manner, and charged Plaintiffs well in excess of the contracted amount. The Complaint contained four counts: Count I – Violation of Pennsylvania Unfair Trade Practices and Consumer Protection Act;¹ Count II – Fraudulent Misrepresentation; Count III – Breach of Contract; Count IV – Unjust Enrichment; and Count V – Quantum Meruit. On October 28, 2021, Defendants filed Preliminary Objections to Plaintiffs’ Complaint, and at argument Plaintiffs requested and the Court granted leave to file an Amended Complaint.

¹ 73 P.S. § 201-1 *et sub.* (“UTPCPL”).

Plaintiffs filed the Amended Complaint on February 1, 2022, which contains six counts: Count I – Violation of Pennsylvania Home Improvement Consumer Protection Act;² Count II – Violation of Pennsylvania Home Improvement Consumer Protection Act;³ Count III – Violation of Pennsylvania Home Improvement Consumer Protection Act;⁴ Count IV – Breach of Contract; Count V – Fraudulent Misrepresentation; and Count VI – Unjust Enrichment. Specifically, the Amended Complaint avers that Plaintiffs agreed to pay Defendants, who held themselves out as registered contractors, \$40,000 to perform certain renovations. Defendants began work in September 2018 and over the next twenty-six months performed a number of tasks, submitting bills totaling \$52,193.45. Plaintiffs aver that although this amount was in excess of the initially agreed amount, they have paid every invoice. Plaintiffs allege that in October 2020 they realized “Defendants were charging Plaintiffs for materials that were not used in the renovation of the Property,” and suspected they were charging them for labor unrelated to the Property as well. Plaintiffs also identified twelve items of renovation they believed were not performed in a workmanlike manner. Plaintiffs aver that Defendants refused to repair certain of these items when requested, forcing Plaintiffs to hire another construction company to repair Defendants’ unsatisfactory work. Ultimately, Plaintiffs contend that they have

² 73 P.S. § 517.1 *et seq.* (“PHICPA”). Count I alleges that Defendants violated § 517.3 of PHICPA by performing home improvements without being registered with the Pennsylvania Office of the Attorney General. Plaintiffs note that PHICPA incorporates the UTPCPL, and Plaintiffs’ Amended Complaint incorporates the UTPCPL to the same extent.

³ Count II alleges that Defendants violated § 517.7 of PHICPA by failing to enter into a written contract for the renovation work. Like Count I, Count II incorporates the UTPCPL.

⁴ Count III alleges that Defendants violated § 517.8 of PHICPA by committing home improvement fraud. Like Counts I and II, Count III incorporates the UTPCPL.

suffered at least \$29,266.45 in damages, and are entitled to treble damages and attorneys' fees under the UTPCPL.

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

On March 4, 2022, Defendants filed Preliminary Objections to Plaintiffs' Amended Complaint. Defendants purport to raise a single preliminary objection "for failure to conform to the law pursuant to Pa. R.C.P. 1028 and to provide a more specific complaint."⁵ This single preliminary objection contains, essentially, four separate claims:

1. The Amended Complaint does not plead certain counts in the alternative as required by the Rules of Civil Procedure;
2. Count IV's request for attorneys' fees is improper in a breach of contract claim;
3. Plaintiffs' descriptions of damages, materials, and work are not itemized or sufficiently specific; and
4. The allegations in the Amended Complaint are insufficient to support Plaintiffs' request for punitive damages.

In response, Plaintiffs generally aver that they have pled the underlying facts and counts with sufficient specificity to satisfy Pennsylvania's standard. Plaintiffs dispute that they need to plead any of the counts in the alternative, and argue that the Amended Complaint speaks for itself with regard to attorneys' fees and punitive damages.

⁵ Pa. R.C.P. 1028(a)(2) allows preliminary objections for "failure of a pleading to conform to law or rule of court." Pa. R.C.P. 1028(a)(3) allows preliminary objections for "insufficient specificity in a pleading."

ANALYSIS

A. Pleading in the Alternative

Rule of Civil Procedure 1020 governs the pleading of alternative causes of action. Rule 1020(c) provides that “[c]auses of action and defenses may be pleaded in the alternative.” Nothing in Rule 1020 *requires* the pleading of causes of action in the alternative, though Rule 1020(d) provides that “[f]ailure to join a cause of action” to others arising out of the same transaction or occurrence “shall be deemed a waiver of that cause of action....”

At argument, counsel for Defendants clarified that he was not claiming the Rules of Civil Procedure demanded plaintiffs plead certain counts in the alternative generally. Rather, he believed that the factual averments in the Amended Complaint demonstrated Plaintiffs were framing their allegations in the alternative, but their requests for relief purported to simultaneously seek recovery on all counts. Inasmuch as this mismatch could theoretically lead to duplicative recovery, Defendants ask the Court to require Plaintiffs to conform their requests for relief to their factual averments.

Pleading in the alternative is appropriate when two causes of action rely on inconsistent factual averments; Rule 1020 makes clear that a plaintiff’s inclusion of inconsistent pleadings of fact in a complaint will not render the complaint defective.⁶ When two different causes of action rest upon *consistent* factual bases, they need not be pled in the alternative, as general principles of jurisprudence will prevent

⁶ See *Baron v. Bernstein*, 106 A.2d 668, 610 (Pa. Super. 1954).

duplicative recovery and limit the plaintiff's recovery to actual damages plus any appropriate statutory or special damages.

Here, there is nothing inconsistent between Counts I, II, III, IV, and V of Plaintiffs' Amended Complaint. Count I is premised on a failure to register with the Pennsylvania Office of the Attorney General; Count II is premised on a failure to enter into a written contract; and Count IV is premised on a failure to abide by the terms of a contract. Count III alleges home improvement fraud, which occurs when a defendant, *inter alia*, "makes a false or misleading statement to induce, encourage or solicit a person to enter into any written or oral agreement for home improvement services or provision of home improvement materials or to justify an increase in the previously agreed upon price."⁷ Count V alleges fraudulent representation, which includes as elements "(1) A representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance."⁸ Each of these five counts are consistent with the others, as the truth of one does not require the falsehood of any other.

Count IV, breach of contract, is, however, inconsistent with Count VI, unjust enrichment. This is because "the existence of a contract" is an element of a breach of contract claim,⁹ whereas unjust enrichment "imposes a duty not as a result of any

⁷ 73 P.S. § 517.8(a)(1).

⁸ *David Pflumm Paving & Excavating, Inc. v. Foundation Services Co.*, 816 A.2d 1164, 1171 (Pa. Super. 2003).

⁹ *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247, 1258 (Pa. 2016).

agreement, whether express or implied, but in spite of the absence of an agreement when one party receives an unjust enrichment at the expense of another.”¹⁰ In *Lugo*, the Superior Court noted that when a plaintiff brings a claim for breach of contract, that plaintiff may only recover for unjust enrichment if the complaint contains a second count explicitly pleading the latter theory.¹¹

Ultimately, the Court views Plaintiffs’ failure to explicitly state that Counts IV and VI are pleaded in the alternative as an issue of style rather than substance. Under Pennsylvania law, Plaintiffs may not prevail on both a breach of contract claim and an unjust enrichment claim premised on the same damages regardless of the language of the Amended Complaint. Therefore, the Court will sustain in part Defendants’ preliminary objection; Plaintiffs are precluded from simultaneously recovering under both Count IV and Count VI of the Complaint, which rest upon inconsistent averments of fact. Plaintiffs need not amend their Amended Complaint to explicitly state that Count IV and Count VI are pleaded in the alternative, as such a construction is necessary under Pennsylvania law.

B. Attorneys’ Fees

The next portion of Defendants’ preliminary objection concerns the prayer for attorneys’ fees in Count IV of the Amended Complaint. Pennsylvania generally follows the “American Rule,” which provides that each party must pay their own attorneys’ fees in the absence of “express statutory authorization, a clear agreement of the parties, or some other established exception....”¹²

¹⁰ *Lugo v. Farmers Pride, Inc.*, 967 A.2d 963, 970 (Pa. Super. 2009).

¹¹ *Id.*

¹² *Trizechahn Gateway LLC*, 976 A.2d 474, 482-83 (Pa. 2009).

Counts I through III of the Complaint specify the statutory authorization for their request for attorneys' fees: they note that the PHICPA incorporates the UTPCPL, which provides that "[t]he court may award to the plaintiff, in addition to other relief provided [in the UTPCPL], costs and reasonable attorney fees."¹³ However, Counts IV through VI do not plead any authorization for their request for attorneys' fees. Therefore, the American Rule bars an award of attorneys' fees on those counts. For this reason, the Court will sustain Defendants' preliminary objections concerning attorneys' fees as they relate to Counts IV through VI of the Complaint. The requests for attorneys' fees shall be stricken from these counts.

C. Specificity

"Pennsylvania is a fact-pleading state. To be legally sufficient, a complaint must not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but the complaint must also formulate the issues by summarizing those facts essential to support the claim."¹⁴ Under this standard, a pleading must include "[t]he material facts on which a cause of action or defense is based... stated in a concise and summary form."¹⁵ "[I]n pleading its case," however, "the complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense."¹⁶ Defendants contend that the Amended Complaint is insufficiently specific on a number of issues.

¹³ 73 P.S. § 201-9.2.

¹⁴ *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa. Super. 2020) (internal quotations and citations omitted).

¹⁵ Pa. R.C.P. 1019(a).

¹⁶ *Unified Sportsmen of Pennsylvania v. Pennsylvania Game Com'n (PCG)*, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008).

1. Failure to Itemize “Additional Damages”

Defendants note that in several paragraphs, the Amended Complaint anticipates “additional damages” to those itemized, but does not describe those damages in detail. Paragraph 67 of the Complaint avers that “Plaintiffs will have additional damages related to the work performed by [Defendants] in an unworkmanlike manner in an amount that is not yet known to Plaintiffs.” Multiple paragraphs state that “Plaintiffs anticipate additional damages related to work performed by Defendants in an unworkmanlike manner as discovered, materials paid for but not received, and labor paid for but not performed by Defendants.”

The Court agrees with Defendants that these general statements are insufficiently specific, as they do not “summariz[e] those facts essential to support the claim” for future damages. Rather, as presently pled, they are entirely speculative. As Defendants noted at argument, if during discovery Plaintiffs uncover additional damages that they could not have known about prior to the commencement of this action, they may always move to amend their pleadings to conform to the extent of their injury as revealed over time. In its present form, however, the Amended Complaint does not specifically describe the outer limits of the damages Plaintiffs are seeking. Therefore, the Court will sustain Defendants’ preliminary objection as it relates to requests for “additional damages.”

2. Theories of Additional Liability

Defendants contend that a number of averments concerning their conduct are insufficiently specific:

- Paragraph 50: “Upon information and belief, Plaintiffs believe that there are additional materials that they were invoiced for by

Defendants that were not used on the renovation of the Property.”

- Paragraph 52: “Plaintiffs believe that they were charged for the same work more than once on invoices.”
- Paragraph 55: “Upon information and belief, Plaintiffs believe that there is significant labor charges invoiced to Plaintiffs and paid to Defendants for labor that was not actually performed on the renovations of the Property.”
- Paragraph 66: “Although... Plaintiffs have repaired some of the work performed by Defendants that was performed in an unworkmanlike manner, the Plaintiffs continue to find issues with the Property attributable to the work performed by the Defendants.”

Like the claims for additional damages, these paragraphs are insufficiently specific. The Amended Complaint does not contain any factual averments in support of Paragraphs 52 and 55; rather, the Amended Complaint merely alleges that “Plaintiffs... suspect that the Defendants were charging the for labor that was not performed”¹⁷ and that Defendants have “refused to provide Plaintiffs any proof of the actual time spent working on... the Property.”¹⁸ Suspicion and belief do not constitute facts sufficient to support these claims.

Paragraph 49 of the Amended Complaint does specify two invoices containing “materials that Plaintiffs were charged for but were not used on the Property....” The averment in Paragraph 50 that “there are *additional* materials” invoiced but not used, without specifying them, is similar to the claims for additional damages in that they do not set any outer bounds on the liability Defendants might face, and thus do not “give [Defendants] notice of what [Plaintiffs’] claim is” as required under Pennsylvania law.

¹⁷ Paragraph 51.

¹⁸ Paragraph 54.

In the same manner, Paragraph 57 specifies twelve items “that Plaintiff believes were not performed in a workmanlike manner,” but Paragraph 66 seeks to impose liability for unenumerated issues without putting Defendants on notice so that they may defend against them.

Again, Plaintiffs may always seek to amend their pleadings to add factual averments supporting liability that they could not have uncovered prior to the filing of this lawsuit. As currently pled, though, the Amended Complaint does not plead sufficiently specific facts to support the claims in Paragraphs 50, 52, 55 and 66. Therefore, the Court will sustain Defendants’ preliminary objection as it relates to insufficiently specific averments of conduct and liability.

D. Punitive Damages

Lastly, Defendants contend that the averments of the Amended Complaint are insufficient to support punitive damages, noting that typically allegations of “intentional and reckless” conduct are required to support punitive damages.¹⁹ Punitive damages are “awarded against a person for outrageous conduct,” and are only available when the evidence “demonstrate[s] willful, malicious, wanton, reckless or oppressive conduct.”²⁰ Punitive damages are available for claims of fraudulent misrepresentation.²¹

The Court finds that Plaintiffs have adequately pled punitive damages as to three of the four claims in Count V, Fraudulent Misrepresentation. As noted above,

¹⁹ Defendants cite *Harker v. Farmers Trust Co.*, 73 Pa. D. & C.2d 217 (Cumberland Cty. 1975).

²⁰ *Delahanty v. First Pennsylvania Bank, N.A.*, 464 A.2d 1243, 1263 (Pa. Super. 1983).

²¹ *Id.* Plaintiffs have not sought punitive damages on each of the other counts; under Pennsylvania law, punitive damages are unavailable for violations of the UTPCPL (Counts I through III) and contractual claims (Counts IV and VI).

Plaintiffs have 1) alleged that Defendants held themselves out as properly registered and competent even though they were not, resulting in the twelve specific issues listed in Paragraph 57; 2) promised to complete the agreed-upon work for \$40,000 but did not; and 3) charged Plaintiffs for specific materials listed in Paragraph 49 even though these were not used on the Property. If proved at trial, a factfinder could find these actions “willful, malicious, wanton, reckless or oppressive” so as to support an award of punitive damages. Count V also contains a claim (in Paragraph 115(d)) that Plaintiffs “misrepresent[ed] the cost of labor... [and] charg[ed] the Plaintiffs for labor that was never performed on... the Property”; however, the Amended Complaint contains no factual averments in support of this claim. Therefore, the court will sustain Defendants’ preliminary objection as to punitive damages arising out of a misrepresentation of the cost of labor, and overrule Defendants’ preliminary objection in all other respects.

ORDER

For the foregoing reasons, the Court SUSTAINS IN PART Defendants’ Preliminary Objection to the Amended Complaint as follows:

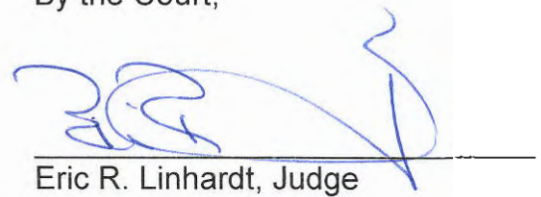
- Plaintiffs may not simultaneously recover under theories of Breach of Contract and Unjust Enrichment.
- Plaintiffs’ requests for attorneys’ fees in Counts IV through VI are STRICKEN from the Amended Complaint.
- Plaintiffs’ vague references to “additional damages” are STRICKEN from the Amended Complaint. Should Plaintiffs uncover additional damages during discovery, they may seek to amend the complaint to reflect the specific damages uncovered.

- Paragraphs 50, 52, 55 and 66 are STRICKEN from the Amended Complaint.
- Paragraph 115(d) is STRICKEN from the Amended Complaint.

In all other respects, the Preliminary Objection is OVERRULED. Defendants shall have twenty (20) days from the date of this Opinion and Order to file an Answer to Plaintiffs' Amended Complaint.

IT IS SO ORDERED this 22nd day of July 2022.

By the Court,



Eric R. Linhardt, Judge

ERL/jcr

cc: Christopher H. Kenyon, Esq.
Scott A. Williams, Esq.
Gary Weber, Esq. (Lycoming Reporter)