

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JAMES A. HORNYAK,	:	CV-22-01160
Plaintiff	:	
vs.	:	
	:	
JEFFREY J. MOORE, RYAN HAMILTON, and	:	
HEATHER MOORE HAMILTON, all individually and	:	
d/b/a HILLER'S FUEL OIL,	:	
Defendants	:	

**OPINION AND ORDER**

AND NOW, this 21<sup>st</sup> day of April 2023, the Court issues the following Opinion and Order regarding Defendants' Preliminary Objections to Plaintiff's Complaint, filed January 17, 2023.

**BACKGROUND**

Plaintiff commenced this action by filing a Complaint on November 23, 2022. Plaintiff named as Defendants Jeffrey J. Moore, Ryan Hamilton, and Heather Moore Hamilton (collectively, the "Individual Defendants"), both individually *and* doing business as "Hiller's Fuel Oil." Plaintiff pled upon information and belief that the Individual Defendants "held themselves out as doing business as Hiller's Fuel Oil, an unregistered business name," operating out of a Jersey Shore address. The Complaint further alleges that "Defendants owned and/or held an interest in Hiller's Inc., a Pennsylvania corporation" – which they sold prior to the filing of the Complaint – but notably *does not* name Hiller's, Inc. as a Defendant.

Essentially, the Complaint alleges that Plaintiff loaned Defendants \$93,000 (via seven personal checks), which Defendants promised to repay. Plaintiff alleges that Defendants issued four checks totaling \$10,200, ostensibly as a partial repayment, but each was returned for insufficient funds. Plaintiff further avers that Hiller's Fuel Oil provided Plaintiff a check for \$24,000 for repayment, but Defendants issued a stop-payment order on that check before Plaintiff could cash it. Plaintiff asserts that at one point he agreed to accept certain real property to satisfy the debt, but Defendants sold that real property to a third party. Although Defendants obtained liquid funds from both the sale of that property and the sale of their interests in Hiller's, Inc., Plaintiff alleges, they did not use any portion of these funds to repay Plaintiff. Ultimately, Plaintiff avers that the entire \$93,000 debt remains outstanding despite repeated demands for repayment.

The Complaint contains four counts, the first three of which – breach of contract, unjust enrichment, and quantum meruit – seek the repayment of the \$93,000 on distinct but related legal theories. The fourth count, fraudulent representation, asserts that Defendants obtained the loan through fraudulent promises to repay Plaintiff in a reasonable period of time, and further committed fraud by issuing checks with insufficient funds, canceling the \$24,000 check, and falsely promising to repay the loan with real property or proceeds from the sale of that property.

## **PRELIMINARY OBJECTIONS**

On January 17, 2023, Defendants filed four preliminary objections.

### **A. First Preliminary Objection – Failure of Pleading to Conform to Law or Rule**

Defendants' first preliminary objection asserts that the Complaint's failure to include as exhibits the various checks referenced therein violates Pennsylvania Rule of Civil Procedure 1019(i).<sup>1</sup> At argument, the parties essentially disagreed on whether the checks are writings upon which Plaintiff's claims are based; if they are not, they need not be attached to the Complaint under Rule 1019(i).

### **B. Second Preliminary Objection – Demurrer**

Defendants' second preliminary objection asserts that each count of the Complaint depends upon an allegation that "Plaintiff agreed to loan monies to *Hiller's, Inc.* in exchange for repayment."<sup>2</sup> On this understanding, Defendants argue that each count fails as a matter of law because, read in a light most favorable to Plaintiff, the Complaint is only sufficient to demonstrate liability against *Hiller's, Inc.*, and not any of the Defendants. Specifically, Defendants contend that Plaintiff has 1) "failed to demonstrate how Defendants [were] benefitted by the alleged loan to *Hiller's, Inc.*"; 2) "failed to state how Defendants are responsible for the obligations

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<sup>1</sup> Rule 1019(i) states "[w]hen any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing."

<sup>2</sup> Emphasis added.

of Hiller's, Inc. under any alleged implied contract"; and 3) generally failed to sufficiently plead his claims, inasmuch as they rely on a number of writings not attached to the Complaint (as alleged in Defendants' first preliminary objection).

Plaintiff responded that Defendants have misconstrued the nature of the claims stated in the Complaint, highlighting that he pointedly did not name Hiller's, Inc. as a defendant or allege that Hiller's, Inc. is liable for any portion of the alleged debt. Rather, he contends that the Individual Defendants were operating as an unincorporated entity, Hiller's Fuel Oil, distinct from Hiller's, Inc., and Defendants – rather than Hiller's, Inc. – are wholly liable for repayment of the debt.

**C. Third Preliminary Objection – Failure to Join Necessary Parties**

Defendants' third preliminary objection is similarly premised on the contention that "Plaintiff allegedly loaned money to Hiller's, Inc." This allegation, Defendants contend, renders Hiller's, Inc. a required party, inasmuch as the company "has a right and interest related to the claims" in the Complaint. Proceeding without Hiller's, Inc. as a party, Defendants argue, would risk adjudicating the substantive rights and liabilities of Hiller's, Inc. without due process. Thus, Defendants argue, Plaintiff's failure to join Hiller's, Inc. as a party renders the Complaint defective.

As above, Plaintiff argues that this objection is based on a misunderstanding of the claims in the Complaint, as Plaintiff is not asserting that Hiller's, Inc. has any legal responsibility related to the loan.

**D. Fourth Preliminary Objection – Statute of Frauds**

Defendants' fourth preliminary objection is related to their previous two objections, and raises a specific issue under Pennsylvania's Statute of Frauds. The Statute of Frauds forbids, *inter alia*, "action[s]... to charge the defendant, upon any special promise, to answer for the debt or default of another, unless the agreement upon which such action shall be brought... [is] in writing, and signed by the party to be charged therewith." In other words, a plaintiff generally cannot sue a defendant on the theory that the defendant orally assumed responsibility to pay another's debt; rather, the agreement transferring the obligation from the original debtor to the defendant must be evidenced by a signed writing. Here, Defendants assert that the failure of the Complaint to attach – or even allege – some signed writing transferring responsibility for repayment of the \$93,000 from Hiller's, Inc. to Defendants renders the Complaint in violation of the Statute of Frauds.

Again, Plaintiff simply responds that he has not alleged that he loaned Hiller's, Inc. \$93,000, responsibility for the repayment of which was then transferred – either orally or in writing – to Defendants. Rather, Plaintiff alleges that Defendants are the parties to whom he originally made the loan, and therefore there has been no transfer of the debt that would implicate the Statute of Frauds.

## **ANALYSIS**

### **A. First Preliminary Objection**

Rule of Civil Procedure 1019(i) requires parties to attach written documents to their pleadings when “any claim or defense is based upon a writing.” Rule 1019(i) typically applies in the context of written contracts; when a plaintiff alleges the breach of a written contract, he may not merely assert the relevant contractual terms in the pleading but must attach the actual writing unless it is unavailable to him.

Here, Plaintiff’s claims are not “based upon” the checks. Counts I, II, and III of the Complaint are based upon an allegation that Defendants breached an unwritten promise to Plaintiff to repay money he loaned them, thereby benefitting wrongfully. Count IV is based on allegations of fraudulent statements. The checks, while relevant to these claims, are merely *evidence* of Plaintiff’s assertions, rather than the *basis* of his claims. It is well-established in Pennsylvania that evidence need not be alleged in pleadings, let alone attached to those pleadings.<sup>3</sup> Therefore, the Court will overrule Defendants’ first preliminary objection.

### **B. Second, Third, and Fourth Preliminary Objections**

Defendants’ second, third, and fourth preliminary objections each rest upon the understanding that Plaintiff claimed that he made a loan to Hiller’s, Inc. As noted above, however, Plaintiff does not make this claim. Rather, Plaintiff contends

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<sup>3</sup> *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974).

that the three Individual Defendants – each of whom happened to have an interest in Hiller’s, Inc. – transacted business as a separate, unincorporated entity, Hiller’s Fuel Oil.

Pennsylvania recognizes both unincorporated associations and civil actions against them; indeed, Rules of Civil Procedure 2151 through 2175 solely address “Unincorporated Associations as Parties.” Specifically, Rule 2153 governing actions against unincorporated associations provides in relevant part:

“(a) In an action prosecuted against an association<sup>4</sup> it shall be sufficient to name as defendant... the association by its name, whether the same is registered, filed or not...

(c) ... the plaintiff may join as parties defendant one or more members of such association in their individual capacity... for the purpose of enforcing any individual liability of such members upon the cause of action sued upon.”

The procedure permitted by Rule 2153 is exactly what Plaintiff has done:

commenced an action against an alleged unincorporated association, by name, as well as alleged members of the unincorporated association in their individual capacities.

The Court finds that as alleged, each of the claims in the Complaint is appropriately filed against the alleged unincorporated association Hiller’s Fuel Oil and its alleged members, the Individual Defendants. Because Plaintiff does not

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<sup>4</sup> As used in Rule 2153, “association” means “an unincorporated association conducting any business or engaging in any activity of any nature whether for profit or otherwise under a common name” that is not a partnership, corporation or similar entity. Pa. R.C.P. 2151.

assert that Hiller's, Inc. was a party to the original loan – or that it engaged in any breach or wrongdoing regarding that loan – he need not establish a connection between Hiller's, Inc. and Defendants' alleged liability. Similarly, Plaintiff was not required to join Hiller's, Inc. as a party because he does not allege that Hiller's, Inc. has ever had any responsibility to repay the alleged loan.<sup>5</sup> For the same reason, Plaintiff's allegations do not implicate the Statute of Frauds.

Plaintiff, of course, will ultimately bear the burden of demonstrating that the Individual Defendants conducted business as the unincorporated association Hiller's Fuel Oil. He will further bear the burden of proving liability against each Defendant. At this stage of proceedings, however, he has asserted cognizable legal claims and provided a sufficient factual basis to support them. For this reason, the Court will overrule Defendants' second, third, and fourth preliminary objections.

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<sup>5</sup> Defendants may seek to join Hiller's, Inc. as an additional defendant should they believe Hiller's, Inc. is in fact responsible for the repayment of the alleged loan.

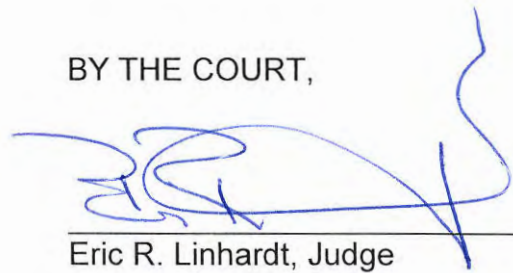


**ORDER**

AND NOW, for the foregoing reasons, the Court OVERRULES Defendants' Preliminary Objections to Plaintiff's Complaint. Defendants shall file an Answer to the Complaint within twenty (20) days of the date of this Order.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Christopher H. Kenyon, Esq.  
Brandon R. Griest, Esq.  
Gary Weber, Esq. (Lycoming Reporter)