

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

AARON W. BENFER, JR., Individually, and as	:
Member/Owner of BENFER’S CONSTRUCTION,	:
LLC, a Pennsylvania Limited Liability Company;	:
and BENFER REALTY, LLC, a Pennsylvania	:
Limited Liability Company,	: No. CV 24-00,724
Plaintiffs,	:
	:
vs.	: CIVIL ACTION
	:
DEVOPS SOLUTIONS, LLC, a New York Limited	:
Liability Company, registered to do business in the	:
Commonwealth of Pennsylvania; DEVOPS UTILITY	:
CONSTRUCTION, LLC, a Pennsylvania Limited	:
Liability Company; and JOHN GRIECO, Individually,	:
and, as a Member/Owner of DEVOPS SOLUTIONS,	:
LLC, and as Member/Owner of DEVOPS UTILITY	:
CONSTRUCTION, LLC, and PATRICK McKELVIE,	:
Individually, and, as a Member/Owner of DEVOPS	:
SOLUTIONS, LLC, and, as Member/Owner of	:
DEVOPS UTILITY CONSTRUCTION, LLC,	:
Defendants.	:

OPINION ON PRELIMINARY OBJECTIONS TO
SECOND AMENDED COMPLAINT FILED NOVEMBER 26, 2025

BACKGROUND:

Plaintiffs filed a Complaint on July 3, 2024. By Order entered April 23, 2025, the Court Ordered the Defendants to file an Answer. On May 12, 2025, Defendants filed a Motion seeking amendment of the Order of this Court directing Defendants to file an Answer. By Order dated June 2, 2025, Judge Eric Linhardt denied that Motion. On June 2, 2025, Plaintiff filed an Amended Complaint. By Order entered October 17, 2025, Judge Eric R. Linhardt dismissed the matter as to the individual Defendants, but granted Plaintiffs leave to amend. On November 26, 2025, Defendants filed Preliminary Objections to Plaintiffs’ Second Amended Complaint. Thus, this matter has been pending in the Court of Common Pleas of Lycoming County for well over two (2) years, and Defendants have not yet filed an Answer.

Defendants’ Preliminary Objections to Plaintiffs’ Second Amended Complaint seek relief in four (4) Counts. Since it appears to the Court that Counts I and II and III all seek a

demurrer to Plaintiffs' claims against the individual Defendants, an individual discussion of each of those Counts appears to be unnecessary. They will be discussed jointly, herein. Count IV seeks dismissal of Plaintiffs' claim for injunctive relief, for failure of Plaintiffs to allege immediate and irreparable harm. This matter has been pending for well over two (2) years, and Plaintiffs have never sought a Preliminary Injunction. For that reason, the Court regards Plaintiffs' claim for injunctive relief as merely a claim for equitable relief at trial.

The Court regrets the fact that Plaintiffs have not carefully reviewed the language contained in the scholarly Opinion of President Judge R. Linhardt entered on October 17, 2025. In that Opinion, President Judge Linhardt discussed the distinction between the several claims for relief, in some detail. The Court will attempt to fashion an Order on the current Preliminary Objections which will provide Plaintiffs with some guidance, in the hope that the pleadings can be closed.

QUESTION PRESENTED:

WHETHER A DEMURRER SHOULD BE ENTERED AS TO PLAINTIFFS' CLAIM AGAINST THE INDIVIDUAL DEFENDANTS.

ANSWERS TO QUESTIONS PRESENTED:

A DEMURRER WILL NOT YET BE ENTERED AS TO ALL OF PLAINTIFFS' CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS, BUT PLAINTIFFS WILL BE DIRECTED TO FILE A THIRD AMENDED COMPLAINT.

DISCUSSION:

The Test Applicable to Preliminary Objections in the Nature of a Demurrer:

Our Superior Court has described the test applicable to consideration of Preliminary Objections in the nature of a demurrer as follows:

When a defendant files preliminary objections in the nature of a demurrer, he necessarily admits as true all of the well-pleaded facts in the complaint, as well as any reasonable inferences to be drawn therefrom. *Preiser v. Rosenzweig*, 418 Pa.Super. 341, 346, 614 A.2d 303, 305 (1992), *aff'd*, 538 Pa. 139, 646 A.2d 1166 (1994); *Wojciechowski v. Murray*, 345 Pa.Super. 138, 140, 497 A.2d 1342, 1343 (1985). A court should sustain preliminary objections in the nature of a demurrer only where it appears from the face of the complaint that recovery upon the facts alleged is not permitted as a matter of law. *Chorba v. Davlisa Enterprises, Inc.*, 303 Pa.Super 497, 500, 450 A.2d 36, 38 (1982). Any doubt as to the legal sufficiency of the complaint should be resolved in favor of overruling the demurrer. *Gekas v.*

Shapp, 469 Pa. 1, 6, 364 A.2d 691, 693 (1976). When considering a demurrer “a court cannot consider matters collateral to the complaint but must limit itself to such matters as appear therein.” *Coccia v. Coccia*, 285 Pa.Super. 259, 261–262, 427 A.2d 212, 213 (1981).

220 Partnership v. Philadelphia Electric Company, 437 Pa.Super. 650, 654, 650 A.2d 1094, 1096 (Pa.Super. 1994).

Plaintiffs’ Second Amended Complaint:

Plaintiffs’ claims arise out of Defendants’ purchase of the assets of Benfer’s Construction, LLC (Second Amended Complaint, Paragraphs 10-32). Plaintiffs assert numerous claims associated with that transaction, both against the buyer (DevOps Utility Construction, LLC) and against DevOps Solutions, LLC, and John Grieco and Patrick McKelvie. Unfortunately, Plaintiffs have asserted all claims for relief against all Defendants, without consideration of which claims apply to which Defendant.

Count I of the Second Amended Complaint asserts a claim for breach of express contract. It can only be asserted against parties to the alleged contract, and not against individual owners of business parties. There is a strong presumption in Pennsylvania against piercing the corporate veil, and a business entity will be recognized and upheld unless unusual circumstances call for an exception. *Lumax Industries, Inc., v. Aultman*, 543 Pa. 38, 41-42, 669 A.2d 893, 895 (Pa. 1995).

Count II of the Second Amended Complaint asserts a claim for breach of contract implied in fact. While Plaintiffs cannot prevail on both Counts I and II, they can be asserted in the alternative, pursuant to Pa.R.C.P. 1020(c). That claim can only be asserted against parties to the alleged contract, and not individual owners of a business entities.

Count III of the Second Amended Complaint asserts a claim for breach of contract implied at law. While Plaintiffs cannot prevail on both Counts I and III, they can be asserted in the alternative, pursuant to Pa.R.C.P. 1020(c). That claim can only be asserted against parties to the alleged contract, and not individual owners of a business entities.

Count IV of the Second Amended Complaint asserts a claim of fraud. It can be asserted against any participant in the fraud, whether a business entity or an individual. Under the “participation theory” of liability, corporate officers are individually liable for their own tortious conduct. *Kaites v. Commonwealth of Pennsylvania Department of*

Environmental Resources, 108 Pa.Cmwlth. 267, 273, 529 A.2d 1148, 1151 (Pa.Cmwlth. 1987), citing *Wicks v. Milzoco Builders. Inc.*, 502 Pa. 614, 470 A.2d 86 (Pa. 1983).

Count V of the Second Amended Complaint asserts a claim for an account stated. That claim can only be asserted against parties to the underlying financial transaction. Presumably, that would be the buyer under the terms of the express contract.

Count VI seeks judgment against the individual Defendants on any judgment entered against the business Defendants, on the theory of “piercing the corporate veil.” Our Supreme Court has cited with approval the factors identified by our Commonwealth Court, including undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of the corporate form to perpetuate a fraud. *Lumax Industries, Inc., v. Aultman*, 543 Pa. 38, 41-42, 669 A.2d 893, 895 (Pa. 1995), citing *Kaites v. Commonwealth of Pennsylvania Department of Environmental Resources*, 108 Pa.Cmwlth. 267, 273, 529 A.2d 1148, 1151 (Pa.Cmwlth. 1987). Obviously, that claim would be only against the individual Defendants.

Count VII appears to be Plaintiffs’ attempt to assert a claim for equitable relief, but is articulated as if it were a motion for injunctive relief.

ORDER

AND NOW, this 30th day of October, 2026, for the reasons more fully set forth above, it is hereby Ordered as follows:

1. Defendants’ Preliminary Objections to Plaintiffs’ Second Amended Complaint, filed November 26, 2025, are granted in part and denied in part. Plaintiffs are directed to file a Third Amended Complaint, within twenty (20) days.
2. The Third Amended Complaint will clearly set forth each claim for relief and identify the particular Defendant to whom that claim is asserted.
3. In the event the Plaintiffs’ Third Amended Complaint asserts a claim for breach of express contract or breach of contract implied in fact or unjust enrichment, those claims will be asserted only against the parties to the alleged agreement.
4. In the event that Plaintiffs’ Third Amended Complaint asserts a claim for fraud, that claim can be asserted against any participant in the alleged fraud.

5. In the event that Plaintiffs' Third Amended Complaint asserts a claim for account stated, that claim will be asserted only against parties to the underlying financial transaction who are alleged to be directly liable on the alleged account.
6. In the event that Plaintiffs' Third Amended Complaint asserts a claim against one or more individual Defendants seeking to assert liability for a judgment entered against any business Defendant on the theory of "piercing the corporate veil," that claim will be asserted only against those individual Defendants.
7. In the event that Plaintiffs' Third Amended Complaint asserts a claim seeking equitable relief, that claim will be set forth in that fashion, rather than in the fashion of a motion for injunctive relief.
8. The balance of the Preliminary Objections are denied.

BY THE COURT:

William P. Carlucci, Judge

cc: Count Administrator
J. Michael Wiley, Esquire
Nicholas D. Grimes, Esquire
Allen P. Page, Esquire
Noah F. Roux, Esquire