

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

ELBOW ENERGY, LLC	:	
Plaintiff,	:	CIVIL ACTION - LAW
v.	:	
	:	No. CV-2025-01373
EQT CORPORATION and	:	
EQT PRODUCTION COMPANY and	:	Amended Preliminary Objections
EQT AMD LLC	:	
Defendants	:	

**OPINION AND ORDER ON AMENDED PRELIMINARY OBJECTIONS**  
**FILED DECEMBER 16, 2025**

This matter came before the Court for oral argument on Defendants’ Amended Preliminary Objections to the Complaint, filed on December 16, 2025. The Preliminary Objections are stated in nine (9) lettered counts. At Count A, Defendants contend that the Complaint must be amended so Plaintiff can attach assignment documents. At Count B, Defendants contend that the Complaint should be amended to state each claim against each Defendant, separately. At Count C, Defendants contend that, based upon publicly recorded documents, a demurrer should be entered on the claims asserted against EQT Corporation and EQT Production Company. At Count D, Defendants contend that a demurrer should be entered as to Plaintiff’s fraud claims, under the “gist of the action” doctrine. At Count E, Defendants contend that Plaintiff’s fraud claim must be restated to include justifiable reliance. At Count F, Defendants contend Plaintiff has not stated a cause of action for the appointment of a receiver. At Count G, Defendants contend that Plaintiff must not be permitted to proceed to seek both specific performance and money damages. At Count H, Defendants contend that Plaintiff’s claim for attorney’s fees should be stricken. At Count I, Defendants contend that Plaintiff’s claim for punitive damages should be stricken.

**QUESTIONS PRESENTED:**

1. WHETHER THE COURT SHOULD REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT TO ATTACH ASSIGNMENT DOCUMENTS.
2. WHETHER THE COURT SHOULD REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT TO STATE EACH CLAIM AS AGAINST EACH DEFENDANT SEPARATELY.

3. WHETHER A DEMURRER SHOULD BE ENTERED AS TO CLAIMS AGAINST EQT CORPORATION AND EQT PRODUCTION COMPANY.
4. WHETHER A DEMURRER SHOULD BE ENTERED AS TO PLAINTIFF'S FRAUD CLAIMS, UNDER THE "GIST OF THE ACTION" DOCTRINE.
5. WHETHER THE COURT SHOULD REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT TO ALLEGE ALL ELEMENTS OF FRAUD.
6. WHETHER A DEMURRER SHOULD BE ENTERED AS TO PLAINTIFF'S CLAIM FOR A RECEIVER.
7. WHETHER THE COURT SHOULD REQUIRE PLAINTIFF TO ELECT REMEDIES BETWEEN MONEY DAMAGES AND SPECIFIC PERFORMANCE.
8. WHETHER PLAINTIFF'S CLAIM FOR ATTORNEY'S FEES SHOULD BE STRICKEN FROM THE COMPLAINT.
9. WHETHER PLAINTIFF'S CLAIM FOR PUNITIVE DAMAGES SHOULD BE STRICKEN FROM THE COMPLAINT.

**ANSWERS TO QUESTIONS PRESENTED:**

1. THE COURT WILL REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT TO ATTACH ASSIGNMENT DOCUMENTS, OR, STATE WHY THEY ARE NOT ATTACHED.
2. THE COURT WILL ONLY REQUIRE PLAINTIFF TO STATE EACH CLAIM AS AGAINST EACH DEFENDANT, SEPARATELY, TO THE EXTENT THAT THE CLAIMS ARE MATERIALLY DISTINCT.
3. AT THIS EARLY STAGE OF THE LITIGATION, NO DEMURRER WILL BE ENTERED AS TO CLAIMS AGAINST EQT CORPORATION AND EQT PRODUCTION COMPANY.
4. NO DEMURRER WILL BE ENTERED AS TO PLAINTIFF'S FRAUD CLAIM, BUT PLAINTIFF MUST REPLEAD THE CLAIM.
5. THE COURT WILL REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT TO ALLEGE ALL ELEMENTS OF FRAUD.
6. AT THIS EARLY STAGE OF THE LITIGATION, NO DEMURRER WILL BE ENTERED AS TO PLAINTIFF'S CLAIM FOR A RECEIVER.
7. AT THIS EARLY STAGE OF THE LITIGATION, THE COURT WILL NOT REQUIRE PLAINTIFF TO ELECT REMEDIES BETWEEN MONEY DAMAGES AND SPECIFIC PERFORMANCE.

8. PLAINTIFF’S CLAIM FOR ATTORNEY’S FEES WILL NOT BE STRICKEN, BUT PLAINTIFF WILL BE REQUIRED TO REPLEAD THAT CLAIM.
9. PLAINTIFF’S CLAIM FOR PUNITIVE DAMAGES WILL NOT BE STRICKEN AT THIS TIME.

**DISCUSSION:**

The Test to Be Applied in Construing the Pa.R.C.P.

This Court is obligated to “liberally construe” the Rules of Civil Procedure “to secure the just, speedy and inexpensive determination of every action” and “may disregard any error or defect of procedure which does not affect the substantial rights of the parties” to that end. Pa.R.C.P. 126. In reviewing preliminary objections, “[a]ll well-pled facts in the complaint, *and reasonable inferences arising from those facts*, are accepted as true. However, unwarranted inferences, conclusions of law, argumentative allegations or expressions of opinion need not be accepted.” *Richardson v. Wetzel*, 74 A.3d 353, 356 (Pa. Commw. Ct. 2013) (quoting *Wilson v. Marrow*, 917 A.2d 357, 361 n. 3 (Pa. Commw. Ct. 2007) (*emphasis added*); *Goehring v. Harleysville Mut. Cas. Co.*, 73 Pa. D.&C.2d 784, 788 (Beaver Cnty. 1976) (“...[A] motion to strike should be overruled unless a party can affirmatively show prejudice...”).

The purpose of pleadings is to place the opposing party on notice of the claims or defenses which they must meet, and to provide a summary of the material facts upon which those claims or defenses are based. *Yacoub v. Lehigh Valley Medical Associates*, 2002 Pa.Super. 251, 805 A.2d 579, 589 (Pa.Super. 2002), citing *McClellan v. Health Maintenance Organization of Pennsylvania*, 413 Pa.Super. 128, 604 A.2d 1053 (Pa.Super. 1992). “The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” Pa.R.C.P. § 1019(a). And, “The purpose of this rule is to require the plaintiff to disclose the material facts sufficient to enable the adverse party to prepare the case.” *Bennett v. Beard*, 919 A.2d 365, 367 (Pa. Commw. Ct. 2007). Furthermore, “Pennsylvania is a fact-pleading jurisdiction; consequently, a pleading must not only apprise the opposing party of the asserted claim, ‘it must also formulate the issues by summarizing those facts essential to support the claim.’” *Wetzel*, 74 A.3d at 356–57 (quoting *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. Super. Ct. 1992)). Finally, “the lower court has broad discretion in determining the

amount of detail that must be averred since the standard of pleading set forth in Rule 1019(a) is incapable of precise measurement.” *United Refrigerator Co. v. Applebaum*, 189 A.2d 253, 255 (Pa. 1963).

1. THE COURT WILL REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT TO ATTACH ASSIGNMENT DOCUMENTS, OR, STATE WHY THEY ARE NOT ATTACHED.

Plaintiff contends that all of the Defendants are “the assignee of the entire interest of the Lessee (originally held by Anadarko Petroleum Corporation) under the Lease and amendments.” (Complaint, ¶ 8). Defendants accurately observe that the assignment documents are not attached to the Complaint. Pa.R.C.P. 1019(h) provides that, whenever a claim 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 to so state, together with the reason, and to set forth the substance of the writing.”

Plaintiff will be directed to file an Amended Complaint, which either attaches the assignment documents, or states that they are not accessible to the Plaintiff.

2. THE COURT WILL ONLY REQUIRE PLAINTIFF TO STATE EACH CLAIM AS AGAINST EACH DEFENDANT, SEPARATELY, TO THE EXTENT THAT THE CLAIMS ARE MATERIALLY DISTINCT.

Defendants contend that Plaintiff must state each claim as against each Defendant in separate counts. Pa.R.C.P. 1020(a) provides that “each cause of action and any special damages related thereto shall be stated in a separate count containing a demand for relief.”

Thus, if claims against multiple defendants are distinct, they must be separately stated. In the alternative, if any claim is identical as to all defendants, they can be joined.

3. AT THIS EARLY STAGE OF THE LITIGATION, NO DEMURRER WILL BE ENTERED AS TO CLAIMS AGAINST EQT CORPORATION AND EQT PRODUCTION COMPANY.

The entry of a demurrer is disfavored under applicable Pennsylvania law.

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded,

material, relevant facts, *Savitz v. Weinstein*, 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus*, 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts. *Chappell v. Powell*, 303 A.3d 507, 511 (Pa.Super. 2023); *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust*, 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra*.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.*, 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.*, 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein, supra*; *London v. Kingsley*, 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker*, 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also, Schott v. Westinghouse Electric Corp., supra*, 436 Pa. at 291, 259 A.2d at 449.

*Mudd v. Hoffman Homes for Youth, Inc.*, 374 Pa.Super. 522, 524–25, 543 A.2d 1092, 1093–94 (1988) (quoting *County of Allegheny v. Commonwealth*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985)). *Accord, Ritz v. Ramsay*, 305 A.3d 1056, 1061 (Pa.Super. 2023).

Defendants contend that Plaintiff's claims as against EQT Corporation and EQT Production Company can be resolved adverse to the Plaintiff "based on the plain language of the current, publicly recorded written assignments that the Complaint implicitly references" (Preliminary Objection, ¶ 39). The Court has not undertaken to research any publicly recorded documents, nor does the Court plan any other investigation of Plaintiff's claims. Rather, the Court must resolve Defendants' Preliminary Objections within the four (4) corners of the pleadings, and resist any temptation to consider evidence advanced by a "speaking demurrer." *See, Regal Industrial Corporation v. Crum and Forster, Inc.*, 2005 Pa.Super. 425, 890 A.2d 395, 398 (Pa.Super. 2005).

The facts developed in discovery may reveal that Plaintiff's claims against some or all of the Defendants are not meritorious. At this early stage of the litigation, the Court will not undertake to determine to make that determination.

4. NO DEMURRER WILL BE ENTERED AS TO PLAINTIFF’S FRAUD CLAIM, BUT PLAINTIFF MUST REPLEAD THE CLAIM.

Defendants contend that Count II of the Complaint, asserting a claim of fraud, should be dismissed because the “gist” of Plaintiff’s claim is breach of a written contract. There is little doubt from the face of the Complaint that Plaintiff’s claims are grounded in the terms of the written lease, with amendments, attached to the Complaint. Until very recently, the “gist of the action” doctrine was well-settled under Pennsylvania law.

[a]lthough mere non-performance of a contract does not constitute a fraud[,] it is possible that a breach of contract also gives rise to an actionable tort[.] To be construed as in tort, however, the wrong ascribed to defendant must be the gist of the action, the contract being collateral.” *Bash*, 601 A.2d at 829, citing, *Closed Circuit Corp. v. Jerrold Electronics Corp.*, 426 F.Supp. 361, 364 (E.D.Pa.1977). “The important difference between contract and tort actions is that the latter lie from the breach of duties imposed as a matter of social policy while the former lie for the breach of duties imposed by mutual consensus.” *Redevelopment Auth. v. International Ins. Co.*, 454 Pa.Super. 374, 685 A.2d 581, 590 (1996) (*en banc*), appeal denied, 548 Pa. 649, 695 A.2d 787 (1997), quoting, *Phico Ins. Co. v. Presbyterian Med. Svcs. Corp.*, 444 Pa.Super. 221, 663 A.2d 753, 757 (1995). “In other words, a claim should be limited to a contract claim when ‘the parties’ obligations are defined by the terms of the contracts, and not by the larger social policies embodied by the law of torts.” ’ *Bohler–Uddeholm Am., Inc. v. Ellwood Group, Inc.*, 247 F.3d 79, 104 (3rd Cir.Pa.2001), cert. denied, 534 U.S. 1162, 122 S.Ct. 1173, 152 L.Ed.2d 116 (2002), quoting, *Bash*, 601 A.2d at 830.<sup>4</sup>

*eToll, Inc. v. Elias/Savion Advertising, Inc.*, 2002 Pa.Super. 347, 811 A.2d 10, 14-15 (Pa.Super. 2002).

Regrettably, the law of Pennsylvania has recently become far less clear. In the matter of *Swatt v. Nottingham Village*, 342 A.3d 23 (Pa.Super. 2025), our Superior Court spoke dismissively of the “gist of the action doctrine”, as follows:

Reliance upon the gist-of-the-action doctrine and *Bruno* to convert Ann Marie's contract claims into tort claims is misplaced. The *Bruno* Court did not decide whether the gist-of-the-action doctrine applies to contract claims. As will become evident through our review of the history of the overlap between tort and contract claims, a plaintiff's choice of remedy (either in tort or in contract) is not necessarily binary. We acknowledge that some non-precedential decisions of this Court and federal cases have applied *Bruno* in the manner that the Nursing Home urges. Those decisions were incorrect.

The history of the common law and advent of the rules of civil procedure indicate that a plaintiff may bring contract claims, *in addition to* tort claims, for the same unlawful conduct by a defendant. In fact, over the centuries, English and American courts have continually eased the rules of procedure and pleading to allow parties to develop all possible claims and defenses in the alternative. Created by a federal district court in 1999, the gist-of-the-action doctrine was an anomaly and inadvertent step backwards. Today, this appeal presents us with the opportunity to correct the error of applying the “doctrine” to dismiss contract claims, and we do so.

*Swatt v. Nottingham Village*, 342 A.3d 23, 39 (Pa.Super. 2025). Accord, *Poteat v. Asteak*, 2025 Pa.Super. 277, 2025 WL 3546324 (Pa.Super. 2025).

As accurately observed in the scholarly concurring and dissenting opinion of Judge Victor P. Stabile, in *Swatt*, the majority opinion in that matter permitting a tort claim to be joined with a companion claim for breach of an implied contract “conflicts with long-held controlling precedent, and most notably our Supreme Court's 2014 decision in *Bruno v. Erie Ins. Co.*, 630 Pa. 79, 106 A.3d 48 (2014).” *Swatt v. Nottingham Village*, 342 A.3d 23, 55 (Pa.Super. 2025). Similarly, Judge Stabile observed in his dissenting opinion in *Poteat* that:

The Majority's attempt to distinguish *Bruno* appears to rely on a plain misreading of our law, as *Bruno* cannot be reconciled with the instant Majority's interpretation of that opinion. Like in *Bruno* and the present matter, *Zell* and *Reitmeyer* were cases where the attempt to convert tort actions into contract claims was rejected by our Supreme Court. *Krum* was a case where the Court affirmed that the action only sounded in tort despite there being a contract between the parties. Although contracts existed in these cases, the gist of those actions sounded in tort based upon the duty breached. The Majority and *Swatt* attempt to undue this well-established precedent to permit breach of contract and tort claims to coexist where the alleged duty breaches arises from tort, and the contract merely serves to establish the relationship between the parties during the time the tort was committed.

*Poteat v. Asteak*, 2025 PA. Super. 277, 2025 WL 3546324 (Pa.Super. 2025).

Pending further guidance from our Supreme Court, the vitality of the “gist of the action” doctrine is unknown. The facts developed in discovery in this matter may reveal that all duties owed by the Defendants to Plaintiff are grounded in the written lease, as amended, and that Plaintiff's fraud claim is not meritorious. At this early stage of the litigation, the Court will not undertake to make that determination. Plaintiff will be directed to file an amended Complaint, but may include claims both in contract and in tort.

5. THE COURT WILL REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT TO ALLEGE ALL ELEMENTS OF FRAUD.

The elements of common law fraud in Pennsylvania are well settled. “Under Pennsylvania law, the essential elements of common law fraud include a material misrepresentation of an existing fact, scienter, justifiable reliance on the misrepresentation, and damages.” *Booze v. Allstate Insurance Company*, 750 A.2d 877, 879 (Pa.Super. 2000).

At Count II of the Complaint, Plaintiff alleges that the Defendants made false and materially misleading statements regarding gathering fees or costs, and that the Defendants knowingly included information in monthly statements regarding gathering fees and costs which the Defendants “knew were excessive and unreasonable.” (Complaint, ¶¶ 58-63, inclusive). Plaintiff fails to allege how Plaintiff justifiably relied on any such misrepresentation. Plaintiff will be directed to file an Amended Complaint.

6. AT THIS EARLY STAGE OF THE LITIGATION, NO DEMURRER WILL BE ENTERED AS TO PLAINTIFF’S CLAIM FOR A RECEIVER.

At Count II of the Complaint asserting common law fraud, Plaintiff seeks compensatory and punitive damages, and the appointment of a receiver.

In general, a receiver may be appointed where the court is convinced that the right to appointment is free from doubt, where the potential loss resulting from the lack of a receivership would be irreparable, where there is no adequate remedy at law, and where the relief sought is necessary. *Bogosian*, 399 A.2d at 411. Hence, although a receiver will not be appointed unless it appears that the appointment is necessary to save the property from injury, threatened loss, or dissipation and although the appointment of a receiver is a drastic remedy, it should be imposed where it is necessary to effectuate equality and justice to all interests. *See McDougal v. Huntingdon & Broad Top Mountain Railroad & Coal Co.*, 294 Pa. 108, 143 A. 574, 578 (1928). As we see it, the appointment of a receiver is a flexible process subject to the court's discretion. There is nothing to suggest that the trial court's decisions cannot adapt to the evolving circumstances of the case as they are revealed during hearings. *See, e.g., Abrams v. Uchitel*, 806 A.2d 1, 8 (Pa. Super. 2002) (trial court could appoint receiver for purpose of preserving status quo during pendency of appeal from a transfer and coordination order, in litigation arising out of agreements between the parties to acquire and develop commercial real estate, even though there was no specific request for such an appointment, where appellees had already petitioned for a receiver prior to the appeal based on allegations that partnership assets were being dissipated; appellees had no obligation to repeat the process, and the court was not required to suspend belief that dissipation.

*In re Mount Vernon Tenants Association*, 322 A.3d 1002, 1013 (Pa.Cmwlt. 2024).

There is nothing in the Complaint which leads the Court to the conclusion that the immediate appointment of a receiver is “necessary to save the property from injury, threatened loss, or dissipation” or that “it is necessary to effectuate equality and justice to all interests.” Nevertheless, the appointment of a receiver is merely a request for relief, and not a separate cause of action. At this early stage of the litigation, the Court regards Plaintiff’s request for appointment of a receiver as harmless.

7. AT THIS EARLY STAGE OF THE LITIGATION, THE COURT WILL NOT REQUIRE PLAINTIFF TO ELECT REMEDIES BETWEEN MONEY DAMAGES AND SPECIFIC PERFORMANCE.

Plaintiff seeks multiple remedies, including a money judgment, an accounting, and specific performance of duties by Defendants which Plaintiff claims are established by the lease. With regard to the remedy of an accounting, a claim for that relief is clearly available under Pa.R.C.P. 1021(a). With regard to Plaintiff’s claim for specific performance, the basis for that claim is less clear. Our Superior Court has described that remedy as follows:

A decree of specific performance is not a matter of right, but of grace.” *Barnes v. McKellar*, 434 Pa.Super. 597, 644 A.2d 770, 776 (1994) (citation omitted), *appeal denied*, 539 Pa. 663, 652 A.2d 834 (1994). Such a decree will be granted only if a plaintiff clearly is entitled to such relief, there is no adequate remedy at law, and the trial court believes that justice requires such a decree. *Id.* “Inequity or hardship may be a valid defense in an action for specific performance and such decree refused if in the exercise of a sound discretion it is determined that, under the facts, specific performance would be contrary to equity or justice.” *Payne*, 187 A.2d at 771.

*Oliver v. Ball*, 2016 PA.Super. 45, 136 A.3d 162, 166 (Pa.Super. 2016).

In all likelihood, Plaintiff actually seeks an accounting and money damages for sums claimed by Plaintiff, under the lease. Pa.R.C.P. 1020(c) clearly permits inconsistent claims to be pleaded in the alternative. As our Superior Court has observed:

Pa.R.C.P. 1020 permits joinder of Assumpsit and Trespass and no election of remedies between assumpsit and trespass shall be required at any time. All causes of action shall be tried together, unless otherwise ordered by the court. “These rules reflect the general principle that plaintiffs should not be forced to elect a particular theory in pursuing a claim and avoids the attendant possibility that meritorious claims will foil because the wrong legal theory was chosen.” *Schreiber v. Republic*

*Intermodal Corp.*, 473 Pa. 614, 375 A.2d 1285 (1977). *Crumbston v. Sheehan*, 100 P.L.J. 307 (1953).

*Mancine v. Concord-Liberty Savings and Loan Association*, 299 Pa.Super. 260, 269, 445 A.2d 744, 748-49 (Pa.Super. 1982).

The Court anticipates that discovery in this matter will reveal whether Plaintiff's claims for an accounting and money damages have merit. At that time, a dispositive motion on Plaintiff's claim for specific performance is likely. At this early stage of the litigation, the Court will permit Plaintiff to proceed on that claim.

8. PLAINTIFF'S CLAIM FOR ATTORNEY'S FEES WILL NOT BE STRICKEN, BUT PLAINTIFF WILL BE REQUIRED TO REPLEAD THAT CLAIM.

The American Rule of Attorney's Fees:

It is the settled law of this Commonwealth that attorney's fees or expert witness costs are available as an item of damages in only very limited circumstances.

This Court has consistently followed the general, American rule that there can be no recovery of attorneys' fees from an adverse party, absent an express statutory authorization, a clear agreement by the parties or some other established exception. *Chatham Communications, Inc. v. General Press Corp.*, 463 Pa. 292, 300–01, 344 A.2d 837, 842 (1975)(quoting *Corace v. Balint*, 418 Pa. 262, 271, 210 A.2d 882, 886–87 (1965)); *In re Kling*, 433 Pa. 118, 121, 249 A.2d 552, 554 (1969); *Shapiro v. Magaziner*, 418 Pa. 278, 280, 210 A.2d 890, 892 (1965). See generally 42 Pa.C.S. § 2503(10)(providing that “a litigant is entitled to attorneys' fees as part of the taxable costs, only in circumstances specified by statute heretofore or hereafter enacted”).

*Merlino v. Delaware County*, 556 PA. 422, 425, 728 A.2d 949, 951 (Pa. 1999).

Plaintiff seeks attorney's fees and expert witness costs at Count IV of the Complaint, but cites no statutory or contract provision to support that claim. The Plaintiff must either support the claim, or abandon it.

9. PLAINTIFF'S CLAIM FOR PUNITIVE DAMAGES WILL NOT BE STRICKEN FROM THE COMPLAINT.

The Test for Imposition of Punitive Damages:

Punitive damages are unavailable to a plaintiff in a contract action, but may be available in cases involving both contract and tort claims. See *Grode v. Mutual Fire, Marine, and Inland Insurance Company*, 154 Pa.Cmwlth. 366, 373-74, 623 A.2d 933, 937

(Pa.Cmwlt. 1993). They are available only where the defendant's conduct can reasonably be regarded as malicious. Our Supreme Court has observed that:

Punitive damages' are damages, other than compensation or nominal damages, awarded against a person to punish him for his outrageous conduct.' Restatement of Torts, Sec. 908(1). Comment b. to the above section states that 'punitive damages are awarded only for outrageous conduct, that is, for acts done with a bad motive or with a reckless indifference to the interests of others.' In *Hughes v. Babcock*, 349 Pa. 475, 37 A.2d 551 (1944), we said that exemplary damages must be based on "malicious', 'wanton', 'reckless', "willful', or 'oppressive' conduct on the part of defendant'. In determining whether punitive damages should be awarded, the act itself together with all the circumstances including the motive of the wrongdoer and the relations between the parties should be considered. Restatement, Torts, Sec. 908, comment e; *Hughes v. Babcock*, supra.

*Chambers v. Montgomery*, 411 Pa. 339, 344, 192 A.2d 355, 358 (Pa. 1963).

Plaintiff has asserted a claim for attorney's fees at Count II alleging common law fraud, claiming that the Defendants made false and materially misleading statements regarding gathering fees or costs, and that the Defendants knowingly included information in monthly statements regarding gathering fees and costs which the Defendants "knew were excessive and unreasonable." (Complaint, ¶¶ 58-63, inclusive).

In the view of the Court, those allegations of fact, if established, would be sufficient to support a claim for punitive damages.

### **ORDER**

**AND NOW**, this 5<sup>th</sup> day of March, 2026, it is hereby **ORDERED** as follows:

1. Count I of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, are **SUSTAINED** in part. Plaintiff is directed to file an Amended Complaint, which either attaches the lease assignment documents, or states that they are not accessible to the Plaintiff.
2. Count II of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, are **SUSTAINED**, in part. In the event that Plaintiff seeks to assert separate claims for relief against separate Defendants, those claims shall be asserted in separate counts in the Amended Complaint. Identical claims against all Defendants may be joined in a single count.

3. Count III of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, is **OVERRULED**.
4. Count IV of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, is **OVERRULED**.
5. Count V of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, is **SUSTAINED**, in part. Plaintiff is directed to file an Amended Complaint, which either deletes the claim of common law fraud, or sets forth sufficient material facts to support all elements of that claim.
6. Count VI of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, is **OVERRULED**.
7. Count VII of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, is **OVERRULED**.
8. Count VIII of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, is **SUSTAINED**, in part. Plaintiff is directed to file an Amended Complaint, which either deletes the claim for attorney's fees, or sets forth the material facts or statutory provision upon which that claim is based.
9. Count IX of Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, is **OVERRULED**.

The Amended Complaint shall be filed within twenty (20) days of the date of filing of this Order. Except to the extent of the relief specifically stated herein, Defendants' Amended Preliminary Objections to the Complaint, filed on December 16, 2025, are **OVERRULED**.

BY THE COURT:

William P. Carlucci, Judge

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