

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

GLENN HOOVER, JR.	:	No. CV-2026-00215
Plaintiff,	:	
VS	:	
	:	
CHRISTINE SCHAEFER	:	
Defendant	:	Preliminary Objections

OPINION AND ORDER ON PRELIMINARY OBJECTIONS
FILED MARCH 10, 2026

This matter came before the Court for oral argument on Defendant’s Preliminary Objections to the Complaint, filed on March 10, 2026. The Preliminary Objections are stated in six (6) unnumbered counts. At the first Count, Defendant seeks a demurrer to Complaint Counts III and VIII as duplicative. At the second Count, Defendant seeks a demurrer to Plaintiff’s claim for money damages. At the third Count, Defendant seeks a demurrer to claims against the Defendant “as executor of the estates of Glenn Hoover’s parents.” At the fourth Count, Defendant seeks a more specific complaint. At the fifth Count, Defendant seeks a more specific complaint regarding the relief sought at Complaint Count V. At the sixth Count, Defendant seeks a more specific complaint regarding the relief sought at Count VI.

QUESTIONS PRESENTED:

1. WHETHER THE COURT SHOULD REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT.
2. WHETHER THE COURT SHOULD STRIKE PLAINTIFF’S CLAIM FOR NEGLIGENCE PER SE.
3. WHETHER THE COURT SHOULD STRIKE CLAIMS ASSERTED ON BEHALF OF “THE ESTATE OF GLENN HOOVER JR.’S PARENTS.”
4. WHETHER A DEMURRER SHOULD BE ENTERED AS TO PLAINTIFF’S NEGLIGENCE, GROSS NEGLIGENCE, AND 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.

ANSWERS TO QUESTIONS PRESENTED:

1. THE COURT WILL REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT.
2. THE COURT WILL STRIKE PLAINTIFF'S CLAIMS FOR NEGLIGENCE PER SE AND GROSS NEGLIGENCE.
3. THE COURT WILL STRIKE CLAIMS ASSERTED ON BEHALF OF "THE ESTATE OF GLENN HOOVER JR.'S PARENTS."
4. NO DEMURRER WILL BE ENTERED AS TO PLAINTIFF'S NEGLIGENCE AND FRAUD CLAIMS, BUT PLAINTIFF MUST REPLEAD THOSE CLAIMS.
5. THE COURT WILL REQUIRE PLAINTIFF TO FILE AN AMENDED COMPLAINT TO ALLEGE ALL ELEMENTS OF FRAUD.

DISCUSSION:

The Test to Be Applied in Construing the Pennsylvania Rules of Civil Procedure:

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.

As an initial observation, the Court notes that the form of the Complaint is curious. The Complaint is thirty-six (36) pages in length and includes one hundred forty-five (145) numbered paragraphs, probably four (4) times the length reasonably required to state Plaintiff’s claims. The Complaint alleges that the Defendant converted funds from the Plaintiff while the Defendant was serving as his fiduciary. Thus, claims of conversion and breach of fiduciary duty seem appropriate. Plaintiff includes a variety of other claims (negligence, gross negligence, fraud) which appear to be out of place in a complaint seeking relief for breach of fiduciary duty.

Defendant’s preliminary objections seek more detail regarding several of Plaintiff’s claims. It appears to the Court that more detail may be pointless, since several of the listed causes of action simply do not fit the facts.

Plaintiff will be directed to file an Amended Complaint. The Court encourages the Plaintiff to perform appropriate legal research, in order to clearly identify the causes of action which fit the facts, as alleged.

2. THE COURT WILL STRIKE PLAINTIFF’S CLAIM FOR NEGLIGENCE PER SE AND GROSS NEGLIGENCE.

The cases in which a Pennsylvania trial court has an evidentiary basis upon which to give the jury Standard Civil Instruction 13.110, regarding negligence *per se* are relatively few. Our Superior Court has described the doctrine as follows:

The concept of negligence *per se* establishes both duty and the required breach of duty where an individual violates an applicable statute, ordinance or regulation designed to prevent a public harm.... Moreover, in analyzing a claim based on negligence *per se*, the purpose of the statute must be to protect the interest of a group of individuals, as opposed to the general public, and the statute must clearly apply to the conduct of the defendant.” *J.E.J. v. Tri-County Big Brothers/Big Sisters, Inc.*, 692 A.2d 582, 585 (Pa.Super.1997). “Further, it is well settled that there must be a direct connection between the harm meant to be prevented by the statute, and the injury complained of.” *Gravlin v. Fredavid Builders and Developers*, 450 Pa.Super. 655, 677 A.2d 1235, 1239 (1996), *appeal denied*, 546 Pa. 694, 687 A.2d 378 (1996).

Shamnoski v. PG Energy A Division of Southern Union Company, 765 A.2d 297, 302 (Pa.Super. 2000).

Similarly, under Pennsylvania law, degrees of negligence are not generally recognized. *See Ferrick Excavating & Grading Co. v. Senger Trucking Co.*, 506 Pa. 181, 191, 484 A.2d 744, 749 (1984); Rather the term “gross negligence” refers to a standard of care, rather than to a separate claim. Thus, negligence *per se* and gross negligence are theories upon which a claim of negligence may be based.

3. THE COURT WILL STRIKE CLAIMS ASSERTED ON BEHALF OF “THE ESTATE OF GLENN HOOVER JR.’S PARENTS.”

Apparently, Plaintiff contends that Defendant breached some duty owed to “the estate of Glenn Hoover Jr.’s parents.” In the event there exists any such claim, and, in the further event , the claim has not been waived or is time-barred, it must be brought by a beneficiary of the estate in the estate administration pending in Orphan’s Court. An individual may have claims based on other tort theories and would file such claims in the Civil Action – Law section. Here, it is virtually impossible to determine what is being claimed and, as such, dismissal of this claim is warranted.

4. NO DEMURRER WILL BE ENTERED AS TO PLAINTIFF’S NEGLIGENCE AND FRAUD CLAIMS, BUT PLAINTIFF MUST REPLEAD THOSE CLAIMS.

It is certainly possible that Plaintiff’s claims of negligence and fraud could be dismissed, since the “gist” of Plaintiff’s claim is breach of fiduciary duty. 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 830.⁴

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

Although the decision is unreported, the Court draws the parties’ attention to the decision of our Commonwealth Court in the matter of *Pennsylvania Utility Commission v. Delaware Valley Regional Economic Development Fund*, 2019 WL 2619952 (Pa.Cmwlt. 2019), in which Judge Brobson, writing for the Court, explained the important difference between causes of action sounding contract from those sounding in tort:

The “gist of the action” doctrine “precludes a party from raising tort claims where the essence of the claim actually lies in a contract that governs the parties’ relationship.” *Sullivan v. Chartwell Inv. Partners, LP*, 873 A.2d 710, 718 (Pa. Super. 2005).⁷ The doctrine is “designed to maintain the conceptual distinction between breach of contract claims and tort claims.” *eToll, Inc. v. Elias/Savion Advert., Inc.*, 811 A.2d 10, 14 (Pa. Super. 2002). Whereas actions in tort “lie from the breach of duties imposed as a matter of social policy,” actions in contract “lie for the breach of duties imposed by mutual consensus.” *Id.* (quoting *Redevelopment Auth. of Cambria Cty. v. Int’l Ins. Co.*, 685 A.2d 581, 590 (Pa. Super. 1996) (*en banc*), appeal denied, 695 A.2d 787 (Pa. 1997)). “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.” *Id.* (quoting *Bohler-Uddeholm Am., Inc. v. Ellwood Grp., Inc.*, 247 F.3d 79, 104 (3rd Cir. 2001), *cert. denied*, 534 U.S. 1162 (2002)).

In determining whether an action sounds in contract or in tort, this Court applies the “mifeasance/nonfeasance” test. Under this test, we determine if there exists a cause of action in tort growing out of a breach of contract based on “whether there was an improper performance of a contractual obligation (mifeasance) rather than the mere failure to perform (nonfeasance).”

... If there is “mifeasance,” there is an improper performance of the contract in the course of which the defendant breaches a duty imposed by law as a matter of social policy. In such instances, the “gist” of the plaintiff’s action sounds in tort and the contract itself is collateral to the cause of action. On the other hand, if there is “nonfeasance,” the wrong attributed to the defendant is solely a breach of the defendant’s duty to perform under the terms of the contract. In such instances, the “gist” of the plaintiff’s action sounds in contract, *and the plaintiff would not have a cause of action but for the contract.*

Yocca, 806 A.2d at 944 (emphasis added) (internal citation omitted) (quoting *Grode v. Mutual Fire, Marine, and Inland Ins. Co.*, 623 A.2d 933, 935 (Pa. Cmwlt. 1993)).

Pennsylvania Utility Commission v. Delaware Valley Regional Economic Development Fund, 2019 WL 2619952 3-4 (Pa.Cmwlt. 2019).

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).

As accurately observed in the scholarly concurring and dissenting opinion of Judge Victor P. Stabile, the majority opinion 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).

The facts developed in discovery may reveal that all duties owed by the Defendant to Plaintiff are claims for breach of a fiduciary duty, and that Plaintiff’s claim of negligence are redundant, or lack merit. The Court believes that Plaintiff is entitled to conduct discovery in order to determine whether any evidence exists to support those claims.

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

The Elements of Common Law 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).

Plaintiff’s Fraud Claim:

At Count V of the Complaint, Plaintiff alleges that the Defendant concealed material facts from Plaintiff. Mere concealment of facts is insufficient to state a cognizable claim for fraud. Rather, a plaintiff must establish that the defendant made a material misrepresentation or failed to disclose facts the defendant had a duty to disclose, scienter, justifiable reliance, and resultant damages. The Court will require the Plaintiff to either abandon his claim for fraud or re-plead the claim to include each element of the claim and material facts supporting the claim.

ORDER

AND NOW, this 31st day of March, 2026, it is hereby **ORDERED** as follows:

1. Plaintiff is directed to file an Amended Complaint consistent with the requirements of Pa.R.C.P. 1019, setting forth Plaintiff's claims in a "concise and summary form." The Amended Complaint may seek an accounting as provided in Pa.R.C.P. 1021.
2. The Amended Complaint will not include separate counts of negligence per se or gross negligence, as those claims do not exist as separate causes of action under applicable Pennsylvania law. Nothing set forth herein will be regarded as preventing Plaintiff from asserting negligence per se under a claim of negligence in the Amended Complaint, provided that the elements of that claim are set forth. Further, nothing set forth herein will be regarded as preventing Plaintiff from asserting that Defendant's conduct was grossly negligent, under a claim of negligence.
3. All claims on behalf of the "the estate of the parents of" the Plaintiff are dismissed. Nothing set forth herein will be regarded as preventing those claims to be asserted against the Defendant, by a proper party in interest, in a separate action.
4. In the Amended Complaint, Plaintiff shall either abandon his claim of fraud, or plead sufficient material allegations of fact supporting each element of a cause of action for fraud.

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, Defendant's Preliminary Objections to the Complaint, filed on March 10, 2026, are **DENIED**.

BY THE COURT:

William P. Carlucci, Judge

CC: Count Administrator
Joseph F. Orso, III, Esquire
Paige Martineau, Esquire