

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VANESSA NOEL GINLEY, Individually,	:	CIVIL ACTION
and VANESSA NOEL GINLEY, d/b/a	:	
VANESSA NOEL HOTEL,	:	04-1986
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
E.B. MAHONEY BUILDERS, INC. and	:	
EDWIN B. MAHONEY,	:	
	:	
Defendants	:	

MEMORANDUM AND ORDER

JOYNER, J.

January 5, 2005

Via the motion now pending before this Court, Defendants move to dismiss Count III of Plaintiffs' Amended Complaint, alleging breach of fiduciary duty,<sup>1</sup> pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons outlined below, the motion shall be GRANTED.

Standards for Pleadings and Motions to Dismiss

The liberal requirements of federal notice pleading require only that a complaint put the defendant on notice of the claims against him. Fed. R. Civ. P. 8(a); see Seville Indus. Mach. Corp. v. Southmost Mach. Corp., 742 F.2d 786, 790 (3<sup>rd</sup> Cir. 1984). In considering a motion to dismiss filed pursuant to Rule

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<sup>1</sup> Plaintiffs' breach of fiduciary claim, marked in their Amended Complaint as "Count III," is in fact the second of only two Counts, the first being a claim for breach of contract.

12(b)(6), a court must accept as true all well-pleaded facts in the complaint, but need not credit the plaintiff's "bald assertions" or "legal conclusions." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3<sup>rd</sup> Cir. 1997). Only where the allegations fail to state any claim upon which relief could be granted will the plaintiff's claims be dismissed. Morse, 123 F.3d at 906.

## Discussion

### I. Formation of a Fiduciary Relationship

A fiduciary relationship arises under Pennsylvania law where "one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side or weakness, dependence or justifiable trust, on the other." Becker v. Chicago Title Ins. Co., No. 03-2292, 2004 U.S. Dist. LEXIS 1988 at 23, 2004 WL 228672 (E.D. Pa. 2004) (quoting PennDOT v. E-Z Parks Inc., 620 A.2d 712, 717 (Pa. Commw. Ct. 1993)). By virtue of the respective strength and weakness of the parties in such a relationship, one has the power to take advantage of or exercise undue influence over the other. Etoll, Inc. v. Elias/Savion Adver., 811 A.2d 10, 22 (Pa. Super. Ct. 2002) (quoting Valley Forge Convention & Visitors Bureau v. Visitor's Servs., Inc., 28 F. Supp. 2d 947, 952-53 (E.D. Pa. 1998)). Under

Pennsylvania law, attorneys owe a fiduciary duty to their clients, as do majority shareholders to minority shareholders, and joint venturers to their associates. Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz, 602 A.2d 1277, 1283 (Pa. 1990) (attorneys); Ferber v. Am. Lamp Corp., 469 A.2d 1046, 1050 (Pa. 1983) (shareholders); Snellbaker v. Herrmann, 462 A.2d 713, 718 (Pa. Super. Ct. 1983) (joint venturers). However, a fiduciary relationship can arise in a wide array of individual circumstances, and the possibility of such a relationship cannot be excluded by a concrete rule. Basile v. H & R Block, Inc., 777 A.2d 95, 103 (Pa. Super. Ct. 2001).

Nevertheless, a fiduciary duty is the highest standard of any duty implied by law, and will not be automatically inferred from the existence of an arm's-length business contract. Etoll, Inc., 811 A.2d at 22-23 (quoting Valley Forge Convention & Visitors Bureau, 28 F. Supp. 2d at 952-53); Zaborowski v. Hospitality Care Ctr. of Hermitage, Inc., 60 Pa. D. & C.4th 474, 488 (Pa. Com. Pl. 2002). This Court has held that there is a "crucial distinction" between surrendering control of one's affairs to a fiduciary in a position to exercise undue influence and entering into an arm's-length commercial agreement, however important its performance may be. Valley Forge Convention & Visitors Bureau, 28 F. Supp. 2d at 952-53. The Pennsylvania Superior Court adopted this reasoning in Etoll, Inc., holding

that standard professional services contracts could not be converted as a matter of course into fiduciary relationships. Etoll, Inc., 811 A.2d at 22-23. "Most commercial contracts for professional services involve one party relying on the other party's superior skill or expertise in providing that particular service. Indeed, if a party did not believe that the professional possessed specialized expertise worthy of trust, the contract would most likely never take place." Etoll, Inc., 811 A.2d at 23. Only if the relationship goes beyond "mere reliance on superior skill" and into one characterized by overmastering influence on one side or justifiable weakness on the other will a fiduciary relationship be established. Etoll, Inc., 811 A.2d at 23.

In their Amended Complaint, Plaintiffs expressly allege that they "reposed special confidence" in the defendants, and that such special confidence was based upon the "weakness, dependence, and/or justifiable trust" arising from the Plaintiffs' lack of knowledge concerning construction and remodeling. Amended Complaint, ¶ 24. Plaintiffs further allege that Defendants were aware that the Plaintiffs were "utterly dependent and reliant upon them for prompt and proper performance of their contractual obligations." Amended Complaint, ¶ 25. These allegations, if true, may be sufficient under the liberal pleading requirements of Rule 8(a) to support a finding that a fiduciary relationship

existed between Plaintiffs and Defendants.

## **II. Gist of the Action Doctrine**

Nonetheless, we must grant Defendants' motion to dismiss Count III, as Plaintiffs' allegations of breach of fiduciary duty are clearly barred by the gist of the action doctrine.<sup>2</sup>

The "gist of the action" doctrine prohibits conversion of a breach of contract claim into a tort claim unless the gravamen of the action sounds in tort. See Quorum Health Res., Inc. v. Carbon-Schuylkill Cmty. Hosp., Inc., 49 F. Supp. 2d 430, 432 (E.D. Pa. 1999). To determine where the gist of the action lies, a court must ascertain whether the parties' obligations have been defined by mutual consensus, or rather by larger social policies embodied in the law of torts, with the contract being merely collateral or incidental. See Quorum Health Res., Inc., 49 F. Supp. 2d at 432; Bohler-Uddeholm Am., Inc. v. Ellwood Group, Inc., 247 F.3d 79, 103-04 (3<sup>rd</sup> Cir. 2001) (quoting Redevelopment Auth. Of Cambria County v. Int'l Ins. Co., 685 A.2d 581, 590 (Pa.

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<sup>2</sup> While the Memorandum accompanying the instant Motion to Dismiss did not directly address the gist of the action doctrine, this issue was raised in Defendants' first Motion to Dismiss, which was incorporated by reference to the instant Motion. Furthermore, a court may, on its own initiative, dismiss a complaint pursuant to Rule 12(b)(6) where the inadequacy of the complaint is apparent as a matter of law. See Erie City Retirees Ass'n v. City of Erie, 838 F. Supp. 1048, 1050 (E.D. Pa. 1993); Bryson v. Brand Insulations, Inc., 621 F.2d 556, 559 (3<sup>rd</sup> Cir. 1980).

Super. Ct. 1996)). A tort claim is barred by the gist of the action doctrine if it arises solely from a contract between the parties, if the duties allegedly breached were grounded in the contract itself, or if the claim's success is wholly dependent on the terms of a contract. Williams v. Hilton Group, PLC, 261 F. Supp. 2d 324, 327-28 (E.D. Pa. 2003) (citing Etoll, Inc., 811 A.2d at 19); see also Factory Mkt. v. Schuller Int'l., 987 F. Supp. 387, 394-95 (E.D. Pa. 1997) (holding that the gist of the action doctrine barred fraud and negligence claims brought against a roofing contractor for failing to properly seal a roof, because his obligation to do so was imposed by the terms of the contract, and plaintiff would have had no cause of action had there been no contract).

Typically, a breach of fiduciary duty claim will survive the gist of the action doctrine only where the fiduciary relationship in question is well-established and clearly defined by Pennsylvania law or policy, such as (for example) the social policy which defines relationships among majority and minority shareholders. See, e.g., Bohler-Uddeholm Am., Inc., 247 F.3d at 104-05. The relationship at issue in this action, between a business owner and a building contractor, is not among those relationships generally identified by Pennsylvania policy as fiduciary in nature. In other words, the obligations owed by a building and remodeling company to its clients are generally

defined by the terms of their contract rather than by grander social policies embodied in the law of torts.

Furthermore, the success of Plaintiffs' fiduciary duty claim is wholly dependent on the existence of a contract with Defendants and the terms set forth therein, a fact only reinforced by the pleadings. In Count III, Plaintiffs allege that Defendants "did not have the ability and/or intent to comply with the requirements of their contractual undertakings," that Defendants failed to "properly perform" the construction and renovation contract, and that Plaintiffs were dependent on Defendants for "proper performance of their contractual obligations." Amended Complaint, ¶ 22, 24, 25. Much like the failed roofing installation at issue in Factory Mkt. v. Schuller Int'l, 987 F. Supp. 387, 394-95 (E.D. Pa. 1997), the failures cited by Plaintiffs as evidence of Defendants' fiduciary breach also form the basis of Plaintiffs' breach of contract claim. Because Plaintiffs' fiduciary duty claim arises directly from Defendants' failure to satisfy their contractual obligations, the "gist of the action" plainly sounds in contract law, rather than tort. As such, Count III does not state a claim upon which relief can be granted, and must be dismissed.

An appropriate Order follows.

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E.B. MAHONEY BUILDERS, INC. and :  
EDWIN B. MAHONEY, :  
: :  
Defendants : :

**ORDER**

AND NOW, this 5th day of January, 2005, upon consideration of Defendants' Motion to Dismiss Count III of Plaintiffs' Amended Complaint (Doc. No. 13), and all responses thereto (Docs. No. 15, 16), it is hereby ORDERED that the Motion is GRANTED.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.