

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

DEBRA GIAMPAPA KIRWAN, et al. : CIVIL ACTION
: :
v. : :
: :
AARON CLARK, et al. : NO. 04-05952-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

June 27, 2005

Plaintiffs' complaint in this action runs to 125 paragraphs, and contains 12 counts. The defendants have filed a motion to dismiss, under Fed. R. Civ. P. 12(b)(6). The motion is almost totally lacking in merit, since the allegations of the complaint, if proven at trial, would plainly authorize relief.

There is probably some overlap among the various counts (e.g., the tenth count charges conduct which probably is the same conduct relied upon to establish breach of contract under the seventh count), but mere duplication is not a basis for dismissal.

Defendants also seek to have plaintiffs' demand for counsel fees stricken from the complaint. The only count in which such claims are specifically demanded, Count VIII, is based upon a Pennsylvania statute which expressly allows an award of counsel fees to the prevailing party. All of the other counts may or may not warrant an award of counsel fees, depending upon how egregious defendants' conduct may have been. The prayer for relief will not be stricken. An Order follows.

