

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

---

VALIDATION COMMERCE, LLC	:	March Term 2004
	:	No. 07272
Plaintiff,	:	
v.	:	Commerce Program
	:	
NGRAVIS, BRYAN YINGST, JUSTIN	:	
STAUFER AND DONALD E. REYNOLDS	:	
	:	Control No. 62261
Defendants.	:	

---

**ORDER and MEMORANDUM**

**AND NOW**, this 28<sup>th</sup> day of August 2004, upon consideration of the Preliminary Objections of Defendants Bryan Yingst, Justin Staufer and Donald Reynolds (the “Individual Defendants”), all responses in opposition, all other matters of record, and in accordance with the Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** that said Preliminary Objections are **SUSTAINED** and that all claims against the Individual Defendants are **DISMISSED**.

**BY THE COURT:**

---

*GENE D. COHEN, J.*

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

---

VALIDATION COMMERCE, LLC	:	March Term 2004
	:	No. 07272
Plaintiff,	:	
v.	:	Commerce Program
	:	
NGRAVIS, BRYAN YINGST, JUSTIN	:	
STAUFER AND DONALD E. REYNOLDS	:	
	:	Control No. 62261
Defendants.	:	

---

**MEMORANDUM OPINION**

***GENE D. COHEN, J.***

Before the Court are Defendants’ Preliminary Objections to Plaintiff’s Amended Complaint. For the reasons fully set forth below, Defendants’ Preliminary Objections are **sustained**.

**DISCUSSION**

Defendants Bryan Yingst, Justin Stauffer and Donald Reynolds (the “Individual Defendants”) have demurred to Counts I (breach of contract) and II (breach of warranty) of the Amended Complaint on the basis that these individuals were not parties to the written service agreement which is at issue in this case. The Master Consulting Services Agreement (the “MCSA”), upon which this action is based, was entered into “by and between Validation Commerce, LLC, a Delaware Limited Liability Company...and nGravis, a Pennsylvania concern...” Compl. Exh. A. No where in the MCSA are any of the Individual Defendants mentioned or referred to, with the exception of Bryan Yingst, who signed the MCSA on behalf of nGravis as an “Internet Consultant.” ¶ 15-18.

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. Bailey v. Storlazzi, 1999 Pa. Super. 97, 729 A.2d 1206, 1211 (1999). For the purposes of reviewing preliminary objections asserting legal insufficiency, “all well pleaded material, factual averments and all inferences fairly deducible therefrom” are presumed to be true. Id. However, the pleader's conclusions or averments of law are not considered to be admitted as true. County of Allegheny v. Commw., 507 Pa. 360, 372, 490 A.2d 402, 408 (1985). Thus, the inquiry at bar is whether Plaintiff has set out material, relevant, well-pleaded facts which, if true, state a claim against the Individual Defendants upon which relief may be granted. This court finds that Plaintiff has failed to satisfy its burden, as one can not be liable for breaching a contract to which he was not a party, as these individuals clearly were not based upon the clear and unambiguous language of the MCSA. *See e.g.* Electron Energy Corp. v. Short, 408 Pa. Super. 563, 597 A.2d 175 (1991).

Plaintiff argues that there should be liability against the Individual Defendants under a theory of piercing the corporate veil. As a preliminary matter, it must be noted that a strong presumption exists in Pennsylvania against disregarding the corporate form. Wedner v. Unemployment Compensation Bd. of Review, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972). “Piercing the corporate veil is the exception, and courts should start from the general rule that the corporate entity should be upheld unless specific, unusual circumstances call for [such] an exception.” First Realvest, Inc. v. Avery Builders, Inc., 410 Pa. Super. 572, 600 A.2d 601, 604 (1991). In order to withstand a demurrer, Plaintiff must set forth the conduct which the Individual Defendants allegedly engaged in that would bring their actions within the parameters of a cause of action based on a theory of piercing the corporate veil.<sup>1</sup> Plaintiff has failed to do so

---

<sup>1</sup> Under Pennsylvania law, the following factors are to be considered in determining whether to pierce the corporate

here. While it is not necessary to set forth the evidences by which facts are to be proved, it is essential that the facts the pleader depends upon to show liability be averred. Id. (*quoting Frey v. Dougherty*, 286 Pa. 45, 48, 132 A. 717, 718 (1926)).

The Amended Complaint, as pled, fails to satisfy this burden. In the Amended Complaint, each of the Individuals are defined as adult individuals with “the actual or apparent authority to act on behalf of all of the Defendants herein.” Am. Compl. ¶¶ 3-6. Such bald allegations insufficient to satisfy Pennsylvania’s requirement of fact pleading. Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991); Santiago v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 418 Pa. Super. 178, 185, 613 A.2d 1235, 1238 (1992) (“[u]nder the Pennsylvania system of fact pleading, the pleader must define the issues; every act or performance essential to that end must be set forth in the complaint”); Sevin v. Kelshaw, 417 Pa. Super. 1, 7, 611 A.2d 1232, 1235 (1992). The purpose behind Pennsylvania's fact pleading requirement is to "give the defendant notice of what the plaintiffs' claim is and the grounds upon which it rests, thus allowing the defendant to prepare a defense.” Alpha Tau Omega Fraternity v. Univ. of Pennsylvania, 318 Pa. Super. 293, 298, 464 A.2d 1349, 1352 (1983). Plaintiff has failed to do so here.

**BY THE COURT:**

---

***GENE D. COHEN, J.***

---

veil: 1) undercapitalization; 2) failure to adhere to corporate formalities; 3) substantial intermingling of corporate and personal affairs; and 4) use of the corporate form to perpetrate a fraud. Lumax Indus. v. Aultman, 543 Pa. 38, 669 A.2d 893 (1995); Village at Camelback Prop. Owners Ass'n, Inc. v. Carr, 371 Pa. Super. 452, 461, 538 A.2d 528, 533 (1988), *aff'd* 524 Pa. 330, 572 A.2d 1 (1990).