

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

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KELLY RAMBO and PHILLIP J. BERG, ESQ.	:	August Term, 2004
	:	
Plaintiffs,	:	No. 03894
	:	
v.	:	
	:	Commerce Program
RONALD B. GREENE, M.D., and RONALD	:	
B. GREENE, M.D., P.C.,	:	Control No. 050765
	:	
Defendants.	:	

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**ORDER and MEMORANDUM**

**AND NOW**, this 30<sup>th</sup> day of June 2005, upon consideration of Defendants' Preliminary Objections, the memorandum in support thereof, all 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 Plaintiffs' Complaint is **DISMISSED** in its entirety.

**BY THE COURT:**

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*C. DARNELL JONES, J.*

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**MEMORANDUM OPINION**

***C. DARNELL JONES, J.***

Before the Court are Defendants’ Preliminary Objections to Plaintiffs’ Complaint. For the reasons fully discussed below, said Preliminary Objections are **sustained**.

**BACKGROUND**

According to Plaintiffs’ Complaint, this action arises out of the refusal of Defendant Ronald B. Greene, M.D. (“Dr. Greene”) to testify as an expert at the medical malpractice trial of Plaintiff Kelly Rambo, who, at the time, was represented by Plaintiff Philip J. Berg, Esquire.

On February 28, 2005, this court entered an order sustaining Defendants’ Preliminary Objections to the Complaint, dismissing the following counts: breach of warranty and fair dealing (Count III); negligence (Count IV); fraud/fraudulent misrepresentation (Count V); constructive/legal fraud (Count VI); professional malpractice (Count VII); intentional infliction of emotional distress (Count VIII); and negligent infliction of emotional distress (Count IX). This court also sustained preliminary objections to Counts I (breach of contract) and II (breach of implied contract) for insufficient specificity. However, the court permitted Plaintiffs to file an amended complaint as to those counts, which they did on March 21, 2005 (the “Amended

Complaint”). Defendants have filed the instant Preliminary Objections challenging the Amended Complaint.

### **DISCUSSION**

As fully set forth in this court’s Opinion of February 28, 2005, generally, an expert witness can not be compelled to give testimony against his will. *See e.g., Williams v. South Hills Health Sys.*, 24 Pa. D. & C.3d 206, 209 (1981); *see also Moses v. Albert Einstein Med. Ctr.*, 25 Phila. 389 (1993); *Graham v. I.M.O. Indus.*, 16 Pa. D. & C.4th 492 (1992). Thus, in order to survive under these facts, any claims that Plaintiffs may have against Dr. Greene must be based upon the breach of a specific agreement. Although Counts I and II of the Complaint purport to state claims for breach of contract, the pleading falls short.

To sustain a claim for breach of contract, Plaintiffs must demonstrate: (1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damages. *CoreStates Bank, Nat’l Assn. v. Cutillo*, 1999 Pa. Super. 14, 723 A.2d 1053 (1999). Clearly, Plaintiffs were promised – and provided with – an expert report from Dr. Greene. However, as pled, this court finds that neither Plaintiff has demonstrated the existence of a specific contractual obligation, either express or implied, between either of them and Defendants, which required Dr. Greene to provide expert testimony at the trial.<sup>1</sup> As such, their contractual claims fail as a matter of law.

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<sup>1</sup> While this court is troubled by Dr. Greene’s failure to honor a subpoena, legal remedies were available to Plaintiffs during the underlying trial for such conduct, including a request that the trial judge issue a bench warrant.

Based on the foregoing, this Court sustains Defendants' Preliminary Objections and dismisses Plaintiffs' Complaint in its entirety.

**BY THE COURT:**

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**C. DARNELL JONES, J.**