

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

THE ESTATE OF BOYD E. RODGERS,	:	
BY AND THROUGH HIS ESTATE	:	October Term 2004
ADMINISTRATOR, C. REGI RODGERS,	:	
and IDA RODGERS,	:	No. 1577
	:	
Plaintiffs,	:	Commerce Program
v.	:	
	:	Control Nos. 082720, 091645
MORRIS CHAPEL MISSIONARY	:	
BAPTIST CHURCH, LINWOOD D.	:	
PARKER, NORMAN J. DOWNING,	:	
DIANE BROWN, 12 th and LEHIGH	:	
AVENUE, PHILADELPHIA, PA 19133	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 14th day of December 2005, upon consideration of the Preliminary Objections of Defendant Morris Chapel Missionary Baptist Church (Control No. 082720) to the Fourth Amended Complaint of Plaintiffs, the Preliminary Objections of Plaintiffs to the Preliminary Objections of Defendant Morris Chapel Missionary Baptist Church (Control No. 091645) and the response thereto, and in accordance with the attached memorandum, it is hereby **ORDERED** and **DECREED** that Plaintiffs shall file an amended complaint within twenty (20) days of the date of this Order or the Fourth Amended Complaint shall be **DISMISSED**.¹

BY THE COURT,

HOWLAND W. ABRAMSON, J.

¹ “[I]f it is evident that the pleading can be cured by amendment, a court ... must give the pleader an opportunity to file an amended complaint.” Harley Davidson Motor Co. v. Hartman, 296 Pa. Super. 37, 42, 442 A.2d 284, 286 (1982).

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Defendants.	:	

MEMORANDUM

Presently before the court are the Preliminary Objections of Defendant Morris Chapel Missionary Baptist Church to the Fourth Amended Complaint (“FAC”) of Plaintiffs the Estate of Boyd E. Rodgers, by and through his Estate Administrator, C. Regi Rodgers, and Ida Rodgers and the Preliminary Objections of Plaintiffs to the Preliminary Objections of Defendant.

Plaintiffs’ Preliminary Objections to Defendant’s Preliminary Objections are grounded in a misreading of the Rules of Civil Procedure. Under Pa. R.C.P. 1028(b), relied upon by Plaintiffs, a party must raise all preliminary objections at one time. This rule, however, is not pertinent to the current matter. Plaintiffs’ original complaint, first amended complaint, second amended complaint, and third amended complaint were all filed in accordance with Pa. R.C.P. 1028(c)(1). Plfs. Prelim. Object. to Def. Prelim. Object., at ¶¶1-8. Rule 1028(c)(1) deems moot the preliminary objections to the prior pleading. Pa. R.C.P. 1028(c)(1). Thus, Defendant’s preliminary objections to the

original complaint, first amended complaint, and second amended complaint have no impact on the current Preliminary Objections. Similarly, the court's Order of July 25, 2005, disposed of Plaintiffs' third amended complaint by directing Plaintiffs to file an amended complaint or face dismissal without issuing a ruling on Defendant's preliminary objections to the third amended complaint. In response to the Order, Plaintiffs filed the FAC, which entitles Defendant to file preliminary objections, Pa. R.C.P. 1028(f). Therefore, Plaintiffs' Preliminary Objections to Defendant's Preliminary Objections are denied.

Defendant's Preliminary Objections highlight Plaintiffs' failure to demonstrate a breach of contract claim. To establish a cause of action for breach of contract, a party must plead (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, N.A. v. Cutillo, 723 A.2d 1053, 1058 (1999). According to the FAC, a fire damaged Defendant's building. FAC, ¶12. Defendant's pastor, Boyd E. Rogers, now deceased, and his wife loaned Defendant in excess of \$150,000 to repair the structure. FAC, ¶¶13-19. In response to the court's Order of July 25, 2005, Plaintiffs indicate that these agreements were oral. FAC, Count I. The terms of these loans, however, are too ill-defined to establish a breach of contract claim. No representative of Defendant is named as agreeing to such loans. FAC, ¶20. At most, Plaintiffs allege that certain members of Defendant received notice about the existence of the loans, but the date or method of such communications is not revealed. FAC, ¶¶21-22. The repayment terms for the loans are not clearly stated. Plaintiffs allege that the parties entered into a repayment agreement in exchange for Boyd E. Rogers's agreement to forbear immediate repayment of the loan. FAC, ¶25. The FAC, however, indicates that no loan repayments were made until more

than five years had passed since the date of the final loan. FAC, ¶18. Lacking both a contracting party and the terms of the agreement, Plaintiffs cannot establish a breach of contract claim against Defendant and Defendant's Preliminary Objections will be granted.

BY THE COURT,

HOWLAND W. ABRAMSON, J.