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

DANLIN MANAGEMENT GROUP, INC.	:	
	:	January Term 2005
Plaintiff,	:	
	:	No. 4527
v.	:	
	:	Commerce Program
THE SCHOOL DISTRICT OF PHILADELPHIA, PAUL VALLAS, MICHAEL HARRIS, JAMES NEVELS, and GINA PELLIGRINO	:	Control No. 041352
Defendants.	:	

O R D E R

AND NOW, this 29TH day of August, 2005, upon consideration of the Preliminary Objections of Defendants The School District of Philadelphia, Paul Vallas, Michael Harris, James Nevels, and Gina Pelligrino to the Complaint of Plaintiff Danlin Management Group, Inc. and the response thereto, and in accordance with the attached memorandum, it is hereby **ORDERED** and **DECREED** as follows:

1) Defendants' Preliminary Objections to Counts V and VI of the Complaint are **SUSTAINED** and Counts V and VI are **DISMISSED**;

2) Defendants' Preliminary Objections to the *ad damnum* clauses of the Complaint are **SUSTAINED** in part and **OVERRULED** in part. All references to equitable relief and attorney's fees and costs shall be **STRICKEN** from the Complaint, all references to punitive damages in Counts I, II, and III of the Complaint shall be **STRICKEN**, and all references to punitive damages against

Defendant The School District of Philadelphia shall be **STRICKEN** from the Complaint; and

3) Defendants' remaining Preliminary Objections are **OVERRULED** and Defendants shall file an answer to Plaintiff's Complaint within twenty (20) days of the date of this Order.

BY THE COURT,

_____

C. DARNELL JONES, II, J.

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

DANLIN MANAGEMENT GROUP, INC.	:	
	:	January Term 2005
Plaintiff,	:	
	:	No. 4527
v.	:	
	:	Commerce Program
THE SCHOOL DISTRICT OF PHILADELPHIA, PAUL VALLAS, MICHAEL HARRIS, JAMES NEVELS, and GINA PELLIGRINO	:	Control No. 041352
Defendants.	:	

O R D E R

Presently before the court are the Preliminary Objections of Defendants The School District of Philadelphia (the "School District"), Paul Vallas, Michael Harris, James Nevels, and Gina Pelligrino (the latter four Defendants, collectively, the "Individual Defendants") to the Complaint of Plaintiff Devlin Management Group, Inc. For the reasons that follow, the court sustains in part and overrules in part the Preliminary Objections.

According to the Complaint, Plaintiff and the School District entered into a contract for Plaintiff to provide certain advisory and support services to the School District. Before this contract expired in February 2004, the parties agreed to the Second Contract, in which the Plaintiff would continue to provide these services and other, additional services to the School District. Plaintiff provided services under the Second Contract from February 2004 through June 2004 but did not receive payment. In addition, Plaintiff and the School District agreed upon Plaintiff's role as administrator with regards to a bond (the "Bond Contract") but the School District never allowed

Plaintiff to perform its duties. The Individual Defendants were involved in the contract negotiations and also informed Plaintiff of the existence of both the Second Contract and the Bond Contract.

Plaintiff brings causes of action against all Defendants for fraud (Count IV) and negligent misrepresentation (Count V), against the School District for breach of contract (Count I), unjust enrichment (Count II), and promissory estoppel (Count III), and against the Individual Defendants for intentional interference with contract (Count VI).

DISCUSSION

Defendants' Preliminary Objections to the Complaint are in the nature of a demurrer. In this posture, the court considers all material facts set forth in the Complaint as well as all inferences reasonably deducible therefrom as true. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it. Moser v. Heistand, 545 Pa. 554, 559, 681 A.2d 1322, 1325 (1996).

Defendants challenge Plaintiff's claim for negligent misrepresentation (Count V) under both the gist of the action and the economic loss doctrines. Plaintiff asserts the gist of the action defense is premature and the economic loss doctrine does not apply to the facts of this case.

Underlying both doctrines is the conceptual distinction between a breach of contract claim and a tort claim. "Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals." Etoll, Inc.v. Elias/Savion

Adver., Inc., 811 A.2d 10, 14 (Pa. Super. 2002). The gist of the action doctrine bars tort claims (1) arising solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; or (4) where the tort claim essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of a contract. Id., at 19.

Plaintiff bases its negligent misrepresentation claim on the Defendants communications concerning the Second Contract and the Bond Contract. According to Plaintiff, Defendants promised Plaintiff it had both contracts and then the School District reneged on its promises. Compl., ¶¶56-61, 66-68. In the *ad damnum* clause, Plaintiff seeks damages based on what it would have received had it performed under the two contracts. Essentially, Plaintiff relies on the contracts, and not on any larger social policy, to support its cause of action. Thus, if Plaintiff and the School District entered into the Second Contract and/or the Bond Contract, the gist of the action doctrine would bar this claim with respect to the particular contract.

The economic loss doctrine "precludes recovery in negligence actions for injuries which are solely economic." David Pflumm Paving & Excavating, Inc. v. Foundation Servs. Co., 816 A.2d 1164, 1170 (2003). An exception for claims of negligent misrepresentation that reflect Section 552 of the Restatement (Second) of Torts ("Section 552"), however, allows such claims to evade dismissal even if they assert purely economic losses. Bilt-Rite Contractors, Inc. v. The Architectural Studio, 866 A.2d 270, 288 (2005).

In Bilt-Rite, the court queried whether a contractor could bring a negligent misrepresentation claim against an architect when there was no privity of contract

between the parties and the contractor suffered purely economic damages as a result of its reliance upon the architect's misrepresentations. From this starting point, the court adopted Section 552 to "clarify the elements of the tort as they apply to those in the business of supplying information to others for pecuniary gain." Bilt-Rite, at 280. Section 552 provides that "one who, in the course of his business, profession or employment … supplies false information for the guidance of others in their business transactions," may be subject to liability. The Bilt-Rite court highlighted that this tort is "narrowly tailored, as it applies only to those businesses which provide services and/or information that they know will be relied upon by third parties in their business endeavors." Bilt-Rite, at 286.

A comparison of the facts presented in Bilt-Rite to those contained in the Complaint reveals that Section 552 is inapplicable to the current dispute. In Bilt-Rite, each party negotiated separately with the school district and not with each other. Here, Plaintiff and Defendants dealt directly with one another. In Bilt-Rite, the defendant architect provided information which the plaintiff contractor used to perform its duties. Here, Plaintiff is providing the services to Defendant School District. Indeed, Plaintiff presents no facts to identify the School District as a service provider. Thus, Bilt-Rite does not provide the appropriate framework for the negligent misrepresentation cause of action and the more general economic loss rule applies.

Although the Complaint offers alternative factual scenarios governing the Second Contract and the Bond Contract – the presence or absence of such an agreement between Plaintiff and the School District – ultimately only one of these situations is correct. If the parties entered into an agreement, the gist of the action doctrine bars the negligent misrepresentation claim. If the parties did not form a contract, the economic loss doctrine

precludes recovery. Since Count V is not viable under either alternative, Count V shall be dismissed.

Defendants contend that Plaintiff's claim for intentional interference with contract (Count VI) is legally insufficient. In Pennsylvania, a claim for intentional interference with a principal's contract cannot be based upon an agent's actions if those actions are within the scope of the agency. Rutherfoord v. Presbyterian-University Hosp., 417 Pa. Super. 316, 332, 612 A.2d 500, 508 (1992). Plaintiff asserts that its failure to identify the Individual Defendants as the School District's agents in the relevant portion of the Complaint, Compl., ¶¶97-100, requires an inference that these individuals were acting outside the scope of their agency when each committed this tort. Plaintiff, however, ignores paragraph 96, which expressly incorporates those sections of the Complaint highlighting the Individual Defendants' role as the School District's agents. Plaintiff's suggested amendment to the Complaint is merely an assertion and contains no facts sufficient to meet the requirements of Pa. R.C.P. 1019(a). Count VI shall be dismissed.

Defendants challenge several of the *ad danmun* clauses of the remaining counts of the Complaint, asserting that Plaintiff improperly seeks equitable relief, punitive damages, and attorney's fees and costs.

Equity lacks jurisdiction when there exists a full, complete, and adequate remedy at law. McGill v. Southwark Realty Co., 828 A.2d 430, 435 (Pa. Commw. 2003). A review of the Complaint shows that monetary damages can adequately make Plaintiff whole. Therefore, all references to equitable relief shall be stricken from the Complaint.

Punitive damages cannot be awarded for breach of contract because they are inconsistent with traditional contract theory. DiGregorio v. Keystone Health Plan E., 840 A.2d 361, 370 (Pa. Super. 2003). As a corollary of this principle, punitive damages

cannot be awarded for promissory estoppel, which creates an implied contract, Crouse v. Cyclops Indus., 704 A.2d 1090, 1093 (Pa. Super. 1997), or unjust enrichment that sounds in quasi-contract, Cole v. Lawrence, 701 A.2d 987, 989 (Pa. Super. 1997). Switching to the parties, the School District is a local agency for purposes of the Political Subdivision Tort Claims Act, Petula v. Mellody, 158 Pa. Commw. 212, 217, 631 A.2d 762, 765 (1993), which prevents the assessment of punitive damages against this Defendant, Marko v. City of Philadelphia, 133 Pa. Commw. 574, 577, 576 A.2d 1193, 1194 (1990). Plaintiff's reliance on Purdy v. Romeo, 10 Pa. D&C.4th 242 (Com. Pl. 1991), is misplaced. Purdy stands for the proposition that punitive damages may be assessed against the Individual Defendants, not the School District. Id., at 247-48. Therefore, all references to punitive damages shall be struck from Counts I, II, and III of the Complaint and all requests for punitive damages against the School District shall be struck from the Complaint.

To recover attorney's fees from an adverse party requires clear statutory authorization, clear agreement of the parties, or another established exception. Snyder v. Snyder, 533 Pa. 203, 212, 620 A.2d 1133, 1134 (1993). As the Complaint lacks any such allegations, all requests for attorney's fees and costs shall be struck from the Complaint.

Defendants' remaining Preliminary Objections lack merit and shall be overruled.

BY THE COURT,

_____

C. DARNELL JONES, II, J.