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

GRADUATE CARDIOLOGY CONSULTANTS, P.C., Plaintiff	:	February Term, 2000
	:	No. 2827
v.	:	
	:	Commerce Case Program
VIVRA, INC., et al., Defendants	:	Control No. 080518

MEMORANDUM OPINION

Defendants Vivra, Inc. ("Vivra"), Vivra Heart Services, Inc. ("VHS"), Vivra Holdings, Inc. ("Vivra Holdings"), VSP Holdings, Inc. ("VSP Holdings"), Vivra Specialty Partners, Inc. ("Vivra Specialty Partners")[1] and Charles W. Ott ("Ott") have filed Preliminary Objections ("Objections") to the amended complaint ("Complaint") of Plaintiff Graduate Cardiology Consultants, P.C. For the reasons set forth in this Opinion, the Court is issuing a contemporaneous Order overruling the Objections in part and sustaining the Objections in part.

BACKGROUND

[1] In 1996, VHS was a subsidiary of Vivra Partners. Vivra Partners, in turn, was a subsidiary of Vivra, Incorporated, a publicly held Delaware corporation. In June 1997, Vivra, Incorporated was sold to a third party. At the same time, Vivra Specialty Partners changed its name to or was merged into "Vivra, Inc." and was sold to a privately held new company called "VSP Holdings, Inc." VSP Holdings subsequently either changed its name to or was merged into another corporation known as "Vivra Holdings, Inc." Throughout this time, VHS continued as a subsidiary of Vivra, Inc. For the sake of simplicity, Vivra Specialty Partners, Inc./Vivra, Inc. will be referred to as "Vivra," while VSP Holdings, Inc./Vivra Holdings, Inc. will be referred to as "Vivra Holdings." Vivra, VHS, Vivra Holdings, VSP Holdings and Vivra Specialty Partners are referred to collectively as the "Vivra Defendants."

On December 30, 1996, Graduate and VHS entered into two agreements ("1996 Agreements"). The first agreement was an Agreement for Purchase and Sale of Assets ("1996 Sale Agreement"), under whose terms Graduate sold certain of its assets ("Graduate Assets") to VHS. Under the 1996 Sale Agreement, VHS also agreed to assume post-closing obligations under Graduate's office leases ("Lease Obligations").[2]

At the same time, Graduate and VHS also entered into a Management Services Agreement ("Management Agreement").[3] Under the Management Agreement, VHS provided administrative and management services to Graduate and collected fees due to Graduate from health care organizations ("Fees"). In exchange, VHS retained 37.5% of the Fees, subject to certain adjustments, and paid the remaining 62.5% to Graduate.

On August 5, 1998, Graduate and VHS entered into a second Agreement for Sale and Purchase of Assets ("1998 Sale Agreement"). Under this Agreement, the Management Agreement was terminated and Graduate purchased the Graduate Assets back from VHS. In the 1998 Sale Agreement, VHS warranted that, aside from certain accrued employee benefits, no VHS liabilities or obligations related to the Graduate Assets were outstanding. VHS also represented that it was not in

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[2] Among the Lease Obligations were payments due under leases for One Graduate Plaza, Philadelphia, Pennsylvania ("One Graduate Plaza") and 1740 South Street, Philadelphia, Pennsylvania ("1740 South Street") (collectively, "Office Spaces"). The leases for the Office Spaces are referred to collectively as the "Leases."

[3] The 1996 Sale Agreement and the Management Agreement are referred to collectively as the "1996 Agreements."

violation of or in default under any material contract, including the Leases. The 1998 Sale Agreement closed on August 14, 1998.[4]

The Complaint alleges that VHS was in breach of the 1998 Sale Agreement when the Agreement both was executed and closed. VHS had paid the Lease Obligations for the Office Spaces for all of 1997 and January 1998, as required by the 1998 Sale Agreement. However, according to the Complaint, VHS did not pay Lease Obligations totaling $118,275.02 that accrued between February 1 through August 14, 1998 ("Rent Delinquency").

At some point between August 14, 1998 and January 5, 1999, Graduate became aware of the Rent Delinquency and alerted VHS. On January 5, 1999, Vivra, VHS's parent, allegedly agreed, on behalf of itself and VHS, to pay the Rent Delinquency. In response, Graduate agreed not to pursue its rights under the Agreements.

Soon after, Vivra sent Graduate checks ("Checks") payable to the Office Space landlord ("Landlord") for the amounts due. However, due to uncertainty generated by the insolvency of the Landlord, Graduate held the Checks pending clarification of the correct identity of the payee under the Leases. The Complaint alleges that this was done with the consent of VHS.

By December 1999, the Checks still had not been cashed. Because of the significant length of time since the Checks were signed, Graduate believed that they were no longer valid, and again requested that the Vivra Defendants correct the Rent Delinquency. According to the Complaint, the Vivra Defendants have refused to do so.

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[4] The representations and warranties of both VHS and Graduate were made as of both the date of execution and the date of closing of the 1998 Sale Agreement.

In a separate matter, in October 1999, Graduate became aware of an alleged overpayment of Fees by QualMed Plans for Health ("QualMed") to VHS. Because VHS retained 37.5% of all Fees collected, Graduate asserts that VHS must pay it 37.5% of any amount owed by Graduate to QualMed. To keep VHS's assets out of Graduate's reach, however, the Complaint alleges that the Vivra Defendants have engaged in fraudulent and conspiratorial behavior.

Graduate asserts eight Counts against the Defendants in the Complaint: breach of contract, promissory estoppel, fraudulent misrepresentation, negligent misrepresentation, fraudulent conveyance, conspiracy, unjust enrichment and contractual compensation adjustments.

The Objections are based on two grounds. First, the Defendants have filed a demurrer that asserts that the Plaintiff's failure to allege actual, compensable damage resulting from the Defendants' supposed malfeasance is fatal. Second, the Defendants claim that the fraudulent conveyance and conspiracy Counts are insufficiently specific and must be dismissed.

As discussed below in greater detail infra, the demurrer to the Complaint as a whole must be overruled. However, the fraudulent conveyance and conspiracy Counts do not meet the requisite level of specificity, and the Objections to them are sustained.

DISCUSSION

I. Demurrer

For the purposes of reviewing preliminary objections in the form of a demurrer, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa. Super. Ct. 2000). When presented with preliminary objections whose end result would be the dismissal of a cause of action, a

court should sustain the objections where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazaras, 746 A.2d 642, 643 (Pa. Super. Ct. 2000) (citation omitted). Furthermore,

> [I]t is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. Ct. 1999).

According to the Defendants, the Complaint does not allege a demand for payment of the Rent Delinquencies. Consequently, they assert, the Plaintiff cannot establish the causation or damages necessary for each of the Counts, and the Complaint should be dismissed.

The Plaintiff counters that the Defendants' alleged actions resulted in harm to the Plaintiff in two ways:

> First, [VHS] misappropriated to itself funds it was contractually obligated to pay as rent. Second, it obtained an inflated price when it sold the practice assets back to plaintiff by falsely claiming that it had, in fact, paid the rents it knew it was obligated to pay but had not paid.

Plaintiff's Memorandum at 2-3.

Most of the offenses alleged in the Complaint against the Defendants require proof of causation. However, for each offense, the misconduct that must cause the damage is different. In addition, one of the Counts alleged does not require causation or damages at all. This precludes addressing the demurrer wholesale and requires that the element of causation, or lack thereof, be addressed separately for each Count.

In summary, the Complaint alleges causation and damages for each of the Counts, albeit in a cursory manner that leaves the Court skeptical as to Graduate's ability to prove causation and resulting damages at trial. However, because a court must regard all factual allegations in a Complaint as true, the demurrer must be overruled.

A. Breach of Contract

To establish a claim for breach of contract, a claimant must show "(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 (Pa. Super. Ct. 1999) (citation omitted). See also Logan v. Mirror Printing Co. of Altoona, Pa., 410 Pa. Super. 446, 448-49, 600 A.2d 225, 226 (1991) ("[i]n order to recover for damages pursuant to a breach of contract, the plaintiff must show a causal connection between the breach and the loss").[5]

Here, VHS was required to pay the Lease Obligations under the 1996 Agreements. Moreover, in the 1998 Sale Agreement, VHS warranted that it was in compliance with the Leases and that there was no Rent Delinquency.[6] Thus, a failure to pay the Lease Obligations, as alleged in the Complaint, qualifies as a breach of the Agreements.

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[5] At least one Pennsylvania case holds that a breach of contract action does not require proof of damages or, consequently, causation. See Grabowski v. Quigley, 454 Pa. Super. 27, 41, 684 A.2d 610, 617 (1996) ("[a] cause of action [for breach of contract] exists even if no compensable loss can be shown because any breach gives rise to at least nominal damages"). However, this case appears to be an isolated example, with the general standard requiring proof damages resulting from the breach of the contract.

[6] In Paragraph 3.10 of the 1998 Sale Agreement, VHS represents that its only liabilities are those related to holiday, sick leave and vacation time. In Paragraph 3.11, VHS represents that it is not in violation of or in default under any of the "Material Contracts" set forth in Schedule 2.1(b). The Complaint states that the Leases are among the Material Contracts. Complaint at ¶ 25.

That said, the Complaint does not allege that any demand for payment has been made on Graduate by the Landlords. In addition, Graduate's assertion of misappropriation in its Memorandum is immaterial, as any benefit to the Defendants without harm to Graduate is not relevant for the breach of contract claim.

Furthermore, VHS's failure to pay the Lease Obligations cannot have affected the price paid under the 1998 Sale Agreement. Section 3.10 of that Agreement insulates Graduate from obligations incurred prior to the Agreement's closing, including the Rent Delinquency.[7] Because this Agreement protects Graduate from VHS's prior obligations, to the extent that they exist, the existence of such obligations has no effect on the purchase price.

In spite of this, the Complaint alleges that Graduate incurred the damages set forth therein "[b]y reason of the foregoing" facts. Complaint at ¶ 44. Because a court must accept the allegations in a complaint as true for the purposes of preliminary objections, the Court is bound to accept the Complaint's allegations of causation as correct. As a result, the Complaint presents a complete claim for breach of contract, and the demurrer to Count I - Breach of Contract is overruled.

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[7] According to Section 3.10 of the 1998 Sale Agreement, with the exception of liabilities related to holiday, sick leave and vacation time,

> [Graduate] will not be obligated for, nor will the Assets secure or be subject to, any liabilities or obligations of the Business of any kind or nature, whether absolute, accrued, contingent, known, unknown or otherwise, and whether normally set forth or reflected in a financial statement arising from the operation of the Business prior to Closing, including but not limited to claims of third parties which may arise from government investigations or proceedings, in each case which relate to the operation of the Business prior to Closing.

B. Promissory Estoppel

Simply put, "promissory estoppel makes promises enforceable." GMH Assocs., Inc. v. Prudential Realty Group, 752 A.2d 889, 904 (Pa. Super. Ct. 2000). A successful claim for promissory estoppel requires evidence that:

> (1) the promisor made a promise that [it] should have reasonably expected would induce action or forbearance on the part of the promisee; (2) the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise.

Crouse v. Cyclops Indus., 560 Pa. 394, 403, 745 A.2d 606, 610 (2000) (citation omitted).

Promissory estoppel also requires proof that the claimant "justifiably relied on the inducement. Promissory estoppel does not apply if the complaining party acted on his own will and not as a result of the defendant's representations." Ravin, Inc. v. First City Co., 692 A.2d 577, 581 (Pa. Super. Ct. 1997).[8] Moreover, a plaintiff may request money damages as relief in a promissory estoppel claim. See DelConte v. Stefonick, 268 Pa. Super. 572, 577, 408 A.2d 1151, 1153 n.1 (1979) (where a complaint requests "any relief the court deems proper" based on a promissory estoppel claim, the request is satisfactory, even if additional relief is requested). See also Herzfeld v. City of Phila., No. Civ. A. 84-5014, 1985 WL 2700, at *3 (E.D. Pa. Sept. 13, 1985) ("monetary damages are recoverable under the doctrine of promissory estoppel").

In addition to the promises made in the Agreements, outlined supra, the Complaint alleges that Vivra promised, on behalf of itself and VHS, to pay the Rent Delinquency. Complaint at ¶ 28. The

[8] Because the Objections challenge only causation, the Court presumes the existence of the first and third elements of promissory estoppel in considering the Objections.

Complaint further alleges that Graduate relied on these promises when it "refrained from enforcing its rights under the various agreements with [VHS] and otherwise." Id. at ¶ 29. These allegations support a claim based on promissory estoppel and require enforcement of the promise to pay the Rent Delinquency. As a result, the demurrer to this Count is overruled.

C. Fraudulent and Negligent Misrepresentation

The elements of intentional fraudulent misrepresentation are:

> (1) A representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and, (6) the resulting injury was proximately caused by the reliance.

Bortz v. Noon, 556 Pa. 489, 499, 729 A.2d 555, 560 (1999). Similarly, negligent misrepresentation requires "(1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; and; (4) which results in injury to a party acting in justifiable reliance on the misrepresentation." Id., 556 Pa. at 501, 729 A.2d at 561.

Here, the alleged misrepresentation is the representation and warranty by VHS and Ott in the 1998 Purchase Agreement that there was no Rent Delinquency. Complaint at ¶ 40. The Complaint alleges that the damages Graduate incurred were a result of this misrepresentation. Id. at ¶¶ 44, 46. Consequently, the demurrer to the fraudulent misrepresentation and negligent misrepresentation Counts are overruled.

D. Fraudulent Conveyance

Under Pennsylvania's fraudulent conveyance statute,

> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or
> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
> (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

12 Pa. C.S. § 5104(a). As relief, a plaintiff alleging a fraudulent conveyance may request money damages. See, e.g., Amadon v. Amadon, 59 A.2d 135, 359 Pa. 434 (1948) (awarding wife $3,500 based on fraudulent conveyances made by husband).

In the Complaint, Graduate alleges that VHS and Vivra transferred assets to other Vivra Defendants "with the intent of hindering, delaying and/or defrauding Graduate as a creditor, and to put assets beyond Graduate's reach."[9] Complaint at ¶ 48.[10] This supports a claim for fraudulent conveyance. In addition, request for monetary relief is appropriate. Consequently, the demurrer to Count V - Fraudulent Conveyance is overruled.

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[9] Graduate's general averment of intent is proper. See Pa. R. Civ. P. 1019(b) ("[m]alice, intent, knowledge, and other conditions of mind may be averred generally").

[10] In the alternative, Graduate asserts that:

> (1) the transferor was engaged or was about to engage in a business or a transaction for which the remaining assets of the transferor were unreasonably small in relation to the business or transaction, and/or (2) the transferor was insolvent at that time or became insolvent as a result of the transfer.

Complaint at ¶ 49. This tracks the language in 12 Pa. C.S. § 5104(b), which sets forth factors to be considered when determining if a transfer was made with the requisite "actual intent."

E. Conspiracy

To state a cause of action for civil conspiracy, a claimant must show "(1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage." Strickland v. University of Scranton, 700 A.2d 979, 987 (Pa. Super. Ct. 1997) (citation omitted). See also GMH Assocs. v. Prudential Realty Group, 752 A.2d 889, 905 (Pa. Super. Ct. 2000) ("a conspiracy is not actionable until some overt act is done in pursuance of the common purpose or design . . . and actual legal damage results"). However, "it is not necessary that [a plaintiff] plead specific amounts of out of pocket losses in order to survive a demurrer." Smith v. Wagner, 403 Pa. Super. 316, 324, 588 A.2d 1308, 1312 (1991).

According to the Complaint, the Vivra Defendants have conspired against Graduate by "secreting and/or transferring assets in order to hinder, delay and/or defraud Graduate as a creditor, and/or to put assets beyond Graduate's reach." Complaint at ¶ 51. As mentioned supra, this constitutes a violation of Pennsylvania's fraudulent conveyance statute. In addition, if Graduate is unable to obtain assets to which it is entitled, it has suffered legal damage. As a result, these allegations, if true, support a cause of action for conspiracy, and the demurrer to Count VI is overruled accordingly.

F. Unjust Enrichment

The elements of a claim for unjust enrichment are "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value."

Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 622 (Pa. Super. Ct. 1999), app. denied, 561 Pa. 700, 751 A.2d 193 (2000). No Pennsylvania case specifically requires loss by the plaintiff or causation.[11] Cf. Allegheny Gen. Hosp. v. Phillip Morris, Inc., No. Civ. A. 99-9, 1999 WL 33135090, at *8 (W.D. Pa. Nov. 4, 1999), aff'd, No. 99-4024, 2000 WL 1478534 (3rd Cir. Oct. 6, 2000) (proximate causation is not an element of an unjust enrichment claim under Pennsylvania law).

Even if causation and damages were required, Graduate alleges that it compensated VHS under the Management agreement by granting VHS the right to 37.5% of all Fees. Moreover, the Complaint asserts that, "by reason of their conduct as averred above, the Vivra defendants have been unjustly enriched." Complaint at ¶ 13. Consequently, there is no merit to the Defendants' claim that Count VII - Unjust Enrichment is incomplete, and the demurrer to the Count is overruled.

G. Contractual Compensation Adjustments

Last, Graduate has brought a claim for contractual compensation adjustments based on the 1996 Agreements. This claim is wholly separate from the previous seven Counts and has no connection to either the Lease Obligations or the Rent Delinquency.

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[11] In contrast, other jurisdictions require a loss to the plaintiff corresponding to a gain by the defendant for a viable unjust enrichment claim. See, e.g., Clay v. American Tobacco Co., 188 F.R.D. 483, 500 (S.D. Ill. 1999) ("the plaintiff must show that the defendant was unjustly enriched at the plaintiff's expense"); Kalamazoo River Study Group v. Rockwell Int'l, 3 F. Supp. 2d 815, 818 (W.D. Mich. 1997), aff'd, 171 F.3d 1065 (6th Cir. 1999) (a claim for unjust enrichment requires proof of causation); Bieber-Guillory v. Aswell, 723 So.2d 1145, 1150 (La. Ct. App. 1998) (action for unjust enrichment requires "causation between the enrichment and the impoverishment"); Maines Paper & Food Serv., Inc. v. Eanes, No. 77301, 2000 WL 1429418, at *4 (Ohio Ct. App. Sept. 28, 2000) ("[t]he concept of unjust enrichment includes not only loss by the plaintiff but gain by the defendant, with a tie of causation between them").

Under the 1996 Agreements, all Fees due to Graduate were paid to VHS. This included Fees due from QualMed. VHS, in turn, retained 37.5% of the Fees as compensation for its services and forwarded the balance to Graduate. According to the Complaint, Graduate has received notice that QualMed overpaid its Fees during the term of the Management Agreement. Because VHS retained 37.5% of the QualMed Fees, Graduate requests that VHS be required to compensate Graduate for 37.5% of the amount Graduate is required to repay to QualMed.

The Defendants' Objections to causation and damages are without merit here as well. If Graduate is forced to repay QualMed, the amount of those repayments will exceed the amount that Graduate received from QualMed via VHS. This would clearly result in damage to Graduate, and the demurrer to this final Count is overruled as well.[12]

II. Insufficient Specificity

Pennsylvania Rule of Civil Procedure 1028(a)(3) permits preliminary objections based on insufficient specificity in a pleading. To determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the facts alleged are "sufficiently specific so as to enable [a] defendant to prepare [its] defense." Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991) (citation omitted). See also In re The Barnes Foundation, 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (1995) ("a pleading should formulate the issues by fully summarizing the material facts,

[12] To the extent that the Complaint does not allege the specific amount of the overpayments, it is important to note that the Plaintiff requests the repayment of "37% [sic] of all sums Graduate is compelled to refund to QualMed." Complaint at ¶ 57(a). If no amounts are due QualMed, then the Defendants presumably will owe Graduate no compensation.

and as a minimum, a pleader must set forth concisely the facts upon which [the] cause of action is based").[13]

In the Objections, the Defendants claim that the Counts for fraudulent conveyance and conspiracy are impermissibly vague. The Court must agree. As stated supra, the allegations of fraudulent conveyance do little more than repeat the language of the fraudulent conveyance statute. Similarly, the Count for conspiracy asserts only that the Vivra Defendants have conspired "by secreting and/or transferring assets in order to hinder, delay and/or defraud Graduate as a creditor, and/or to put assets beyond Graduate's reach." Complaint at ¶ 51. These statements are insufficient to allow the Defendants to prepare a defense to these Counts.

The Plaintiff maintains in its Memorandum that the facts underlying the fraudulent conveyance and conspiracy claims are "more within [the Defendants'] knowledge than plaintiff's," permitting them to defend against the two Counts.[14] Plaintiff's Memorandum at 5. Pennsylvania law grants the plaintiff considerable latitude "where the crucial facts are in the exclusive knowledge of the defendant, and the plaintiff so pleads." Line Lexington Lumber & Millwork Co. v. Pennsylvania Publishing Corp., 451 Pa. 154, 162, 301 A.2d 684, 689 (1973). However, the Complaint does not allege that the facts upon

[13] Allegations of fraud, including fraudulent conveyance, are held to an even higher standard. Pa. R. Civ. P. 1019(b). See also Martin v. Lancaster Battery Co., 530 Pa. 11, 18, 606 A.2d 444, 448 (1992) (an allegation of fraud must "explain the nature of the claim to the opposing party so as to permit the preparation of a defense" and be "sufficient to convince the court that the averments are not merely subterfuge").

[14] Significantly, this assertion is not included in the Complaint.

which these two Counts are based are in the exclusive knowledge of the Defendants.[15] Cf. Baker v. Rangos, 229 Pa. Super. 333, 350 n.4, 324 A.2d 498, 506 n.4 (1974) (plaintiffs are "not entitled to have their complaints reviewed with special leniency" where they do not plead "the defendants' superior knowledge"). Consequently, Count V - Fraudulent Conveyance and Count VI - Conspiracy are insufficiently specific[16] and the Objections to them are sustained.

In Pennsylvania, "parties are liberally granted leave to amend their pleadings." Frey v. Pennsylvania Elec. Co., 414 Pa. Super. 535, 538, 607 A.2d 796, 797 (1992). As a result, Graduate is granted twenty days in which to file a second amended complaint whose fraudulent conveyance and conspiracy counts are sufficiently specific.

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[15] Even if the Plaintiff pled that the relevant facts were in the exclusive knowledge of the Defendants, it is far from certain that the Complaint would meet the specificity requirements.

[16] This conclusion finds support in Pennsylvania case law as to both Counts. See Landau v. Western Pa. Nat'l Bank, 445 Pa. 217, 225, 282 A.2d 335, 340 (1971) (a "single, vague and conclusory allegation that the [defendants] have 'conspired' . . . falls far short of the requisite pleading of 'the material facts'"); Newman v. Newman, 328 Pa. 552, 196 A. 30 (1938) (general allegations of an effort to cheat and defraud defendants' creditors in violation of statute was insufficiently specific to support a count for fraudulent conveyance); Shaffer v. Proctor & Gamble, 412 Pa. Super. 630, 638, 604 A.2d 289, 293 (1992) (allegations of conspiracy are insufficient where they are "merely conclusory"); Leopold v. Tuttle, 378 Pa. Super. 466, 471, 549 A.2d 151, 154 (1988) (claim for fraudulent conveyance cannot be based on "vague conclusions of fact or unjustified inferences of the grantor's indebtedness"); Burnside v. Abbott Laboratories, 351 Pa. Super. 264, 280, 505 A.2d 973, 982 (1985) (allegations of "no more than a contemporaneous and negligent failure to act" are insufficient to support a cause of action for conspiracy).

CONCLUSION

Each of the Counts in the Complaint is complete and the demurrer is overruled. However, the causes of action for fraudulent conveyance and conspiracy are not sufficiently specific. As a result, the Objections to them are sustained, the Counts are stricken and the Plaintiff is directed to file a second amended complaint within twenty days of this Opinion.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: October 20, 2000

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

GRADUATE CARDIOLOGY CONSULTANTS, P.C., Plaintiff	:	February Term, 2000
	:	No. 2827
v.	:	
	:	Commerce Case Program
VIVRA, INC., et al., Defendants	:	Control No. 080518

ORDER

AND NOW, this 20th day of October, 2000, upon consideration of the Preliminary Objections of Vivra, Inc., Vivra Heart Services, Inc., Vivra Holdings, Inc., VSP Holdings, Inc., Vivra Specialty Partners, Inc. and Charles W. Ott to the Amended Complaint of Plaintiff Graduate Cardiology Consultants, P.C., and Plaintiff's response thereto and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that:

1. The Preliminary Objections in the form of a demurrer to the Amended Complaint are OVERRULED;

2. The Preliminary Objections asserting insufficient specificity in Count V - Fraudulent Conveyance and Count VI - Conspiracy are SUSTAINED and those Counts are STRICKEN; and

3. The Plaintiff is granted leave to file an amended complaint within twenty days of this Order.

BY THE COURT:

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JOHN W. HERRON, J.