

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

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GREENWICH INSURANCE COMPANY.	:	
	:	December Term, 2002
	:	
Plaintiff,	:	No. 03007
v.	:	
	:	Commerce Program
DOLLARLAND PROPERTIES, LLP, et al.	:	:
	:	Control No. 030516
Defendants.	:	

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**ORDER and MEMORANDUM**

**AND NOW**, this 2nd day of October, 2003, upon consideration of Defendants' Preliminary Objections, all responses in opposition, the respective memoranda, all matters of record and upon oral argument of the parties, it hereby is **ORDERED** and **DECREED** that said Preliminary Objections are **SUSTAINED**.

Plaintiff is granted leave to amend its Complaint within twenty (20) days from the date of entry of this Order, in accordance with the contemporaneous memorandum opinion.

**BY THE COURT:**

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

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

**MEMORANDUM OPINION**

Before the Court are Defendants' Preliminary Objections to Plaintiff's Complaint. For the reasons fully discussed below, said Preliminary Objections are **sustained**.

**BACKGROUND**

As per the Complaint, on February 2, 2002, Plaintiff Greenwich Insurance Company ("Greenwich") issued a bond in the sum of \$560,000.00 (the "Bond"), guaranteeing the deductible reimbursement and insurance premium payment obligations of Dollarland Properties LLP ("Dollarland"). (Compl. ¶¶ 2-6). The Bond identified Dollarland as the Bond principal and Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company and Liberty Insurance Company (collectively "Liberty"), individually and collectively, as the obligee under the Bond. Id. Under the Bond, Liberty is entitled to file multiple claims up to the total bond penalty in the aggregate sum of \$560,000.00. Id. at ¶ 6. As of the date the Complaint was filed, Greenwich had paid claims under the Bond totaling \$185,941.79 and, as of that time, Greenwich continued to receive additional claims on, approximately, a monthly basis. Id. at ¶ 7.

Greenwich claims that, as a material inducement for the issuance of the Bond, the parties

executed a Commercial Surety General Indemnity Agreement in favor of Greenwich (the “Indemnity Agreement”). *Id.* at ¶ 9, Ex. B. Greenwich asserts that “in reliance thereon,” it issued the Bond. *Id.* at ¶¶ 9-10. Dollarland also posted a letter of credit in the sum of \$280,000.00 in favor of Greenwich as partial security for the Bond (the “LOC”). *Id.* at ¶ 11. Greenwich claims that, despite its repeated demands, Defendants refuse to “honor their contractual obligation to exonerate Greenwich by posting additional collateral.” *Id.* at ¶ 12. As a result, Greenwich filed the instant Complaint, asserting claims against Defendants for claims including: exoneration (Count I); *quia timet* (Count II) and indemnification (Count III).

Defendants have filed the instant Preliminary Objections to the Complaint pursuant to Rule 1028(a)(4), arguing that each Greenwich’s claims are insufficient as a matter of law.<sup>1</sup>

### **DISCUSSION**

While it appears that Plaintiff has pled a valid cause of action, this court find that it is incorrectly and insufficiently pled under Pennsylvania law. 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); In re The Barnes Foundation, 443 Pa. Super. 369, 381, 661 A.2d 889, 985 (1995)(“a pleading should formulate the issues by fully summarizing the material facts, and as a minimum, a pleader must set forth concisely the facts upon which [the] cause of action is based”). Based upon the allegations of the Complaint, this court finds that Plaintiff’s claims against Defendants are insufficient to allow them to prepare a proper defense.

The Complaint demonstrates beyond cavil that Plaintiff’s claims are based upon

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<sup>1</sup>In addition, Defendants have also filed a Preliminary Objection pursuant to Rule 1028(a)(2), claiming improper verification Complaint in violation of Rule 1024. Def. Mtn. at 4. However, the docket reflects that a Praecipe to Substitute Verification was filed by Plaintiff on or about January 9, 2003, thereby rendering this Preliminary Objection moot.

Defendants' alleged breach of the written agreement between the parties, namely Defendants' purported refusal to "honor their contractual obligation to exonerate Greenwich by posting additional collateral." Compl. at ¶ 12. Because this action is based upon the alleged breach of a specific contract between the parties, it should be pled accordingly, allowing Defendants to avail themselves of all available and appropriate contractual defenses.

Accordingly, based on the facts pled in the Complaint, this court finds that this case should appropriately have been filed as a breach of contract action seeking equitable relief in the nature of specific performance in accordance with the Indemnity Agreement, which requires Defendants to post additional security based upon the amounts of any claim filed against the Bond. (Compl. Exh A., § 2.a.).<sup>2</sup>

Based on the foregoing, Plaintiff is granted leave to amend its Complaint within twenty (20) days from the date of entry of this order

This Court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT:**

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

***Dated: October 2, 2003***

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<sup>2</sup> As a result, this court need not address the viability, applicability or ripeness of the causes of action pled in the Complaint at this time.