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

HOSPICOMM, INC.,	:	August Term, 2000
Plaintiff	:	
	:	No. 2195
v.	:	
	:	Commerce Case Program
INTERNATIONAL SENIOR	:	
DEVELOPMENT, LLC., et al.,	:	Control No. 00100232
Defendants	:	Control No. 00102046

MEMORANDUM OPINION

Defendants International Senior Development, LLC ("ISD"), Stuart Mills ("Mills"), Gary R. Hoffarth ("Hoffarth"),[1] Two Reading L.P. ("Two Reading") and Three Reading, LLC ("Three Reading") have filed preliminary objections ("Objections") to the complaint ("Complaint") of Plaintiff Hospicomm, Inc. ("Hospicomm").[2] For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order ("Order") dismissing the breach of contract and intentional interference causes of action against ISD and overruling the remaining Objections.

BACKGROUND

Sometime in 1997 or 1998, ISD approached Hospicomm regarding ISD's planned development of a series of senior care facilities in Pennsylvania and New Jersey. Hospicomm agreed

[1] Mills is alleged to be the President and a member of ISD. Hoffarth is alleged to be the Chief Financial Office and a member of ISD. Collectively, ISD, Mills and Hoffarth are referred to as the "ISD Defendants."

[2] Two of the defendants in this matter have not raised preliminary objections. In the interest of brevity, however, the objecting defendants will be referred to throughout as simply "Defendants."

to act as ISD's project manager and granted ISD permission to use Hospicomm's name in preparing financing packages for potential investors. In its discussions with investors, ISD represented that Hospicomm would be managing four senior care facilities in New Jersey and Pennsylvania ("Facilities"). Often, Hospicomm itself would participate in such discussions.

On November 23, 1998, Hospicomm and Two Reading[3] entered into a property management agreement ("Property Management Agreement") that named Hospicomm the property manager for Providence House, one of the Facilities. The Property Management Agreement provides conditions for termination in Article 8.2:

> (a) . . . The Owner may terminate this Agreement at anytime [sic] without cause by giving ninety (90) days[']written notice of its intent to the Property Manager after the expiration of two (2) years from the issuance of the final certificate of occupancy for the Project.
>
> (b) If the Owner terminates this Agreement pursuant to paragraph 8.2(a) above, it shall pay the Property Manager Twelve Thousand Dollars ($12,000.00) as a termination fee. Half of the termination fee will be paid by the Owner. The balance of the termination fee will be paid by Stuart D. Mills and Garry R. Hoffarth who shall consent and agree to this payment by attaching their signatures to the Consent and Agreement page of this Agreement.[4]

[3] Two Reading was formed by Market Square Senior Associates, Inc. ("Market Square") and Transamerica Occidental Life Insurance Company ("Transamerica") to own and operate Providence House. Under the First Amended and Restated Limited Partnership Agreement of Two Reading ("Two Reading Agreement"), executed in November 1998, Market Square is the general partner, and Transamerica is a limited partner. The Complaint alleges that Two Reading is both an affiliate and a subsidiary of ISD, although the exact relationship between the two is unclear.

[4] The Property Management Agreement permits termination under other conditions, including mutual agreement, sale of the property and for cause.

In addition, Article 11.2 of the Property Management Agreement requires Two Reading to indemnify Hospicomm for liability and expenses, including attorneys' fees, arising from the management of Providence House.

The Parties devised a similar arrangement for Manor House, a second Facility. There, the owner of the Facility was Three Reading,[5] which entered into a Management Services Agreement on October 4, 1999 for Hospicomm to manage Manor House. The Management Services Agreement addresses termination in Article VIII(D) as follows:

> The contract term is for 5 years. The Owner may purchase an "Early Termination" of the contract from Hospicomm without cause, only after the third year of the contract term has elapsed, as an "Early Termination" with additional compensation having first been paid. Early termination may occur only with a minimum notice period of six (6) months having first been given, and with a penalty payment equal to 50% of the unexpired term being paid at the early termination effective date.[6]

Hospicomm claims that it rendered pre-development consulting services to Two Reading, Three Reading and the ISD Defendants in connection with the Facilities. In addition, the Property Management Agreement required Hospicomm to undertake certain activities on behalf of and at Two Reading's expense. According to the Complaint, however, none of the ISD Defendants, Two Reading, Three Reading or Transamerica ever intended for Hospicomm to manage any of the Facilities or reimbursed Hospicomm for its services or expenses. Moreover, it is alleged that ISD subsequently entered into an agreement with Generations Management Company ("Generations") naming Generations the property manager of Providence House.

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[5] Three Reading is alleged to be an ISD affiliate and subsidiary whose members are Mills and Hoffarth.

[6] The Management Services Agreement also may be terminated for cause.

On October 25, 1999, Hospicomm entered Providence House and began managing the Facility. Sometime thereafter, representatives of Generations arrived at Providence House with the intention of replacing Hospicomm as the Facility's property manager. At that time, Hospicomm notified Generations of the Property Management Agreement. On January 20, 2000, however, ISD notified Hospicomm in writing that its management of Providence House was suspended effective immediately. Hospicomm contends that these actions violated the Property Management Agreement.

In addition to the alleged improprieties regarding Providence House, the Complaint asserts that ISD and Three Reading have prevented Hospicomm from managing Manor House, in breach of the Management Services Agreement. Furthermore, Hospicomm has not been permitted to manage the remaining two Facilities and has not received the early termination compensation required by the Property Management and Management Services Agreements.

On August 22, Hospicomm initiated this action by filing the Complaint, which asserts causes of action for breach of contract, intentional interference with contractual relations, unjust enrichment, promissory estoppel, fraud and civil conspiracy.[7] The Objections filed by ISD, Mills and Hoffarth ("ISD Defendants' Objections") assert legal insufficiency and insufficient specificity, while the

[7] The first breach of contract count is based on the Property Management Agreement and is brought against Two Reading, the ISD Defendants and Transamerica. The second breach of contract court is based on the Management Services Agreement and is brought against Three Reading and ISD. The first intentional interference with contractual relations count is brought against ISD and Generations, while the second is brought against ISD alone. The claim for unjust enrichment is brought against the ISD Defendants, Two Reading, Three Reading and Transamerica, and the counts for promissory estoppel and fraud are brought against ISD, Two Reading, Three Reading and Transamerica. The final court, for civil conspiracy, is brought against ISD, Two Reading, Transamerica and Generations.

Objections of Two Reading and Three Reading ("Reading Objections") assert legal insufficiency, improper venue and failure to delineate the defendants for each count.

DISCUSSION

The breach of contract and intentional interference claims presented against ISD are deficient and are dismissed. The remaining Objections are without merit and are overruled.

I. Legal Insufficiency and Insufficient Specificity

To determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the allegations 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 Found., 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (1995) ("a pleading should . . . fully summariz[e] the material facts, and as a minimum, a pleader must set forth concisely the facts upon which [a] cause of action is based"). Allegations of fraud are held to an even higher standard. Rule 1019(b).[8] 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").

For the purposes of reviewing preliminary objections asserting legal insufficiency, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to

[8] Each Pennsylvania Rule of Civil Procedure is referred to individually as a "Rule."

be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa. Super. Ct. 2000). 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).

The ISD Defendants object to the legal sufficiency of Counts I and II, both of which are for breach of contract, and Count V - Unjust Enrichment. They also object to the lack of specificity in the Complaint as a whole. Two Reading and Three Reading attack the legal sufficiency of Count V, Count VII - Fraud and Count VIII - Civil Conspiracy.

A. Counts I and II - Breach of Contract

To sustain a claim for breach of contract, a complaint must allege "(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). However, "a person who is not a party to a contract cannot be held liable for a breach by one of the parties to a contract." Fleetway Leasing Co. v. Wright, 697 A.2d 1000, 1003 (Pa. Super. Ct. 1997) (citation omitted).

Hospicomm does not allege any contract to which ISD is a party, thus precluding direct liability on ISD's part. Instead, the Complaint contends that ISD entered into the Property Management and Management Services Agreements "through its subsidiaries, Two Reading and Three Reading." Complaint at ¶ 19. However, the Complaint's allegations of liability through Two Reading and Three

Reading are unconvincing: regardless of ISD's relationship with either entity, "a corporation is to be treated as a separate and independent entity even if its stock is owned entirely by one person." Commonwealth v. Vienna Health Prods., Inc., 726 A.2d 432, 434 (Pa. Commw. Ct. 1999). See also Shared Communications Servs. of 1800-80 JFK Blvd. Inc. v. Bell Atl. Props. Inc., 692 A.2d 570, 573 (Pa. Super. Ct. 1997) ("[a]lthough a parent and a wholly owned subsidiary do share common goals, they are still recognized as separate and distinct legal entities"). As a result, even if Two Reading and Three Reading are ISD subsidiaries, this cannot alone impose liability on ISD.

The Objections as they relate to Mills and Hoffarth are more difficult to comprehend. Mills and Hoffarth both are parties to the Property Management Agreement in part.[9] However, the Objections claim that "Mills and Hoffarth cannot be liable to Plaintiff for an amount in excess of $50,000.00, since any liability that they may have is limited specifically by the contract." ISD Defendants' Memorandum at 2. It is unclear what relevance this has to the legal sufficiency of the claims. Moreover, the Complaint lays out the allegations with sufficient detail to enable Mills and Hoffarth to prepare their defense. Consequently, the breach of contract claims against ISD are dismissed, while those against Mills and Hoffarth are permitted to stand.

B. Counts III and IV - Intentional Interference with Contractual Relations

Next, ISD challenges the specificity of Counts III and IV. A successful claim for intentional interference with contractual relations must satisfy four elements:

[9] According to Page 37 of the Property Management Agreement, Mills and Hoffarth "agree to the requirements of section 8.2(b)," which relates to the termination fee.

> (1) the existence of a contractual, or prospective contractual relation between the complainant and a third party; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct.

Strickland v. University of Scranton, 700 A.2d 979, 985 (Pa. Super. Ct. 1997) (citation omitted). Here, ISD's assertions of insufficient specificity have merit: the Complaint offers nothing more than conclusory statements that ISD acted to induce Two Reading to breach the Property Management and the Management Services Agreement.[10] With only these vague assertions, it is impossible for ISD to prepare a defense, and Counts III and IV against ISD are dismissed.[11]

C. Count V - Unjust Enrichment[12]

Next, the Defendants challenge the legal sufficiency and the degree of specificity in Count V. 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 [the] defendant to retain the benefit without payment of

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[10] The only specific accusation relevant to these Counts that Hospicomm levels at ISD is that, "subsequent to the execution of the Property Management Agreement, ISD executed a contract with Generations for which Generations was to manage the Providence House." Complaint at ¶ 37. However, without knowing the details of the agreement between ISD and Generations, the Court cannot rely on this allegation to sustain the intentional interference claims.

[11] When dismissing an action based on a defendant's preliminary objections, a court may not dismiss the action as to any additional defendants who did not file preliminary objections. Galdo v. First Pa. Bank N.A., 250 Pa. Super. 385, 388, 378 A.2d 990, 991 (1977). Because Generations did not file preliminary objections, the Court may not dismiss Count III as it relates to Generations.

[12] The Defendants do not assert that the Property Management and Management Services Agreements bar Hospicomm's unjust enrichment claim.

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).

Here, the Complaint alleges that Hospicomm engaged in discussions with potential investors and provided "valuable" consulting services to the ISD Defendants, Two Reading, Three Reading and Transamerica. Complaint at ¶¶ 17, 28, 51, 62, 96. In addition, it may be inferred that the Defendants in question appreciated these services, as Hospicomm's assistance helped lay the groundwork for opening the Facilities. Complaint at ¶¶ 13-18. Given these conditions, it would be inequitable for the ISD Defendants to retain the benefit of Hospicomm's actions without compensation, and Count V is legally adequate.

The allegations in the Complaint are sufficiently detailed to allow the preparation of a defense. Hospicomm alleges that it "lent support and engaged in discussions, interviews and meetings with prospective investors," with the investments ultimately benefitting the ISD Defendants, Two Reading and Three Reading. Complaint at ¶¶ 17, 51, 62, 96. In addition, Hospicomm has attached to the Complaint a list of the specific expenses it allegedly incurred in providing consulting services to ISD and Two Reading. Thus, Hospicomm's claim for unjust enrichment is both legally sufficient and adequately specific.

D. Count VI - Promissory Estoppel

To support a claim based on promissory estoppel, a complaint must allege that "1) the promisor made a promise that he should have reasonably expected to 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). Here, the Complaint alleges that ISD, Two Reading, Three Reading and Transamerica promised Hospicomm that it would be the manager of the Facilities and reasonably expected Hospicomm to act on their promise. Complaint at ¶¶ 19, 103. In addition, Hospicomm allegedly helped procure financing and provided consulting services in reliance on the Defendants' promises. Id. at ¶¶ 17, 20, 96-99. Furthermore, the circumstances set forth in the Complaint are such that injustice can be avoided only by enforcing the Defendants' promises. These allegations set forth a complete claim for promissory estoppel and are more than adequate to allow the Defendants to prepare a defense. Accordingly, the Objections to Count VI asserting insufficient specificity and legal insufficiency are overruled.

E. Count VII - Fraud[13]

The elements of a cause of action for fraud 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.

Gruenwald v. Advanced Computer Applications, Inc., 730 A.2d 1004, 1014 (Pa. Super. Ct. 1999) (citing Gibbs v. Ernst, 538 Pa. 193, 207, 647 A.2d 882, 889 (1994)).

The Complaint asserts that ISD, Two Reading, Three Reading and Transamerica "knowingly and intentionally made misrepresentations of material fact" with the aim of inducing Hospicomm's reliance. Complaint at ¶¶ 109, 111. Among these alleged misrepresentations are the specific

[13] In reviewing Count VII - Fraud, the Court notes that the Defendants have not raised objections based on the gist of the action doctrine or the parol evidence rule.

assurances that Hospicomm would manage the Facilities. Id. at ¶¶ 14, 20. Hospicomm was led to believe that it would manage the Facilities for at least two years, and its reliance was justified. Id. at ¶¶ 110, 112. These events allegedly have caused Hospicomm financial harm. Id. at ¶¶ 20, 101, 107, 114. This sets forth a complete count for fraud with sufficient particularity. Accordingly, the Objections to Count VII are overruled.

F. Count VIII - Civil Conspiracy

A claim for civil conspiracy requires the following: "(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." McKeeman v. CoreStates Bank, N.A., 751 A.2d 655, 660 (Pa. Super. Ct. 2000). See also Pelagatti v. Cohen, 370 Pa. Super. 422, 441, 536 A.2d 1337, 1346 (1987) ("[w]here the existence of identifiable damages, even if nominal, is established by the facts alleged, the gravamen of the civil conspiracy has been sufficiently pled: it is the fact of damages, rather than the amount, that is the key inquiry").

In the Complaint, Hospicomm specifies the Defendants' unlawful overt actions and common purpose. Id. at ¶¶ 118, 120. Furthermore, the Complaint asserts that Hospicomm has suffered damages due to these actions, including the termination of its role as manager of the Facilities. Id. at ¶ 122. As a result, the allegations meet Pennsylvania's specificity and legal sufficiency requirements, and the Objections to the civil conspiracy claim are overruled.

II. Failure to Delineate Defendants for Each Action

The Objections assert that almost every count in the Complaint is brought against multiple Defendants without specifying how each Defendant's conduct results in liability and without dividing the allegations against each Defendant into separate counts. This, the Defendants assert, violates Rule 1020's requirement that each cause of action "be stated in a separate count."

While Rule 1020 requires separate counts for each cause of action, "[w]here a plaintiff sues several defendants jointly, alleging liability jointly or in the alternative, separate counts are not required." Goodrich-Amram 2d § 1020(a):3 (citation omitted). The Complaint does not specify that the Defendants for each count are jointly liable, but the allegations make it clear that this is Hospicomm's intention. Cf. Cosmas v. Bloomingdales Bros., Inc., 442 Pa. Super. 476, 488, 660 A.2d 83, 89 (1995) (although the plaintiff did not specifically state that she was seeking to hold the defendants jointly and severally liable in tort, the complaint sufficiently identified the joint liability of each defendant); Meinhart v. Heaster, 424 Pa. Super. 433, 437, 622 A.2d 1380, 1382 (1993) ("promises made by two or more persons are presumed to be joint"). As a result, Hospicomm has no obligation to set forth separate counts for each Defendant, and the Objections made on this basis are overruled.

III. Improper Venue

When preliminary objections challenge venue, "the defendant is the moving party and bears the burden of supporting [its] claim" of improper venue. Liggitt v. Liggitt, 253 Pa. Super. 126, 131, 384 A.2d 1261, 1263-64 (1978). Cf. Gale v. Mercy Catholic Med. Center Eastwick, Inc., Fitzgerald Mercy Div., 698 A.2d 647, 652 (Pa. Super. Ct. 1997) (concluding that the moving party did not meet its burden of showing that the original choice of venue was improper). Consequently, to prevail, Two Reading and Three Reading must show that Philadelphia constitutes improper venue.

An action against a corporation or a similar entity[14] may be brought in any of the following places:

> (1) the county where its registered office or principal place of business is located;
> (2) a county where it regularly conducts business;
> (3) the county where the cause of action arose; or
> (4) a county where a transaction or occurrence took place out of which the cause of action arose.

Rule 2179(a). Similarly, where the defendant is a partnership, venue is proper "in and only in a county where the partnership regularly conducts business, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose." Rule 2130(a).[15] Additionally, where an action is brought to enforce a joint liability against two or more

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[14] A limited liability company is not listed in the definition of "corporation or similar entity" set forth in Rule 2176. However, Rule 2176 defines a "corporation or similar entity" to include "any public, quasi-public or private corporation, . . . or any other association which is regarded as an entity distinct from the members composing the association." In addition, the Committee Comment--1994 to 15 Pa. C.S. § 8906 states as follows:

> The only purpose of the registered office location of a limited liability company under Chapter 89 is to determine venue in actions involving the company under Pa. R.C.P. 2179(a)(1) and the definition of "court" in [15 Pa. C.S.] Section 8903. Notwithstanding the policy of Chapter 89 [of Title 15] that a limited liability company is a form of partnership entity, for purposes of the Pennsylvania Rules of Civil Procedure a limited liability company will probably be deemed a "corporation or similar entity" under Pa. R.C.P. 2176, rather than a "partnership" under Pa. R.C.P. 2126 or an "association" under Pa. R.C.P. 2151

Based on this comment and Rule 2176's broad language, the Court believes that a limited liability company is a "corporation or similar entity" to which Rule 2179 applies.

[15] The conditions in Rule 2179 are "disjunctive, so any one of the enumerated acts will result in venue attaching in the appropriate county." Goodrich-Amram 2d § 2179:1 (citing Deeter-Ritchey-Sippel Assocs. v. Westminster College, 238 Pa. Super. 194, 357 A.2d 608 (1976)). It is logical to conclude that this applies to Rule 2130 as well.

defendants, venue generally is proper against all defendants in any county where it is proper against one defendant. Rule 1006(c).[16]

Two Reading and Three Reading assert that "[t]he Complaint does not allege that any portion of the cause of action took place in Philadelphia County." Reading Objections at ¶ 38. However, Paragraph Nine of the Complaint states that "most parties are located in this district and the transactions and occurrences giving rise to this cause of action occurred in this district." Furthermore, none of the ISD Defendants has raised objections to venue, leading the Court to conclude that venue is proper as to them and thus to all the Defendants under Rule 1007(c). As a result, the Reading Objections asserting improper venue are without merit and are overruled.[17]

CONCLUSION

ISD's Objections to the Counts for breach of contract and intentional interference are sustained. The remaining Objections are overruled, and Hospicomm is directed to file an amended complaint within twenty days of this Opinion.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: January 9, 2001

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[16] As discussed supra, each count is brought jointly against the Defendants named in the count.

[17] Where venue is proper, a defendant is precluded from using preliminary objections to secure a transfer and must instead file a petition to transfer in accordance with Rule 1006(d). Hosiery Corp. of Am., Inc. v. Rich, 327 Pa. Super. 472, 473-74, 476 A.2d 50, 50-51 (1984). See also McCrory v. Abraham, 441 Pa. Super. 258, 267, 657 A.2d 499, 504 (1995) (discussing difference between objections to venue and a petition to transfer). As a result, if either Two Reading or Three Reading wishes this matter to be transferred to Montgomery County, it must file a petition to transfer.

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

HOSPICOMM, INC.,	:	August Term, 2000
Plaintiff	:	
	:	No. 2195
v.	:	
	:	Commerce Case Program
INTERNATIONAL SENIOR	:	
DEVELOPMENT, LLC., et al.,	:	Control No. 00100232
Defendants	:	Control No. 00102046

ORDER

AND NOW, this 9th day of January, 2001, upon consideration of the Preliminary Objections of Defendants International Senior Development, LLC, Stuart Mills , Gary R. Hoffarth, Two Reading L.P. and Three Reading, LLC to Plaintiff Hospicomm, Inc.'s Complaint and the Plaintiff's response thereto and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED as follows:

1. The Preliminary Objections of International Senior Development, LLC as to Counts I, II, III and IV are SUSTAINED;

2. The remaining Preliminary Objections are OVERRULED; and

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

BY THE COURT:

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JOHN W. HERRON, J.