

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

ROBERT PARSKY and ANN ROANTREE,	:	
Plaintiffs	:	February Term, 2000
	:	
v.	:	No. 771
	:	
FIRST UNION CORPORATION,	:	Commerce Program
Defendant	:	

OPINION

Plaintiffs Robert Parsky and Ann Roantree have filed a class action suit alleging breach of contract and breach of fiduciary duty by Defendant First Union Corporation. This Court has overruled the Defendant's preliminary objections for the reasons stated in this Opinion.

First Union claims that the Orphans' Court Division has exclusive jurisdiction over this matter pursuant to 20 Pa. C.S. § 711. However, 20 Pa. C.S. § 712 allows either the Orphans' Court or any other appropriate division of the Court of Common Pleas to exercise jurisdiction over "any case where there are substantial questions concerning matters enumerated in section 711 and also matters not enumerated in that section."

In their Complaint, the Plaintiffs set forth a claim for breach of contract, a matter not among those specified in Section 711. Indeed, Pennsylvania courts have held that a breach of contract action is specifically not within the jurisdiction of the Orphans' Court. See Petrocon Corp. v. Batdorf, 24 Fiduc. Rep. 362, 364, 66 Berks 140, 141 (1974) (stating that "the Orphans' Court has no jurisdiction to try actions for breach of contract"); Hess v. Provident Tradesmens Bank and Trust Co., 33 Pa. D. & C.2d 676, 84 Montg. Co. L.R. 21 (1964); Orban v. Rothrock, 19 D. & C.2d 336, 28 Lehigh 350 (1959). See also In re Gilbert's Estate, 350 Pa. 13, 14, 38 A.2d 277, 278 (1944) (holding that the

Orphans' Court does not have jurisdiction over actions ex delicto). This dooms First Union's argument that the Trial Division has no jurisdiction over this matter.

First Union maintains that, even if a breach of contract claim against a trustee may be brought in the Trial Division, the Plaintiffs' action presents nothing more than "a trust administration claim in disguise." This is not so. If one accepts as true the facts set forth in the Complaint regarding the Defendant's form letters and the subsequent actions of both the Plaintiffs and the Defendant, the facts allege a breach of contract claim wholly separate from and independent of any accusations of mismanagement of trust funds.

In determining which specific division of the Court of Common Pleas may hear a case, "[a]bsent a general rule which allocates [specific] matters to a particular division of the court, an administrative judge of one division does not have the authority to refuse to exercise jurisdiction over a matter which is properly before the court." Baskin & Sears v. Edward J. Boyle Co., 506 Pa. 62, 67, 483 A.2d, 1365, 1367 (1984). In accordance with this practice, the fact that the Trial Division has jurisdiction over this matter precludes a transfer to the Orphans' Court Division and requires the Court to overrule the Defendant's preliminary objections.

BY THE COURT:

JOHN W. HERRON, J.

Dated: June 29, 2000

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ORDER

AND NOW, to wit, this 29th day of June, 2000, upon consideration of Defendant First Union Corporation's Preliminary Objections to Plaintiffs' Complaint and any responses thereto, it is hereby ORDERED and DECREED that the Preliminary Objections are OVERRULED.

BY THE COURT:

JOHN W. HERRON, J.