

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

ALAN SPIVAK, ADAM SPIVAK and	:	
LARRY MAGID	:	
	:	January Term 2004
Plaintiffs,	:	
v.	:	No. 1597
	:	
CORPORATE FINANCIAL SERVICES	:	Commerce Program
	:	
Defendant/	:	
Third-Party Plaintiff,	:	Control Nos. 041521, 021970
	:	
v.	:	
	:	
STEPHEN I. GROSS and GROSS &	:	
COMPANY, L.L.P., d/b/a CARNOUSIE	:	
INVESTORS	:	
	:	
Additional	:	
Defendants.	:	

ORDER

AND NOW, this 15TH day of April, 2005, upon consideration of the Preliminary Objections to Plaintiffs Alan Spivak, Adam Spivak, and Larry Magid's Complaint of Defendant Corporate Financial Services and the response thereto (Control No. 041521), the Preliminary Objections to Third-Party Plaintiff Corporate Financial Services' Amended Joinder Complaint of Additional Defendants Stephen I. Gross and Gross & Company, L.L.P., d/b/a Carnousie Investors and the response thereto (Control No. 021970), and in accordance with the attached memorandum opinion, it is hereby

ORDERED and **DECREED** that:

1) Defendant Corporate Financial Services' Preliminary Objections are **OVERRULED** and Defendant Corporate Financial Services is further **ORDERED** to file an answer to Plaintiffs' Complaint within twenty (20) days of this Order; and

2) Additional Defendants Stephen I. Gross and Gross & Company, L.L.P., d/b/a Carnousie Investors' Preliminary Objections are **SUSTAINED** solely with respect to the claims for indemnity based upon Counts I and II of Plaintiffs' Complaint. All other Preliminary Objections are **OVERRULED** and Additional Defendants Stephen I. Gross and Gross & Company, L.L.P., d/b/a Carnousie Investors are further **ORDERED** to file an answer to the Amended Joinder Complaint within twenty (20) days of this Order.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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	:	
	:	
STEPHEN I. GROSS and GROSS &	:	
COMPANY, L.L.P., d/b/a CARNOUSIE	:	
INVESTORS	:	
	:	
	:	
	:	
Additional	:	
Defendants.	:	

MEMORANDUM OPINION

ABRAMSON, J.

Presently before the court are the Preliminary Objections of Defendant/Third-Party Plaintiff Corporate Financial Services (“CFS”) to the Complaint of Plaintiffs Alan Spivak, Adam Spivak, and Larry Magid (collectively, the “Plaintiffs”), and the Preliminary Objections of Additional Defendants Stephen I. Gross and Gross & Company, L.L.P., d/b/a Carnousie Investors (together, “Gross”) to the Amended Joinder Complaint of CFS.

In this matter, Plaintiffs purchased life insurance policies from CFS. Allegedly, the policies were purchased with a “one-time dump in premium.” Less than two years later, however, Plaintiffs learned they needed to make additional contributions. As a result, Plaintiffs sued CFS, bringing claims for violation of the Pennsylvania unfair trade

practice and consumer protection law (“PUTPCPL”) (Count I), fraud (Count II), professional negligence (Count III), and breach of contract (Count IV).

Following the initial lawsuit, CFS filed a joinder complaint against Gross, seeking contribution and/or indemnification in the event Plaintiffs prevailed against CFS. CFS asserts that Gross served as Plaintiffs’ financial advisor and directed them to purchase the contested life insurance policies.

CFS seeks to strike Counts I and II of Plaintiffs’ complaint for failing to allege fraud with sufficient particularity pursuant to Pa. R.C.P. 1019(b). To comply with the particularity requirement, “the pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not mere subterfuge.” New York State Elec. & Gas Corp. v. Westinghouse Elec. Corp., 387 Pa. Super. 537, 553, 564 A.2d 919, 927 (1989). CFS focuses its challenge on the misrepresentations underlying both the PUTPCPL and fraud claims. Plaintiffs’ complaint identifies the fraudulent statements, Complaint, at ¶¶ 6, 7, 8, 9, 12, 24, 26, 28, 41, 44, 55, 56, 57, and 63, the speakers, id., at ¶¶ 5, 8, 26, 41, the time period when the statements were made, id., at ¶¶ 5, 8, and the recipients, id., at ¶¶ 6, 7, 8, 26, and 41. This information sufficiently establishes the element of misrepresentation in compliance with Pa. R.C.P. 1019(b). Therefore, CFS’ objections are denied.

Gross demurs to CFS’ attempt to seek contribution for the fraud and PUTPCPL claims.¹ Both parties recognize that if CFS and Gross are joint tortfeasors, contribution is appropriate. In the joinder complaint, CFS alleges that Plaintiffs based their purchase of the life insurance policies upon the advice of Gross, Amended Joinder Complaint, at ¶18,

¹ CFS concedes it cannot support the indemnity claims based upon fraud and the PUTPCPL and they are stricken from the Amended Joinder Complaint.

and their investments within those policies upon the advice of Gross, id., at ¶22. These allegations are sufficient to establish Gross as a joint tortfeasor with CFS because they implicate the Plaintiffs' decision to purchase and maintain the life insurance policies at the center of this matter. Gross' objections are denied.

BY THE COURT,

HOWLAND W. ABRAMSON, J.