

ORDERED and **DECREED** that the remainder of the Motion is **DENIED**.

BY THE COURT:

C. DARNELL JONES, J.

relationship between itself and the Defendants as one that goes far beyond a typical landlord/tenant relationship. Mercy asserts the Agreements provide the basis of a joint undertaking with the Defendants in order to create a one stop shopping integrated healthcare and retail project (the “Project”). Therefore, the obligations flowing from the Agreements encompass more than the traditional landlord/tenant obligations.

Mercy believes that the Defendants failed to perform its duties in accordance with the Agreements’ terms. As a result, Mercy asserts that it is no longer receiving the benefits it bargained for when it originally executed the Agreements. Moreover, Mercy believes its current payments are far in excess of the value it is receiving. Mercy attributes this reduction in value to the Defendants’ breaches.

Mercy attempted to address the perceived inequities with the Defendants by requesting that the Defendants renegotiate the Agreements. Ultimately, Mercy’s efforts did not resolve the matter and Mercy commenced this action by filing a civil action complaint (the “Complaint”). The Complaint contains the following seven counts:

- Count I - Rescission;
- Count II - Declaratory Judgment;
- Count III - Breach of Contract;
- Count IV - Breach of Implied Contract;
- Count V - Breach of the Implied Covenant of Good Faith and Fair Dealing;
- Count VI - Breach of Fiduciary Duty; and
- Count VII - Unjust Enrichment.

After the Complaint was filed, the Defendants removed the case to the District Court for the Eastern District of Pennsylvania. While the matter was pending in the District Court, the Defendants filed an answer with affirmative defenses to the Complaint and a motion to dismiss. Subsequently, the District Court remanded the case back to state court for lack of federal jurisdiction.

II. JUDGMENT ON THE PLEADINGS

Under Pennsylvania law, a motion for judgment on the pleadings is granted only where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1034; Giddings v. Tartler, 130 Pa.Cmwlth. 175, 177, 567 A.2d 766, 767 (1989).

Like all summary judgments entered without a trial judgment on the pleadings may be entered only in clear cases free from doubt where there are no issues of fact, and only where the cause is so clear that a trial would clearly be a fruitless exercise The party moving for judgment on the pleadings admits for the purpose of his motion the truth of all the allegations of his adversary and the untruth of any of his allegations which may have been denied by his adversary.

Otterson v. Jones, 456 Pa. Super. 388, 390, 690 A.2d 1166, 1166 (1997)(quoting Beck v. Minestrella, 264 Pa. Super. 609, 401 A.2d 762, 763 (1979)). Lastly, neither party may be deemed to have admitted conclusions of law. Mellon Bank, N.A. v. National Union Fire Insurance Co. of Pitt., 768 A.2d 865, 868 (Pa. Super. Ct. 2001).

III. DISCUSSION

Plaintiff sets forth numerous theories of liability against the Defendants in the Complaint, many of which are in the alternative. The Defendants request that judgment be entered in their favor on all counts. In the alternative, if the Plaintiff is to proceed on some or all of the counts, the Defendants request that Metropolitan Partners, Ltd. (“Metropolitan Partners”) be dismissed because the Complaint lacks any allegations of wrongdoing against it.

The Court finds, at this preliminary stage of the case, that Counts I, II, III and IV survive

the Defendants' motion for judgment on the pleadings and the case will proceed accordingly.¹ For the reasons set forth more fully below, the Motion is granted in favor of the Defendants on counts V, VI and VII. The Motion is also granted with regards to the dismissal of the Complaint in its entirety as against Metropolitan Partners.

A. Breach of the Implied Duty of Good Faith and Fair Dealing

In Count V, Mercy alleges that the Defendants' breached the duty of good faith and fair dealing that, under Pennsylvania law, is implicit in every contract. The Court agrees with Mercy that every contract imposes the duty of good faith and fair dealing; however, the Court finds that an alleged breach of this implied duty does not provide an independent ground for liability.

JHE, Incorporated v. Southeastern Pennsylvania Transport Authority, contains a thorough review of the law of Pennsylvania on the implied duty of good faith and fair dealing. 2002 WL 1018941, *7 (Pa. Com. Pl. 2002). The JHE court held "that a breach of the covenant of good faith is nothing more than a breach of contract claim and that separate causes of action cannot be maintained for each, even in the alternative." Id. at *7. Accordingly, Mercy's claim based upon the breach of the implied duty of good faith and fair dealing must be dismissed.

B. Count VI - Breach of Fiduciary Duty

In Count VI, Mercy alleges that the Defendants breached the fiduciary duty owed to Mercy when they failed to perform as allegedly required under the Agreements. The basis of this alleged fiduciary duty is Mercy's assertion that the nature of its relationship with the Defendants is not that of a mere landlord/tenant, but a joint venture partnership. The Defendants counter with the assertion

¹ The Court makes no finding as to the future viability of these counts and this Opinion and Order is not prejudicial to the Defendants' right to address these issues at a later date.

that the only possible relationship between the parties is one of landlord/tenant.

The Court need not address whether or not there is a fiduciary relationship between the parties. Even assuming there is a fiduciary duty, Pennsylvania's gist of the action doctrine bars a breach of fiduciary duty claim under the present circumstances. The purpose of Pennsylvania's gist of the action doctrine is to prevent ordinary contract actions from turning into tort actions. The gist of the action doctrine has been held to bar tort claims that:

1. Arise solely from a contract between the parties;
2. Where the duties allegedly breached were created and grounded in the contract itself;
3. Where the liability stems from a contract;
4. Where the tort essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of the contract.

Etoll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 19 (Pa. Super. 2002)(citations omitted).

Mercy argues that the fiduciary duty owned by the Defendants arises from the joint venture partnership; however, the claims in Count VI are based upon the Defendants alleged breaches under the Agreements. Therefore, instead of the Agreements being collateral to the fiduciary duty claim, the Agreements are central to the claim. As a result, Count VI of the Complaint is dismissed.

C. Count VII - Unjust Enrichment

Defendants allege that because there are express written agreements that govern the rights and obligations between the parties, Mercy cannot maintain an unjust enrichment claim. Mercy concedes this point in its brief and the Court agrees. Therefore, the Motion is granted as to Count VII of the Complaint and it is dismissed.

D. Metropolitan Partners

The Defendants request that the Court dismiss Metropolitan Partners from this action because the Complaint alleges no wrongdoing on its part. In order to address the Defendants' argument, the Court must examine the Complaint with an eye to the relationships between the Defendants and Mercy. While the Complaint is drafted in a manner that treats all of the Defendants as a single entity, Metropolitan Partners Realty, LLC. ("Metropolitan Realty") appears to be the only defendant that executed the Agreements. Other than to allege all of the Defendants are affiliated, the Plaintiff does not address with particularity how each of the remaining defendants may be held liable for breaches under the Agreements.

The Defendants shed some light in their answer to the Complaint. Defendants aver that Metropolitan Realty, after executing the Agreements, changed its name to Anchor Health Properties LLC which in turn was succeeded by Anchor Health Properties Delaware LLC. However, the Defendants assert that yet another entity, Philadelphia Wellness Partners, succeeded in Metropolitan Realty's interests under the Agreements. Given these allegations, it appears that there is an open question as to which defendant is truly liable for breaches under the Agreements; however, that question is not before the Court. Since it is only Metropolitan Partners that the Defendants focus upon at this time, the Court shall confine its analysis to said defendant.

The following references are made to Metropolitan Partners within the Complaint:

- ¶ 7. Defendant Metropolitan Partners, Ltd. is, upon information and belief, a Delaware limited liability company with a business location at One Avenue of the Arts, Suite 300, Wilmington, DE 19801 that is affiliated with the defendant Metropolitan.

¶ 13(e). An affiliate of the defendants, Metropolitan Partners, Ltd., was to license the trademark “The Wellness Place®” to defendants and Mercy for the use of the Projects. Exh. A, ¶ 19.3; Exh. B, ¶ 19.3.

Paragraph 19.3(i) of the Agreements provides in relevant part the following:

(i) Landlord and Tenant acknowledge that “The Wellness Place®”(the Service Mark”) is a phrase registered with and granted protection by the United States Patent Trademark Office (No. 1,975,792), the rights to which belong to Metropolitan Partners, Ltd., a Delaware corporation which is an affiliate of Landlord (the Service Mark Holder”). The Service Mark Holder, by its execution of a Joinder to this Lease, and for the consideration set forth therein, agrees to permit, on a non-exclusive basis, the use of the Service Mark at the Project by Landlord and, to the extent approved in advance by Landlord, by Tenant, for use at the Building

The Complaint is replete with allegations that the Defendants failed to promote or use the “The Wellness Place®” mark (the “Service Mark”) in accordance with the Agreements. Yet, it is clear that, under Section 19.3, Metropolitan Partners is not required to use or promote the Service Mark. What the Agreements do require is Metropolitan Partners’ permission for Mercy and the landlord to use the Service Mark.² In fact, Mercy’s use of the Service Mark is also contingent upon the permission of the landlord. The Complaint contains no allegations that Metropolitan Partners, or any of the Defendants, did not *permit* its use the Service Mark. Because there are no allegations in the Complaint that Metropolitan Partners breached its sole obligation under the Agreements, the Motion must be granted as to all counts as against Metropolitan Partners.³

² The Exhibits to the pleadings do not appear to contain a copy of the Joinder of Lease referred to in section 19.3 that would bind Metropolitan Partners to the Agreements. Regardless, the Court assumes for the purposes of this Motion that Metropolitan Partners is obligated by Section 19.3 of the Agreements, otherwise there does not appear to be any basis for liability.

³ The Court notes that Mercy did not address this issue in its brief. Furthermore, when addressed at oral argument, Mercy simply reiterated that the use and promotion of the Service Mark did not take place and it needs to discovery to determine the reason. Again, Metropolitan

IV. CONCLUSION

For the reasons set forth above, the Motion is granted as to counts V, VI and VII of the Complaint. Furthermore, the Motion is granted as to all counts as against Metropolitan Partners, Ltd. The remainder of the Defendants' Motion is denied.

BY THE COURT:

C. DARNELL JONES, J.

Dated: July 10, 2003

Partners' use and promotion of the Service Mark was not required, only its permission. The Court will not permit Mercy to hold Metropolitan Partners as a defendant while it searches for a basis of liability.