

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

JERRY PANTELIDIS,	:	August Term, 2000
Plaintiff	:	
	:	No. 3819
v.	:	
	:	Commerce Case Program
THE BARCLAY CONDOMINIUM ASSOCIATION,	:	
Defendant	:	Control No. 100885

MEMORANDUM OPINION

Defendant The Barclay Condominium Association (“Association”) has filed preliminary objections (“Objections”) to the complaint (“Complaint”) of Plaintiff Jerry Pantelidis (“Pantelidis”). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order (“Order”) overruling the Objections.

BACKGROUND

On September 20, 1974, The Barclay Inc. (“Corporation”) organized a condominium known as “The Barclay” pursuant to the Unit Property Act.¹ The Barclay’s code of regulations (“Code”) establishes a five-member council (“Council”).² The terms of Council members (“Members”) are three years in length and are staggered so that two Members’ terms expire in each of the first two years and

¹ 68 Pa. Code §§ 700.101-700.805. The Unit Property Act was repealed in 1980 but generally remains in effect for condominiums created prior to the effective date of the repeal. 68 Pa. C.S. § 3102(b).

² According to The Barclay’s declaration of condominium (“Declaration”), the Council is to “manage the business, operation, and affairs of the property, on behalf of the unit owners and in compliance with and subject to the provisions of the Unit Property Act.” Declaration art. II.J.

the term of fifth Member expires in the third year. In electing Members, the owner of each unit is to have a vote proportional to the size of his or her unit.

At some point after the Code's adoption, it was amended to require that one of the five Members be elected by a majority vote of the residential unit³ owners on a one vote per unit basis ("Residential Member"). To qualify, the Residential Member must be a residential unit owner or the spouse of a residential unit owner.

The Association was formed by the Corporation on March 3, 1975.⁴ The Association's bylaws ("Bylaws") provide that the Association's business is to be managed by a board of directors ("Board"). The Board is elected in substantially the same manner as the Council, except that there is no position corresponding to that of the Residential Member.

On June 29, 1999, an election for four Members ("Election") was held.⁵ As a result of the Election, Allan Domb, Henry J. Donner, Phillip Senechal and Mary Frangipanni were elected Members, with Frangipanni filling the Residential Member position.⁶ Pantelidis claims that the Election was void for several reasons:

1. The creation of the Association as a separate corporate entity violates the Unit Property Act and the Code;

³ The Barclay consists of residential units and one hotel unit. Declaration art. V.A.

⁴ The Complaint alleges that "the Defendant Corporation was formed, apparently to supplant the Association." Complaint at ¶ 8. This allegation is confusing, as the Association is the Defendant.

⁵ This appears to conflict with the staggered terms provision of the Code, which requires elections for a maximum of two Members per year.

⁶ No election was held for the Council seat held by Pantelidis, as his term had not expired.

2. The Election was held without the minimum ten-day prior notice required by the Code;
3. The Residential Member position violates the Unit Property Act; and
4. Allowing one vote per unit in selecting the Residential Member is improper.

As a result, Pantelidis has asked that the Court enter a declaratory judgment declaring the Election null and void. In response, the Association has filed the Objections, which assert legal insufficiency and insufficient specificity.

DISCUSSION

The Objections are without merit and are overruled accordingly.

I. Legal Sufficiency

When presented with preliminary objections based on legal insufficiency, “all well-pleaded material, factual averments and all inferences fairly deducible therefrom” are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa. Super. Ct. 2000). Furthermore, a party raising preliminary objections must overcome a significant burden:

[I]t is essential that the face of the complaint indicate that [the] 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). Here, the Association asserts that the Complaint does not allege an actual controversy and is therefore legally insufficient.

As a prerequisite for a court to assume jurisdiction under Pennsylvania’s Declaratory Judgments Act,⁷ a plaintiff must present an actual case or controversy or the “ripening seeds” of a controversy. Fidelity Bank v. Pennsylvania Turnpike Comm’n, 498 Pa. 80, 96, 444 A.2d 1154, 1163 (1982). This requirement is satisfied “where . . . the claims of the several parties in interest, while not having reached the active stage, are . . . present, and indicative of threatened litigation in the immediate future, which seems unavoidable.” Mid-Centre County Auth. v. Boggs Twp., 34 Pa. Commw. 494, 500, 384 A.2d 1008, 1011 (1978). See also Gulnac v. South Butler School Dist., 526 Pa. 483, 487-88, 587 A.2d 699, 701 (1991) (“antagonistic claims indicating imminent and inevitable litigation coupled with a clear manifestation that the declaration sought will be of practical help in ending the controversy are essential”).⁸

Here, it is readily apparent that there is an actual controversy. The Complaint questions the validity of the Code and the Bylaws, as well as the legitimacy of the Residential Member. Moreover,

⁷ 42 Pa. C.S. §§ 7531-7541. The Declaratory Judgments Act is to be construed liberally. 42 Pa. C.S. § 7541(a).

⁸ The Association contends that an “actual case or controversy consists of (1) the interests of the parties being adverse; (2) the judgment is sufficiently conclusive to define and clarify the legal rights of the parties; and (3) the judgment is useful or of practical help.” Association’s Memorandum at 3 (citing City Council of Northampton County v. SHL Systemhouse Corp., 55 F. Supp. 2d 334 (E.D. Pa. 1999)). However, this standard is used by federal courts in applying 28 U.S.C.A. § 2201(a) and is not binding on the Court. See Juban v. Schermer, 451 A.2d 1190, 1195-96 (Pa. Super. Ct. 2000) (comparing portions of Pennsylvania’s Declaratory Judgments Act with the federal Declaratory Judgments Act).

Pantelidis challenges the actions and existence of the Association, on whose board of directors he serves.⁹ This is sufficient to allow the Court to assume jurisdiction.

The Association attempts to bolster the Objections by quoting from an order issued by Judge Albert W. Sheppard in BDGP, Inc. v. Independent Mortgage Co., January 1999, No. 812 (C.P. Phila.) on July 29, 1999 (“July Order”).¹⁰ However, the language in the July Order does not support the conclusion that “the subject election of the Council of The Barclay cannot be challenged” or that the instant dispute is “moot,” as the Association claims. Objections at ¶ 12. Indeed, it is unclear how the July Order or BDGP, Inc. relates to this matter at all. As a result, the Objections asserting legal insufficiency are overruled.

II. Specificity

Pennsylvania Rule of Civil Procedure 1019(a) requires that a pleading set forth the material facts on which a cause of action is based. To determine if a pleading meets this requirement, a court must ascertain if the allegations “fully summariz[e] the material facts, and . . . set forth concisely the facts upon which [a] cause of action is based.” In re The Barnes Found., 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (1995). In this respect, the Complaint is satisfactory: it alleges everything from the date the Corporation was formed to the winners of the Election. This sets forth the material facts more than adequately, and the Objections alleging insufficient specificity are overruled.

⁹ The Complaint states that Pantelidis “is a member of the Council . . . and/or of the Board of Directors” Complaint at ¶ 1.

¹⁰ The portion of the July Order quoted in the Objections states that “the plaintiffs are hereby precluded from taking the deposition of, or otherwise seeking discovery from the Community Association Management Company, Inc. relating to the election of the members of the Council of the Barclay Condominium.” Objections at ¶ 11.

CONCLUSION

The Complaint is legally sufficient and adequately specific. As a result, the Objections are overruled.

BY THE COURT:

JOHN W. HERRON, J.

Dated: December 8, 2000

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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CIVIL TRIAL DIVISION**

JERRY PANTELIDIS,	:	August Term, 2000
Plaintiff	:	
	:	No. 3819
v.	:	
	:	Commerce Case Program
THE BARCLAY CONDOMINIUM ASSOCIATION,	:	
Defendant	:	Control No. 100885

ORDER

AND NOW, this 8th day of December, 2000, upon consideration of the Preliminary Objections of Defendant The Barclay Condominium Association to the Complaint of Plaintiff Jerry Pantelidis 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 that the Preliminary Objections are OVERRULED. The Defendant is directed to file an answer within twenty days of this Order.

BY THE COURT:

JOHN W. HERRON, J.