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

STANLEY J. ANGELO	:	
	:	May Term, 2015
Plaintiff	:	
	:	Case No. 01428
and	:	
	:	
JOHN S. ANGELO	:	
	:	
Involuntary Additional Plaintiff	:	
	:	Commerce Program
v.	:	
	:	Control Nos.
WESTINGHOUSE LIGHTING CORP. ET AL.	:	
	:	15093769, 15093764,
Defendants	:	15093533, 15093531.

ORDER

AND NOW, this 21st day of January, 2016, upon consideration of the preliminary objections of defendants Raymond Angelo, Howard Anderson, Esquire, Joseph Sedlack, Esquire, and Westinghouse Lighting Corporation, Sportsmen's Ventures, Westinghouse Lighting, L.P., and Carl Thon, it is **ORDERED** that plaintiff's amended complaint is **DISMISSED**. Plaintiff may re-file a second amended complaint no later than February 11, 2016.

BY THE COURT,

***MCINERNEY*, J.**

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

STANLEY J. ANGELO	:	
	:	May Term, 2015
Plaintiff	:	
	:	Case No. 01428
and	:	
	:	
JOHN S. ANGELO	:	
	:	
Involuntary Additional Plaintiff	:	
	:	Commerce Program
v.	:	
	:	Control Nos.
WESTINGHOUSE LIGHTING CORP. ET AL.	:	
	:	15093769, 15093764,
Defendants	:	15093533, 15093531.

MEMORANDUM OPINION

Defendants Westinghouse Lighting Corporation ("WLC"), Westinghouse Lighting, L.P. ("WLLP"), and Sportmen's Ventures ("SV"), are respectively a corporation, a limited partnership, and a general partnership based in Philadelphia, Pennsylvania (the "Angelo Entities"). Individual defendant Raymond S. Angelo ("Raymond Angelo") is or was at all times relevant to this action an officer of, and a shareholder, general partner and limited partner in, the Angelo Entities. Individual defendant Carl Thon ("Thon"), was all times relevant to this action an officer of WLC. Individual defendants Howard Anderson ("Anderson") and Joseph M. Sedlack ("Sedlack"), are attorneys who provided legal services to one or more of the parties in this action. Plaintiffs Stanley J. Angelo, Jr. ("Stanley Angelo") and John S. Angelo ("John Angelo"), are or were at all times relevant to this action officers of, and

shareholders, general partners and limited partners in, the Angelo Entities. John Angelo has been joined by Stanley Angelo as an involuntary plaintiff. Whenever required hereinafter, plaintiffs Stanley Angelo and John Angelo, and defendant Raymond Angelo, all shareholders in the Angelo Entities, shall be identified jointly or severally as "Holders" of interests in the Angelo Entities.

On November 22, 2010, Stanley Angelo, John Angelo, Raymond Angelo, and the Angelo Entities, entered into an Owners Agreement (the "2010 Owners Agreement").[1] Subsequently, on December 13, 2013, the same parties entered into a "2013 Owners Agreement" which was executed with the intent of terminating and replacing the prior 2010 Owners Agreement.[2] Pursuant to the 2013 Agreement, any Holder who worked as an employee of the Angelo Entities was required to retire upon reaching the age of sixty-five; however, such Holder could delay retirement, but only up to the age of seventy-two, by giving proper notice of an intent to delay retirement.[3]

In 2014, plaintiff Stanley Angelo reached the mandatory retirement age of 72. Pursuant to the 2013 Owners Agreement, any Holder such as Stanley Angelo, upon retiring, "shall be deemed to offer to sell all Interests owned by such Interest Holder to the Remaining Holders who shall have the obligation to purchase all such offered interest."[4] The 2013 Owners Agreement also contains a provision governing repayment of certain outstanding loans upon the retirement of a Holder. Specifically, the 2013 Owners Agreement requires that when a retiring interest Holder owes outstanding loans to another interest Holder or to any of the Angelo Entities, then the proceeds from the

[1] 2010 Owners Agreement dated November 22, 2010, Exhibit 1 to plaintiffs' amended complaint.
[2] 2013 Owners Agreement dated December 13, 2013: Recitals—H.
[3] Id. ¶ 1.—Definitions: "Retirement Date."
[4] Id. ¶ 7.a.

sale of the retiree's interests shall be used to pay off the outstanding loans. The pertinent provisions of the 2013 Owners Agreement state as follows:

> "Holder Loans" means all loans or advances ... including all accrued but unpaid interest thereon, between (i) an [Angelo Entity] and a Seller, as reflected on the financial statements of the [Angelo Entities]; and (ii) a Seller and any other Holder.[5]
>
> "Seller" means a Holder who has agreed to sell his Interests.[6]
>
> Upon the sale of any Interest ... any Holder Loans Interest between a Seller and another Holder or [an Angelo Entity] shall be set off against each other. If after setting off such Holder Loans, a Seller owes any Holder Loans ... to another Holder or to [an Angelo Entity], then the cash proceeds from the Sale of any Interest shall be paid by each Purchaser to such Holder or [Angelo Entity] *pari passu* until all Holder Loans owed by such Seller are paid.[7]

The latter provision, which requires any retiring Holders to use the proceeds from the sale of their interests to immediately pay off their outstanding loans, constitutes a change from the requirements contained in the prior 2010 Owners Agreement. Under that agreement, the loans of a retiring Holder were not subject to a set-off, and repayment of such loans was mandatory only upon the Holder's death, not upon retirement.[8]

On May 14, 2015, Stanley Angelo commenced the instant action; subsequently, Stanley Angelo filed a complaint on July 14, 2015.[9] Defendant Raymond Angelo and involuntary plaintiff John Angelo were not parties in this complaint. On August 14, 2015, this court entered an order upon stipulation by the parties to the original

---

[5] Id. ¶ 1.—Definitions: "Holder Loans."
[6] Id., ¶ 1.—Definitions: "Seller."
[7] Id., ¶ 12.b.
[8] 2010 Owners Agreement, ¶ 7.b.iii., Exhibit A to the first amended complaint.
[9] Plaintiff Stanley Angelo retirement commenced on December 31, 2015.

complaint. The Order directed plaintiff Stanley Angelo to "file an Amended Complaint ... adding as additional parties ... John S. Angelo and Raymond S. Angelo."[10] The amended complaint added Raymond Angelo as defendant, and John Angelo as an additional involuntary plaintiff. Counts I and II of the amended complaint seek to rescind the 2013 Owners Agreement respectively under a claim of fraud and under equitable principles of contract rescission. Count III asserts the claim of breach-of-fiduciary-duty against each individual defendant named in the amended complaint. Count IV asserts that corporate defendant WLC breached a consulting fee agreement by failing to pay certain consulting fees to plaintiff Stanley Angelo. Finally, Count V of the amended complaint asserts a breach-of-contract claim against defendant Raymond Angelo under the terms of the 2010 Owners Agreement.[11]

On September 28, 2015, individual defendant Sedlack filed preliminary objections to the amended complaint. On September 29, 2015, Defendant Raymond Angelo filed preliminary objections to Stanley Angelo's amended complaint. On the same day, the Angelo Entities and individual defendant Thon, and individual defendants Anderson and Sedlack, also filed their respective preliminary objections against the amended complaint of Stanley Angelo.

DISCUSSION

In Pennsylvania, the law on preliminary objection is well settled:

> [w]hen considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of

[10] Order dated August 14, 2015.

[11] The amended complaint was verified only by plaintiff Stanley Angelo. Additional involuntary plaintiff John Angelo did not sign any verification. In addition, the certificate of service of the amended complaint was signed by counsel only on behalf of plaintiff Stanley Angelo.

> action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.[12]

I. The amended complaint pleads with insufficient specificity facts which would require John Angelo to be joined on the same side as plaintiff or defendants.

The preliminary objections filed by defendant Raymond Angelo, and those filed by defendants Thon and the Angelo Entities, respectively attack the amended complaint on grounds that plaintiff's pleadings fail to conform to law or rule of court, and for non-joinder of a necessary party.[13]

Under the Pennsylvania Rules of Civil Procedure and Pennsylvania case law—

> (a) Persons having only a joint interest in the subject matter of an action must be joined on the same side as plaintiffs or defendants.
>
> (b) If a person who must be joined as a plaintiff refuses to join, he or she shall, in a proper case, be made a defendant when the substantive law permits such involuntary joinder.[14]
>
> Subsection (b) [*supra*] is ... predicated upon ... the unity and identity of the interests of the co-owners who are to be joined.[15]

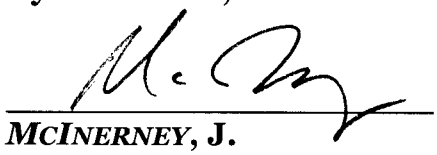
In this case, plaintiff Stanley Angelo has neither alleged in the amended complaint that he and involuntary additional plaintiff John Angelo share unity and identity of interests, nor does the amended complaint aver in any way whatsoever why

---

[12] Feingold v. Hendrzak, 2011 Pa. Super. 34; 15 A.3d 937, 941 (Pa. Super. 2011).
[13] Pa. R.C.P. 1028(a)(2), 1028(a)(5).
[14] Pa. R.C.P. 2227.
[15] State Farm Mut. Auto. Ins. Co. v. Ware's Van Storage, 2008 Pa. Super 134, ¶ 11; 953 A.2d 568, 573 (Pa. Super. 2008) (explaining the purpose of Pa. R.C.P. 2227(b).

this is a "proper case" which would require John Angelo to involuntarily align himself on the same side as plaintiff. In addition, Stanley Angelo's amended complaint fails to aver, if any, the "nature of the rights or interests" of John Angelo, as they might be affected by litigation, if John Angelo should remain joined in this action as an additional involuntary plaintiff.[16] For this reason, plaintiff's amended complaint cannot survive.

By The Court,



***McINERNEY*, J.**

[16] Examination of the record merely shows that pursuant to the 2013 Owners Agreement, Stanley Angelo, John Angelo and Raymond Angelo are the respective owners of separate interests in the Angelo Entities. See Exhibit 2 to the amended complaint—the 2013 Owners Agreement, Exhibit A thereunder: Interests in Entities. "In determining whether or not a party is indispensable, the Supreme Court has held that the following considerations are pertinent:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties? Church of Lord Jesus Christ of Apostolic Faith, Inc. v. Shelton, 740 A.2d 751, 756 (Pa. Commw. 1999).