

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

MARIA A. LIBERATORE	:		
<b>Plaintiff</b>	:		
	:	NOVEMBER TERM, 2015	
vs.	:		
	:	NO. 1887	<b>DOCKETED</b>
PAUL J. WINTERHALTER and	:		AUG 09 2016
PAUL J. WINTERHALTER, P.C.	:		N. MONTE
<b>Defendants</b>	:		CIVIL ADMINISTRATION

**ORDER**

And Now, this 9<sup>th</sup> day of August, 2016, after considering the Preliminary Objections to Plaintiff's Complaint filed by both Defendants and Plaintiff's Response thereto, and for the reasons set forth in Court Exhibit "A", attached hereto, it is hereby **ORDERED** that the Preliminary Objections are **OVERRULED**.

Defendants Paul J. Winterhalter and Paul J. Winterhalter, P.C., shall file their Answers to Plaintiff's Complaint, within Twenty (20) days from the date this Order is docketed.

Liberatore Vs Winthalte-ORDER



15110188700052

**BY THE COURT:**

*Frederica A. Massiah-Jackson*  
FREDERICA A. MASSIAH-JACKSON, J.

---

**Court Exhibit “A”**

---

In this legal malpractice litigation, Defendant-Attorneys have filed Preliminary Objections pursuant to Rule 1028(a)(4) in the nature of demurrer. In Barton v. Lowe’s Home Center, Inc., 124 A.3d 349 (Pa. Superior Ct. 2015), the Superior Court relied on well-established principles to hold that the lower Court committed an error of law when a demurrer was sustained. The Appellate Court noted at 124 A.3d 354, quoting Weiley v. Albert Einstein Medical Center, 51 A.3d 202 (Pa. Superior Court 2012):

“ . . . , the question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.”

In Pennsylvania, an individual may sue her attorney for malpractice under either a trespass (negligence) or assumpsit (contract) theory. See generally, Fiorentino v. Rapoport, 693 A.2d 208, 212-213 (Pa. Superior Ct. 1997) and cases cited therein. In this case, Plaintiff-Liberatore has set forth a detailed Complaint asserting a series of facts in support of both theories. Most significantly, the underlying allegations of misrepresentations, conflicts of interests, self-dealing and deficits in professional performance render this Court unable to conclude with certainty that no recovery will be possible. In re Noonan’s Estate, 63 A.2d 80 (Pa. 1949); In re Estate of Harrison, 745 A.2d 676 (Pa. Superior Ct. 2000). Because a doubt exists, the demurrer must be **Overruled**.

The Plaintiff's Complaint states a prima facie breach of contract claim, which, of course, has a four year limitation. 42 Pa. C.S.A. §5525. The engagement letter, dated August 10, 2011, signed and counter-signed by the parties provides the basis for damages based on alleged breaches of express and implied terms. See generally, Dougherty v. Pepper Hamilton, LLP, 133 A.2d 792 (Pa. Superior Ct. 2016); Gorski v. Smith, 812 A.2d 683 (Pa. Superior Ct. 2003). The bases of this Complaint are founded on allegations of breaches of specific executory promises ("Every effort will be made to expedite your case promptly and efficiently according to the highest level of legal and ethical standards") as well as allegations of breaches of implied contractual promises (to "render legal services in accordance with the profession at large").

Generally, the statute of limitations will run against persons claiming a disability, such as "severe mental and physical ailments" per Footnote 1 of Plaintiff-Liberatore's Complaint. In this case where allegations of intentional and/or unintentional misrepresentations have been asserted, it will be appropriate to determine whether the equitable considerations of the discovery rule are applicable after a full period of discovery on the negligence claims.

A handwritten signature in black ink, appearing to be 'MSJ', is located in the lower right quadrant of the page.