

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

Premium Assignment Corporation	:		
	:	MARCH TERM 2005	
	:		
v.	:	NO: 1135	
	:		
	:	CONTROL NO: 060157	City Cab
Company, Inc.	:		
	:		

O R D E R

AND NOW, this 15th day of July, 2005, upon consideration of Defendant Premium Assignment Corporation's Preliminary Objections to Plaintiff City Cab Company, Inc.'s Complaint, and responses thereto, and in accordance with the court's contemporaneously filed memorandum opinion, it is hereby ORDERED and DECREED that said Preliminary Objections are SUSTAINED. Count II of Plaintiff's Complaint is DISMISSED. Plaintiff is granted leave to re-plead the special damages portion of the Complaint within twenty (20) days from the date of this Order.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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MEMORANDUM OPINION

Before the Court are Defendants' Preliminary Objections to Plaintiff's Complaint. Defendant ("City Cab") entered into a Premium Financing Agreement on May 7, 2004 with Plaintiff ("Premium Assignment") whereby Premium Assignment financed insurance policies purchased by City Cab for its business. On July 12, 2004 City Cab cancelled the insurance contract with the insurance carriers that was financed by Premium Assignment. Consequently, Premium Assignment brought an action for Breach of Contract and Fraud against City Cab claiming approximately \$60,440 damages along with uncalculated punitive damages.

In the present motion, Defendant has raised three (3) Preliminary Objections to Plaintiff's Complaint. The court will address each in turn.

I. Defendant's Preliminary Objection to Count I – Insufficiency of the Pleading

A Complaint must state sufficient facts as to time, place and items of special damages with specificity according to Rule 1019(f). The Plaintiff clearly states in the Complaint that the \$60,440.24 being sought are "consequential damages." Compl., ¶ 7. According to Pennsylvania case law and Black's Dictionary, "consequential" and "special" are synonyms with regards to damages. Birth Center v. St. Paul Companies, Inc., 787 A.2d 376, 390 (Pa. 2001). The pleading

of special damages must be “sufficiently clear to enable the defendant to prepare his defense.” St. Hill v. Capital Asset, 2000 Phila. Ct. Com. Pl. LEXIS 95, *5 (Commerce Program) (Sept. 7, 2000) (Herron, J.) citing Paz v. Com. Dept. of Corrections, 580 A.2d 452, 456 (Pa.Cmmw. 1990). One reason for specifically pleading allegations is because a plaintiff largely knows the information and “averring it would be relatively simply and expeditious, while requiring defendants to obtain the information by deposition or interrogatories would be costly and time-consuming.” St. Hill, 2000 Phila. Ct. Com. Pl. LEXIS 95, *6. Here, the Complaint alleges that the Defendant defaulted under their Premium Finance Agreement and was obligated to pay the Plaintiff the principle balance, accrued interest, late charges and attorney’s fees and costs. However, the Complaint fails to aver how the Plaintiff calculated those numbers. The specific calculations are necessary pieces of information that are known by the Plaintiff and relatively simple to aver. The addition of those specific calculations will enable the Defendant to prepare its defense and address the issues without forcing the Defendant to engage in unnecessary discovery.

The Court **Sustains** this Objection and allows Plaintiff to re-plead the special damages.

II. Defendant’s Preliminary Objection to Count II – Failure to State a Cause of Action, Insufficiency of the Pleading

According to Pa.R.C.P. 1019(b) an allegation of fraud must be pled with particularity. To establish a claim for fraud, a plaintiff must allege: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. Sigmond v. Phillips & Brooke P.C. et at., 2003 Phila. Ct. Com. Pl. LEXIS 70,

*37 (Commerce Program) (Apr. 2, 2003) (Sheppard, J.). The Complaint alleges general facts as to each element of the tort; however, the Plaintiff does not plead with particularity facts showing how the Defendant made representations with knowledge of their falsity, how the Defendant made representations with the intent to mislead, and how the Plaintiff relied on the Defendant's misrepresentations. Compl., ¶ 12, 13, 14. For example, simply averring that "Plaintiff justifiably relied on Defendant's misrepresentation" is not enough to comply with the specificity requirements of pleading fraud. Id. at ¶ 14. Because of the specificity requirements, a plaintiff must back general averments of fraud with particular facts so as to enable a defendant to form an answer to the complaint.

The Court **Sustains** this Objection.¹

III. Defendant's Preliminary Objection to Count II – Failure to Conform to Law or Rule of Court

Under Pennsylvania law, a plaintiff can recover punitive damages under a cause of action for fraud. Smith v. Reinhart Fort, 68 Pa. D. & C.4th 432, 440 (2004). However, Count II of the Plaintiff's Complaint, a cause of action in fraud, was dismissed with prejudice; therefore, only a breach of contract count remains. A plaintiff may not seek punitive damages under a cause of

¹ Moreover, Count II of the Complaint is dismissed under the gist of the action doctrine. The gist of the action doctrine "precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims. . . Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals." Etoll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. 2002). The Plaintiff alleges that the Defendant knew at the time it entered into the contract that it would not pay the premiums. In a similar case, a fraud claim was barred at the preliminary objection phase under the gist of the action doctrine based on Krause v. Great Lakes' holding, "it is well established that a cause of action for fraud must allege a misrepresentation of a past or present material fact . . . a promise to do something in the future . . . is not a proper basis for a cause of action for fraud." Philadelphia Regional Port Authority v. Carusone Construction Co., 2004 Phila. Ct. Com. Pl. (Commerce Program) (Sheppard, J.) citing Krause v. Great Lakes Holdings, Inc., 563 A.2d 1182, 1187 (Pa. Super. 1989).

action for breach of contract. Rambo v. Greene, 2005 Phila. Ct. Com. Pl. LEXIS 133, *7
(Commerce Program) (Feb. 28, 2005) (Jones, J.).

The Court **Sustains** this Objection.

CONCLUSION

For all the foregoing reasons, Defendants' Preliminary Objections to Plaintiff's
Complaint are SUSTAINED and Count II of the Complaint is DISMISSED.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

