

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY  
IN THE COURT OF COMMON PLEAS**

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<b>DARRYL WALKER,</b>	:	<b>CIVIL TRIAL DIVISION</b>
	:	
<b>Appellant/Plaintiff,</b>	:	<b>MARCH TERM, 2006</b>
	:	<b>No. 0923</b>
	:	
<b>v.</b>	:	
	:	
	:	<b>Superior Court Docket No.</b>
<b>COMCAST FINANCIAL AGENCY CORP.</b>	:	<b>1938 EDA 2006</b>
<b>And</b>	:	
<b>COMCAST CABLEVISION OF N.J., INC.</b>	:	
	:	
<b>Appellees/Defendants.</b>	:	
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**OPINION**

**PROCEDURAL HISTORY**

Plaintiff appeals from the Order dated June 14, 2006, wherein this Court granted Defendants' Preliminary Objections and dismissed Plaintiff's Complaint.

**FACTUAL BACKGROUND**

This Court had previously published an Opinion on August 3, 2005. The Opinion addresses similar issues as those discussed *infra*. This Court will cite and adopt the relevant factual portions of the previous Opinion to the extent it lays a foundation for this Opinion. The Appeal, which generated this prior Opinion, was withdrawn by Plaintiff subsequent to the Court's issuance of the Opinion. The full text of the prior Opinion is attached as Exhibit "A" for judicial administrative convenience.

On March 13, 2002, Plaintiff Darryl Walker (hereinafter Plaintiff) and Comcast Cablevision of NJ, Inc., a subsidiary of Comcast Corporation, executed a written contract entitled “Cable Television On Line & Marketing/Sales Agreement” (hereinafter the “Contract”). (Opinion, April Term, 2004 No. 4292, pg.1). The Contract explicitly established Plaintiff as an independent contractor solely for Comcast Cablevision of NJ, Inc. Id. This contract specified that this agreement was governed and construed in accordance with the laws of New Jersey. Id. at 2.

According to the Contract, Plaintiff was to market Comcast Basic cable television service, digital cable tier, and High Speed Internet Service (CHSI) to potential individual subscribers and large corporations (also know as “Large Account Plans” or LAP), in New Jersey and throughout Comcast Corporation’s national serviceable area. Id. Among other things, the Contract established the terms under which Plaintiff would receive commissions for completed order forms requesting cable television and/or high speed internet service. Id. According to the “Commission Schedule,” attached to the Contract, Plaintiff was to receive sixty (\$60.00) dollars per individual installed sale, and ninety (\$90.00) dollars per installed sale from a LAP. Id.

The Contract memorialized his previous arrangement with Comcast Cablevision of NJ, for which Plaintiff provided independent contractual services for Comcast Cablevision of NJ from May 1997 to March 2002. Id. The Contract states, “This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements of such parties in connection therewith.” Id.

The Contract was the only written contract that Plaintiff alleged existed between Plaintiff and any Comcast affiliate in the Amended Complaint of his Original Action and it was the only contract attached as an exhibit. Id.

However, Plaintiff contended that subsequently, on some undisclosed date, Comcast Corporation, acting through various undisclosed subsidiaries and officers of those subsidiaries, “orally authorized” plaintiff to implement a marketing plan to solicit orders for CHSI from LAPs. Id. at 3. Although Plaintiff asserted that Comcast, the parent corporation, “orally authorized” him to solicit LAPs, Plaintiff simultaneously alleged that these same LAPs would be between the target corporation and Comcast Commercial Online, Inc. Id. According to Plaintiff, Comcast Commercial Online, Inc., is a subsidiary of Comcast Corporation. This contention forms the basis of Plaintiff’s alleged oral contract with Comcast Corporation. Id. Aside from this broad assertion, Plaintiff provided no other details of his oral contract or any other facts which would support his vague and illusory claim that these various business entities held a contractual relationship with him. Id. Rather than provide more details of the alleged oral contract with Comcast Corporation, which was the subject matter of the original action, Plaintiff instead attached his written contract with Comcast Cablevision of NJ to his Amended Complaint further supporting this Court’s conclusion that Plaintiff’s Contract with Comcast Cablevision of NJ establishes a written obligation by Comcast Cablevision of NJ only. This fact alone defeats jurisdiction in Philadelphia. In order to overcome this obstacle, Plaintiff asserts a simultaneous oral contract with another subsidiary of Comcast Corporation in another attempt to lodge this Complaint in Philadelphia.

Between December 2000 and August 2002, Plaintiff secured five LAPs. *Id.* During this period, John Cerciello was the Vice President of Sales of Comcast Commercial Online, and Rich Shoulberg was the Salesman for Comcast Commercial Online.<sup>1</sup> Plaintiff contended that Cerciello and Shoulberg were threatened by Plaintiff's success in negotiating five LAPs. *Id.* Plaintiff further asserted that Cerciello and Shoulberg concocted a "scheme to terminate Plaintiff's contractual relations with Comcast Corporation," fearing that their positions were being threatened by Plaintiff's success. *Id.* Plaintiff alleged that Cerciello and Shoulberg ultimately "caused various purported notices of termination to be issued to [plaintiff]." *Id.*

Plaintiff subsequently commenced the Original Action against Comcast Corporation, Cerciello and Shoulberg via filing a Complaint on April 20, 2004. *Id.* Plaintiff filed his Amended Complaint on May 17, 2004 claiming that Comcast Corporation is vicariously liable for the damage caused by Cerciello and Shoulberg's tortious interference with Plaintiff's alleged contract with Comcast Corporation. *Id.* at 4.

Defendant Comcast Corporation filed its Motion for Judgment on the Pleadings, which was granted on September 28, 2004. *Id.* Thereafter Plaintiff filed a Praecipe to Discontinue as to Cerciello and Shoulberg, and filed his Notice of Appeal on October 25, 2004. The Court issued its Opinion accordingly on August 3, 2005. On October 3, 2005, Plaintiff withdrew his Appeal. (See Docket, April Term, 2004 No. 4292).

Since withdrawal of the Appeal in the Original Action, Plaintiff filed this second lawsuit on March 10, 2006 alleging breach of contract against Comcast Financial and Comcast Cablevision of NJ, Inc. (See Docket, March Term, 2006 No. 923). Plaintiff also included a claim for wrongful termination of contract. The Complaint in the

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<sup>1</sup> Cerciello and Shoulberg were listed as defendants in the Original Action.

Original Action was based on the same alleged facts as are set forth in the instant Complaint. Defendants filed Preliminary Objections on April 17, 2006 and their Motion to Determine Preliminary Objections on May 17, 2006. Plaintiff replied on June 7, 2006.

The Court granted Defendants' Motion to Determine Preliminary Objections on June 14, 2006. Plaintiff appealed this Order on July 14, 2006 and filed his Statement of Matters accordingly.

The two issues raised by Plaintiff in his Statement of Matters are:

1. Whether the Court committed an abuse of discretion or error of law in finding that no contractual relationship existed between Comcast Financial Agency Corporation and Plaintiff in order to allege a breach of contract claim against Defendant.
2. Whether the Court committed an error of law or abused its discretion in refusing to address the issue of venue in Philadelphia with respect to the remaining Defendant, Comcast Cablevision of NJ, where Plaintiff cannot allege a contractual relationship with a party that directly conducts business in Philadelphia.

## **LEGAL ANALYSIS**

### **Plaintiff Has No Contractual Relationship With Comcast Financial**

As a trial court's decision to grant or deny a demurrer involves a matter of law, our standard for reviewing that decision is plenary. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 854 A.2d 425, 437-438 (2003). Preliminary objections in the nature of demurrers are proper when the law is clear that a plaintiff is not entitled to recovery

based on the facts alleged in the complaint. *Id.* When considering a motion for a demurrer, the trial court must accept as true “all well-pleaded material facts set forth in the complaint and all inferences fairly deducible from those facts.” *Small v. Horn*, 554 Pa. 600, 722 A.2d 664, 668 (Pa. 1998). Under the Pennsylvania Rules of Civil Procedure, a preliminary objection in the nature of a demurrer “will be granted where the contested pleading is legally insufficient.” *Williams v. Nationwide Mutual Ins. Co.*, 750 A.2d 881, 883 (Pa.Super. 2000) (*citing* Pa.R.C.P. 1028(a)(4)). It is also true that every element of a contract must be specifically pled. *Snaith v. Snaith*, 282 Pa. Super. 450; 422 A.2d 1379, 1382 (1980).

Three elements are necessary to plead properly a cause of action for breach of contract in Pennsylvania: “(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages.” *Williams*, 750 A.2d at 884, (quoting *Corestates Bank Nat’l. Assn. v. Cutillo*, 1999 PA Super 14, 723 A.2d 1053, 1058 (Pa.Super. 1999)).

The Plaintiff’s Complaint, fails to allege the existence of a contract with Comcast Financial which would allow him to assert a claim for breach of contract and remedies under the law. The Plaintiff also does not attach a contract to his Complaint which would establish a basis for a breach of contract claim against Comcast Financial. By failing to plead that a contract exists or provide documentation to validate such a claim Plaintiff’s contract claim violates Pa.R.C.P. 1019 which states:

(h) When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.

Note: If the agreement is in writing, it must be attached to the pleading. See subdivision (i) of this rule.

(i) When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

Like with the prior action, wherein Plaintiff failed to assert any direct contractual relationship between Comcast Corporation and himself, his claim against Comcast Financial fails for the same reasons. (See Opinion, August 3, 2005, pg. 12-14). The contract as attached to his Complaint is clearly between “Darryl Walker” and “Comcast Cablevision of NJ, Inc.” (Complaint, Exhibit A).

In *Williams v. Nationwide Mut. Ins. Co.*, 750 A.2d 881, 2000 PA Super 110 (2000), our Superior Court sustained defendant’s preliminary objections and dismissed plaintiffs’ breach of contract claims, where plaintiffs failed to plead sufficient facts in their Complaint to establish any contractual duty on the part of defendant, and failed to attach pertinent parts of their alleged contract to the Complaint.

As a result, plaintiff’s claim for breach of contract would be insufficient as a matter of law because he does not allege the existence of a contract with Comcast Financial nor attach any contract with Comcast Financial pursuant to Pa.R.C.P. 1019 and therefore cannot satisfy the essential elements for a breach of contract claim.

### **Venue of the Breach of Contract Claim With Comcast Cablevision of NJ**

Plaintiff also attempts to argue that the claims regarding his contractual relationship with Comcast Cablevision of NJ should remain in Philadelphia County. To support his position Plaintiff makes arbitrary references to contact with Comcast Corporation affiliates in an attempt to establish venue in Philadelphia through Plaintiff’s

interaction with these other branches of Comcast. Plaintiff's argument to establish jurisdiction in his claim against Comcast Cablevision of NJ is meritless and attenuated at best, as Plaintiff has not established any of the elements for valid contract with either Comcast Corporation or any of its affiliates having sufficient Philadelphia contacts which would satisfy the rules of venue (Pa.R.C.P. 2179). A valid contract as set for in *Williams* supra, would first be required between plaintiff and one of these entities, in order to establish a parties right to have venue considered by the Court. *Williams*, 750 A.2d at 884. Without the contention of a valid contract with any of the Comcast entities having venue in Philadelphia, this matter is more appropriately addressed by the New Jersey Court, whose laws govern the contract between Plaintiff and Comcast Cablevision of NJ, Inc. Plaintiff has failed to establish or even allege that the New Jersey courts are without jurisdiction to hear Plaintiff's claim.

Plaintiff's Complaint also fails to establish the nature of the corporate relationship, if any, between Comcast Financial and Comcast Cablevision of NJ., which could provide the basis for allowing this action to remain in Philadelphia. In failing to do so, Plaintiff has failed to provide a basis for allowing jurisdiction to remain in Philadelphia. Further, since it is undisputed that the laws of New Jersey govern the Contract at issue, this Court believes that the Contract between Plaintiff and Comcast Cablevision of NJ., is more appropriately addressed by the New Jersey courts.



## **CONCLUSION**

In light of the foregoing analysis, this Court believes that the Defendants' Preliminary Objections were properly granted, and should be affirmed by the Court above.

**BY THE COURT:**

**2-15-2007**

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**Date**

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**ALLAN L. TERESHKO, J.**

cc:  
Gregory M. Harvey, Esq., for Appellant  
Kenneth A. Murphy, Esq., Appellee

