

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

CITY OF PHILADELPHIA, COUNTY OF LUZERNE, COUNTY OF LEHIGH,	:	March Term, 2003
Plaintiffs,	:	
v.	:	No. 00950
HUMAN SERVICES CONSULTANTS, II, INC., HUMAN SERVICES CONSULTANTS MANAGEMENT, INC.,	:	Commerce Program
RICHARD ADAMS, LINDA ADAMS, SAFARI CORP., EDGEWATER, INC.,	:	Control Numbers 010307
Defendants.	:	

ORDER

AND NOW, this 23rd day of March, 2004, upon consideration of Defendants Human Services Consultants, II, Human Services Consultants Management, Inc., Richard Adams, Linda Adams and Edgewater Inc.'s Preliminary Objections to Plaintiffs' amended complaint, Plaintiffs response thereto, memorandum, all matters of record and in accord with the Memorandum Opinion, it is hereby **ORDERED** and **DECREED** as follows:

1. Defendants' Preliminary Objection to Count I (Breach of Contract) of Plaintiffs' amended complaint is **SUSTAINED** as it pertains to Linda Adams and **OVERRULED** as it pertains to Richard Adams.
2. Defendants' Preliminary Objection for failure to attach documents pursuant to Pa. R. Civ. P. 1019 (i) is **OVERRULED** with the qualification that Plaintiffs are ordered to produce the contracts identified by Defendants within ten days from the date of this order.

3. Defendants' Preliminary Objections to Count III (fraud) are **SUSTAINED** as it pertains to Richard Adams and **OVERRULED** as it pertains to Human Services Consultants Management, Inc.
4. Defendants' Preliminary Objections to Count IV (conspiracy) are **OVERRULED** as to Human Services Consultants Management, Inc. and **SUSTAINED** as to Human Services Consultants, II, Inc., Richard Adams, Linda Adams and Edgewater, Inc. Plaintiffs are granted leave to amend the amended complaint within ten days from the date of this order.
5. Defendants Preliminary Objections to Count V (negligence) are **OVERRULED** as to Human Services Consultants Management. Inc., Human Services Consultants Management, Inc., Linda Adams and Edgewater, Inc. and **SUSTAINED** as to Richard Adams.
6. Defendants Preliminary Objections to Count VI (fraudulent conveyance) and Count VII (violation 62 P. S. 1407 (a)-(e)) are **OVERRULED**.

BY THE COURT,

C. DARNELL JONES, II, J.

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Plaintiffs,	:	No. 00950
vi.	:	
HUMAN SERVICES CONSULTANTS, II, INC., HUMAN SERVICES CONSULTANTS MANAGEMENT, INC.,	:	Commerce Program
RICHARD ADAMS, LINDA ADAMS, SAFARI CORP., EDGEWATER, INC.,	:	Control Numbers 010307
Defendants.	:	

MEMORANDUM OPINION

JONES, II, J......

Presently before the court are the Preliminary Objections of Defendants Human Services Consultants, II, Inc., (HSC, II), Human Services Consultants Management, Inc.(HSCM), Richard Adams, Linda Adams and Edgewater, Inc.¹ For the reasons that follow, this court sustains in part and overrules in part Defendants’ Preliminary Objections.

BACKGROUND

The instant lawsuit arises out of three separate contracts for residential services to mentally ill and mentally retarded individuals between Human Services Consultants, Inc. (“HSC”)² and the City of Philadelphia, County of Luzerne and County of Lehigh. Plaintiffs have brought causes of action against Defendants for breach of contract (Count I), violation of the 4300 regulations (Count II), fraud (Count III), civil conspiracy (Count IV), negligence (Count V), fraudulent transfers (Count VI), and violation of 62 P.S. § 1407 (a)-(e) (Count VII).

¹ Defendant Safari Corp. filed preliminary objections which the court will dispose of in a separate order.
² HSC is presently in bankruptcy and according to plaintiffs is not a party to this action.

DISCUSSION

A. Plaintiffs have failed to state a claim against Linda Adams for Breach of Contract but have stated a claim against Richard Adams.

Defendants have demurred to Count I of the amended complaint on the basis that Defendants Richard Adams and Linda Adams were not parties to the purported contracts. Plaintiffs argue that the allegations of the amended complaint are sufficient to pierce the corporate veil for the Adams'.

In Pennsylvania, there is a strong presumption against piercing the corporate veil. Lumax Industries, Inc. v. Aultman, 543 Pa. 38, 41-41, 669 A.2d 893, 895 (Pa. 1995). “Piercing the corporate veil is an exception, and courts should start from the general rule that the corporate entity should be upheld unless specific, unusual circumstances call for [such] an exception.” JK Roller Architects, LLC v. Tower Investments, Inc., 2003 WL 1848101, * 1(2003)(Jones)(quoting First Realvest, Inc. v. Avery Builders, Inc., 410 Pa. Super. 572, 600 A.2d 601, 604 (Pa. Super. 1991). Under Pennsylvania law, the following factors are to be considered in determining whether to pierce the corporate veil: 1) undercapitalization; 2) failure to adhere to corporate formalities; 3) substantial intermingling of corporate and personal affairs; and 4) use of the corporate form to perpetuate a fraud. Id(quoting Lumax Indus. v. Aultman, 543 Pa. 38, 669 A.2d 893 (Pa. 1995)).

In order to withstand a demurrer, Plaintiff must set forth the conduct which the Adams' allegedly engaged in that would bring their actions within the parameters of a cause of action based on a theory of piercing the corporate veil. Id. While it is not necessary to set forth the evidences by which facts are to be proved, it is essential that the facts the pleader depends upon to show liability be averred. Id.

Paragraphs 21, 23, 29 and 30 are the allegations which arguably support a cause of action against Linda Adams individually under the theory of piercing the corporate veil. Paragraphs 21 and 23 identify Linda Adams as second in command with absolute control over the management and financial affairs of HSC, HSCII and HSCM. These paragraphs are insufficient to support the extreme remedy of piercing the corporate veil. The general rule is that a corporation shall be regarded as an independent entity even if its stock is owned entirely by one person. College Watercolor Group, Inc. v. William H. Newbauer, Inc., 468 Pa. 103, 117, 360 A.2d 200, 207 (1976).

Paragraph 29 and 30 allege that HSCM needed extra money from HSC to fund a lavish lifestyle for Linda Adams. These are conclusions of law and are insufficient to withstand a demurrer since Plaintiffs failed to plead what Linda Adams allegedly did to bring her actions within the parameters of piercing the corporate veil.

Paragraphs 21, 22, 23, 29, 30, 47, 48, 49 are the allegations which arguably support a cause of action against Richard Adams individually under a theory of piercing a corporate veil. Paragraphs 21, 22 and 23, similar to the paragraphs alleged against Linda Adams, are insufficient to pierce the corporate veil against Richard Adams. However, Paragraphs 29, 30, 47, 48 and 49 do set forth conduct which Richard Adams allegedly engaged in to bring his actions within the parameters of a cause of action based on a theory of piercing the corporate veil.

Accordingly, Defendant Linda Adams preliminary objections to Count I are sustained and Richard Adams preliminary objections to Count I are overruled.

B. Plaintiff Fails to Attach the Writings upon which Suit is Based.

Defendants assert that Plaintiff has violated Rule 1019(i)³ by failing to attach all the contracts upon which suit is based. Rule 1019 (i) provide:

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. Pa. R. Civ. P. 1019 (i).

Based on the plain language of the amended complaint, Plaintiffs' claims are based upon the various agreements entered into between HSC and Plaintiffs. The amended complaint does not attach any of the contracts between HSC and the County Plaintiffs and the third contract between the City of Philadelphia and HSC. However, Plaintiffs maintain that the contracts that are attached are similar to those not attached and are representative of the material part upon which suit is based. Based on the foregoing, the court will overrule Defendants' Preliminary Objection with the qualification that Plaintiffs provide Defendants with a copy of the contracts upon which their amended complaint is based within ten days from the date of this order.

C. The Fraud and Negligence Counts against Defendant Richard Adams Are Barred by Pennsylvania's Gist of the Action.

Plaintiffs' fraud and negligence claims against Richard Adams are barred by the gist of the action doctrine. The gist of the action doctrine precludes plaintiffs from recasting ordinary breach of contract claims into tort claims." eToll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. 2002). The gist of the action doctrine bars tort claims that: (1) arise solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the

³ The parties reference Rule 1019 (h). Rule 1019 (h) was amended effective January 1, 2001 and was relettered as Rule 1019 (i).

liability stems from a contract; and (4) where the tort essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of the contract.

Id. at 19.

Here, since Plaintiffs' allege conduct which could potentially pierce the corporate veil and since Plaintiffs' fraud claim is based upon misrepresentations made by Richard Adams in performance of the contracts, the fraud claim is barred by the gist of the action. The Superior Court in eToll, Inc. v. Elias/Savion Advertising, Inc., supra. specifically held that claims of fraud in the performance of the contract are barred by the gist of the action doctrine. Given this clear precedent, the court finds that Plaintiffs' fraud claim is barred against Richard Adams. However, Plaintiffs fraud claims against HSCM are not barred by the gist of the action doctrine since HSCM is not a party to the contracts in issue, therefore the doctrine does not apply. Accordingly, Defendants preliminary objections to Count III of Plaintiffs' amended complaint alleging fraud is sustained in part as it pertains to Richard Adams and overruled in part as it pertains to HSCM.

In addition to a fraud claim, Plaintiffs also allege negligence claims (Count V) against Richard Adams as well as other defendants. Similar to the fraud claim alleged against Richard Adams, the gist of the action doctrine also bars the negligence claim against Richard Adams. The negligence claim against Richard Adams concerns Adams' performance of the contracts. Accordingly, Defendants' preliminary objection to Count V of Plaintiffs' amended complaint is sustained as it pertains to Richard Adams.

D. The Negligence Count is not barred by the Economic Loss Doctrine as it pertains to Defendants Human Services Consultants Management, Inc., Linda Adams, Human Services Consultants, Inc. II and Edgewater, Inc..

The purpose of the economic loss doctrine, as adopted in Pennsylvania, is “maintaining the separate spheres of the law of contract and tort.” Waterware Div. v. Ametek/US Gauge Div. 51 Pa. D.& C. 4th 201, (2001)(quoting New York State Elec. & Gas Corp. v. Westinghouse Elec. Corp., 387 Pa. Super. 537, 550, 564 A.2d 919, 925 (1989)). The Commonwealth’s version of the doctrine precludes recovery for economic losses in a negligence action if the only damage sustained by the plaintiff is damage to the product itself, but no other property damage or personal injury resulted. Id. If the only damages from the alleged tort are economic, the tort claims cannot stand. New Hope Books, Inc. v. Datavision Prologix, Inc., 2003 WL 21672001, *5 (2003)(Cohen).

Here, plaintiffs allege that the defendants were negligent for failing to discover the check kiting scheme, supervise the individuals involved in the scheme and stop the scheme. As a direct result of defendants’ negligence, the plaintiffs seek compensatory damages. Said damages do not appear at this stage to constitute the type of damages barred by the economic loss doctrine. Accordingly, Defendants’ preliminary objections to Count V with the exception of Richard Adams are overruled.

E. Plaintiffs Claims under 62 P.S. § 1407 provides for a Civil Remedy.

Count VII of Plaintiffs’ amended complaint alleges a cause of action under 62 P. S. § 1407, Pennsylvania’s Medicaid Fraud Abuse and Control Act. Defendants argue that Plaintiffs claims fail as a matter of law since the statute does not provide for a private cause of action. The court does not agree.

Title 62 P.S. § 1407 is found within Article XIV entitled “Fraud and Abuse Control”. This article sets forth a detailed scheme of provider prohibited acts and recipient prohibited acts.⁴ Section 1407 (a) of the Code enumerates the various provider prohibited acts. Section 1407 (c)(1) of the Code provides that if the department determines that a provider has committed any prohibited act or has failed to satisfy any requirement under 1407(a), it shall have the authority to immediately terminate, upon notice to the provider, the provider agreement and to institute a civil suit against such provider in the court of common pleas for twice the amount of excess benefits or payments plus legal interest from the date the violation (s) occurred. *Id.* Thus, the statute does provide for a private cause of action. Accordingly, Defendants preliminary objections are overruled.⁵ However, pursuant to the statute, a provider is defined as an individual or medical facility which signs an agreement with the department to participate in a medical assistance program. The only defendants who signed the contracts at issue are HSC and arguably Richard Adams. Therefore, plaintiffs’ claims under 62 P.S. § 1407 are dismissed as to other named defendants.

F. Plaintiffs have failed to allege sufficient facts to allege conspiracy.

Count IV of Plaintiffs’ amended complaint sets forth a claim for civil conspiracy against all defendants. In order to assert a claim for civil conspiracy, plaintiffs must allege “that [each defendant] entered into an unlawful agreement for the express purpose of committing either a criminal act or an intentional tort.” *Romy, M.D. v. Burke, 2003*

⁴ 62 P.S. § 1401, defines “provider” as “any individual or medical facility which signs an agreement with the department to participate in the medical assistance program, including, but not limited, to licensed practitioners, pharmacies, hospitals, nursing homes, clinics, home health agencies and medical purveyors.” Section 1401 also defines “recipient” as “an eligible person who receives medical assistance from a participating provider.”

⁵ Although the court finds that the statute provides for a private cause of action, the court questions whether the statute is applicable to the case at hand.

WL 21205975 * 4 (2003)(Sheppard)(quoting Burnside v. Abbot Laboratories, 351 Pa. Super. 264, 278, 505 A.2d 973, 981 (Pa. Super. 1985). In addition, plaintiffs must allege facts showing concerted action or agreement, “a contemporaneous and negligent failure to act” is not sufficient. Id. Furthermore, plaintiffs must allege facts to show malice, i.e. of each defendant’s intent to injure plaintiffs. Id. While Plaintiffs have set forth the underlying tort claim against HSME i.e. fraud, the Plaintiffs have not set forth an underlying tort claim against the remaining defendants. Therefore, the conspiracy count fails against these defendants. In the event Plaintiffs are capable of stating a conspiracy claim, against Richard Adams, Linda Adams, HSC, II and Edgewater, Inc., Plaintiffs are granted leave to amend the amend complaint within ten days from the date of this order.⁶

CONCLUSION

Based on the forgoing, the court sustains in part and overrules in part Defendants

Preliminary Objections as follows:

1. Defendants’ Preliminary Objection to Count I (Breach of Contract) of Plaintiffs’ amended complaint is **SUSTAINED** as it pertains to Linda Adams and **OVERRULED** as it pertains to Richard Adams.
2. Defendants’ Preliminary Objection for failure to attach documents pursuant to Pa. R. Civ. P. 1019 (i) is **OVERRULED** with the qualification that Plaintiffs are ordered to produce the contracts identified by Defendants within ten days from the date of this order.
3. Defendants’ Preliminary Objections to Count III (fraud) are **SUSTAINED** as it pertains to Richard Adams and **OVERRULED** as it pertains to Human Services Consultants Management, Inc.
4. Defendants’ Preliminary Objections to Count IV (conspiracy) are **OVERRULED** as to Human Services Consultants Management, Inc. and **SUSTAINED** as to Human Services Consultants, II, Inc., Richard Adams, Linda Adams and Edgewater, Inc. Plaintiffs are granted leave to amend the amended complaint within ten days from the date of this order.

⁶ All other Preliminary Objections are overruled.

5. Defendants' Preliminary Objections to Count V (negligence) are **OVERRULED** as to Human Services Consultants, II, Inc., Human Services Consultants Management, Inc., Linda Adams and Edgewater, Inc. and **SUSTAINED** as to Richard Adams.

6. Defendants Preliminary Objections to Count VI (fraudulent conveyance) and Count VII (violation 62 P. S. 1407 (a)-(e)) are **OVERRULED**.

BY THE COURT,

C. DARNELL JONES, II, J.

Dated March 23, 2004