

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>EAGLE CONSTRUCTION, INC. t/d/b/a</b>	:	
<b>EAGLE CONSTRUCTION CO.,</b>	:	
<b>Plaintiff</b>	:	<b>NO. CV-21-458</b>
	:	
<b>vs.</b>	:	
	:	
<b>JOHN RITTER and DEBRA RITTER,</b>	:	
<b>husband and wife,</b>	:	<b>CIVIL ACTION</b>
<b>Defendants</b>	:	

**ORDER**

**AND NOW**, this \_\_\_ day of **June, 2022**, before the Court are Preliminary Objections filed by Defendants on August 6, 2021. Argument was originally scheduled for September 29, 2021; however, on August 18, 2021, counsel for the parties entered into a Stipulation and requested the Court hold the matter in abeyance. By Order dated August 25, 2021, this Court cancelled argument on the Preliminary Objections and directed the parties to jointly file a petition to relist the matter for argument should they choose to pursue the Preliminary Objections. On February 7, 2022, the Parties filed a Joint Petition to Activate Case and Set a Scheduling Order, indicating that the dispute between the parties has to do with “extras” and not the matter governed by the written agreement containing the arbitration clause. Defendants withdrew their Preliminary Objection with respect to arbitration and requested that the remaining Preliminary Objections be scheduled for argument and disposition. After a series of continuances, argument was scheduled for April 11, 2022. However, on the day of the argument, counsel for the parties requested that the Preliminary Objections be decided on the briefs they submitted.

Defendants' Preliminary Objections with regard to the legal insufficiency of Count IV alleged that, pursuant to 73 P.S. §503(a) of the Contractor and Subcontractor Payment Act, "[t]his act shall not apply to improvements to real property which consists of six or fewer residential units which are under construction simultaneously." As the litigation relates to the remodeling of the Defendants' single residential unit, Defendants argue that the Plaintiff will be unable to prove facts legally sufficient to establish its right to relief. In its Brief in Opposition to Defendants' Preliminary Objections, Plaintiff concedes that under current appellate precedent, the Act has been interpreted as applying only to multi-unit construction and therefore withdraws its claim under Count IV.

As Defendants' Preliminary Objections relating to arbitration have been deemed withdrawn, and Plaintiff has withdrawn their claim under the Contractor and Subcontractor Payment Act, the Defendant's remaining objection requests to strike Count III for legal insufficiency. When ruling on a preliminary objection in the nature of a demurrer, the Court must be mindful of the following:

A preliminary objection in the nature of a demurrer is properly sustained where the contested pleading is legally insufficient. Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer. All material facts set forth in the pleading and all inferences reasonably deducible therefrom must be admitted as true. . . . When sustaining the preliminary objections will result in the denial of claim or a dismissal of suit, the preliminary objections may be sustained only where the case is free and clear of doubt.

**Hill v. Ofalt**, 85 A.3d 540, 547-548 (Pa. Super. 2014) (internal citations omitted).

Defendants' preliminary objection with regard to Count III (Tortious Theft of Services) of Plaintiff's Complaint indicates that the Complaint does not allege with any specificity or particularity the allegations of fraud that were allegedly committed by the Defendants. The Complaint alleges "[D]efendants acted in a fraudulent manner and misrepresenting their intention to make payment to the detriment of Plaintiff." *Plaintiff's Complaint, 7/30/21*, ¶ 55. The Complaint further alleges "[t]he acts committed by Defendants or omissions were intentional, or, in the alternative, were negligent, and in any event have resulted in Defendants' failing to make payment, suggestions for payment, terms of payment, attempts at reconciliation, or any other effort to recognize their duties and obligations." *Id. at* ¶ 57. Defendants argue, since the Plaintiff's Complaint fails to support, with particularity, the allegations of "fraud," the Plaintiff's Complaint is legally insufficient.

"Fraud" consists of "anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture." *Martin v. Hale Products, Inc.*, 699 A.2d 1283, 1288 (Pa. Super. 1997). To demonstrate fraud, the plaintiff must establish the following elements: "(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." *Id.* The essence of fraud is "a misrepresentation

fraudulently uttered with the intent to induce the action undertaken in reliance upon it, to the damage of its victim.” *Id.*

Pursuant to Pa.R.C.P. 1019(b), “averments of fraud or mistake shall be averred with particularity.” In the present case, the Complaint fails to state with specificity the statements made or the actions taken by Defendants which fraudulently induced Plaintiff to complete additional work. All actions and statements alleged by the Plaintiff to have been made or taken by the Defendant with respect to the failure to pay were done and made after the work was completed. The Plaintiff last worked on the project in December 2018, and met with Defendant John Ritter in 2019 to ask about finishing the work. *Plaintiff’s Complaint, 7/30/21, ¶¶ 14, 16.* Only in October of 2020 did Plaintiff make a demand for payment, which was followed by a series of, as Plaintiff alleges, delays and evasiveness on the part of Defendants with respect to payment of the money owed for the work performed. The Plaintiff has failed to establish through his Complaint that the Defendants made knowingly false representations with respect to payment, which Plaintiff relied upon when deciding to perform additional work on the Defendants’ property.

Accordingly, Defendants’ Preliminary Objection in the form of a demurrer to Count III is **SUSTAINED** and Count III is hereby stricken from the Complaint

as legally insufficient. Defendants shall file an Answer to Counts I and II of Plaintiff's Complaint within **twenty (20)** days of the date of this Order.

BY THE COURT,

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Ryan M. Tira, Judge

RMT/jel

CC: Michael Dinges, Esq.  
Clifford Rieders, Esq.  
Gary Weber, Esq.