

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

SUSQUEHANNA LEGAL AID FOR : NO. CV-2024-01041  
ADULTS AND YOUTH D/B/A/ SLAAY, :  
Plaintiff, :  
 :  
 :  
 :  
 vs. :  
 : CIVIL ACTION - LAW  
 :  
 MARK AND SUZANNE WINKELMAN and :  
 THE PAJAMA FACTORY, LLC and P.J. :  
 HOLDING, LLC, : Preliminary Objections  
 Defendants. : to Third Amended Complaint

**OPINION AND ORDER**

This matter came before the Court on April 7, 2025, for oral argument on Defendants’ Preliminary Objections, filed March 3, 2025, to Plaintiff’s Third Amended Complaint. A representative of the Defendants appeared with counsel. Plaintiff did not appear.

Following an earlier evidentiary hearing in this matter, the Count entered the following Findings of Fact:

1. Defendants Mark and Suzanne Winkelman (hereinafter collectively “Winkelman”) are the members of a limited liability company named P.J. Holdings, LLC, which in turn is the owner of one or more parcels of real property situate at 1307 Park Avenue, Williamsport, Pennsylvania 17701. Winkelman are the members of a separate limited liability company known as the Pajama Factory, LLC, which is the operating entity for the real estate. For ease of reference, both limited liability companies will hereinafter be referred to as the “Pajama Factory” and the real property owned and operated by those limited liability companies will be referred to as the “Premises.”
2. The Premises contains eight (8) buildings, several of which have been leased to commercial tenants. The Plaintiff is one of those tenants.
3. According to Winkelman, the Premises contains approximately 300,000 square feet of leasable space, of which approximately 240,000 has a functional sprinkler system, and 60,000 does not.

4. According to Winkelman, all but three (3) of the commercial tenants at the Premises are occupying space which is sprinklered.
5. As a result of an inspection conducted by an agency of the City of Williamsport (hereinafter the “City”), the City served Winkelman with a notice—dated July 18, 2024—introduced into evidence at Exhibit G, which directed the Defendants to vacate the Premises, unless and until the entire Premises is served by a functional sprinkler system. The notice gave Defendants an option, in the interim, of providing a “fire watch” defined as in person security by trained personnel, alert for signs of a potential fire, on a twenty-four (24) hour per day, seven (7) days per week basis (hereinafter the “Eviction Notice”).
6. Defendants have filed a timely appeal to the Notice, which has been the subject of an appeal hearing before an agency of the City (hereinafter the “Eviction Appeal”). Defendants have received no response from the City on the eviction appeal.
7. During the pendency of the Eviction Appeal, Defendants have engaged fire watch services at the Premises. Because of the fire watch service, the effect of the Eviction Notice has been stayed.
8. Plaintiff introduced no testimony to suggest that the Defendants intend to terminate the fire watch service. Thus, there is no testimony that Plaintiff is currently threatened with eviction.
9. In the event that the fire watch service is terminated by Defendants, and unless the City withdraws or modifies the Eviction Notice, Plaintiff may be threatened with eviction.
10. When questioned by the Court regarding the eventual outcome of the Eviction Appeal, Mark Winkelman responded that he hoped for an outcome which involved some compromises regarding the position taken by the City in the Eviction Notice.
11. Plaintiff contends that local media coverage of issues related to the Eviction Notice and the Eviction Appeal have had a negative effect upon the reputation of the Plaintiff.
12. The Court finds that local media have reported issues related to the Eviction Notice and the Eviction Appeal, including the hearing conducted before an agency of the City. Those reports have centered around the position taken by the City in connection with the Eviction Notice, and Defendants’ response and the Eviction Appeal. Those reports have not

been directed at Plaintiff, or Plaintiff's business operations. Thus, Plaintiff's claim of negative effect upon Plaintiff's business reputation is speculative.

13. The City representative testified that the Eviction Notice was issued based upon concerns about the size of the buildings at the Premises, the lack of a functional sprinkler system, and the fact that the Premises is situated in a residential neighborhood.

Order of October 11, 2024.

At some point during the pendency of this matter, Defendants undertook to evict the Plaintiff from its tenancy. That generated another Petition seeking Injunctive Relief. After another evidentiary hearing on January 22, 2025, the Court entered an Order granting the Plaintiff the following interim relief:

1. Defendant's eviction action filed before Magistrate District Judge Biichle, to docket number 29102-LT-4-2025, is STAYED, until May 1, 2025, or further Order of Court.
2. Defendants are enjoined from taking any action to evict Plaintiff from its current leased premise at 1307 Park Avenue, Williamsport, PA 17701, until April 30, 2025, provided the Plaintiff complies with the rental payment terms of this Order.
3. Plaintiff is ordered and directed to make timely payment of rent to Defendants, as follows:
  - a. Rent in the amount of \$1071.00 per month on February 1, March 1, and April 1, 2025.
  - b. "Catch-up" rent for January, 2025, by payment of the additional sum of \$357.00 per month to Defendants on February 1, March 1, and April 1, 2025.
  - c. Thus, the total amount of rental per month paid by Plaintiff to Defendants on February 1, March 1, and April 1, 2025, will be in the amount of \$1,428.00 per month.
  - d. Plaintiff's occupancy of its current leased premise at 1307 Park Avenue, Williamsport, PA 17701, until April 30, 2025, will be subject to the same terms and conditions as its written lease in effect during the calendar year 2024.
  - e. Nothing set forth herein will be interpreted to prevent Defendants from proceeding to evict Plaintiff, on or after May 1, 2025, pursuant to applicable law.

Order of January 24, 2025.

By Order of January 22, 2025, the Court Ordered the Plaintiff to file its Third Amended Complaint, which was filed on February 9, 2025. On March 3, 2025, Defendants filed their Preliminary Objections to the Third Amended Complaint. After oral argument conducted on April 7, 2025, those Preliminary Objections are granted in part and denied in part, as more fully set forth, herein.

**ISSUES PRESENTED:**

1. WHETHER A DEMURRER SHOULD BE ENTERED TO ALL OF THE CLAIMS ASSERTED IN THE COMPLAINT.
2. WHETHER PLAINTIFF CAN PURSUE ITS CLAIMS ON BEHALF OF THIRD PARTIES.
3. WHETHER PLAINTIFF SHOULD BE REQUIRED TO ATTACH ANY WRITTEN CONTRACT UPON WHICH ITS CAUSE OF ACTION IS BASED.
4. WHETHER PLAINTIFF'S CLAIM FOR ATTORNEY'S FEES SHOULD BE STRICKEN.
5. WHETHER PLAINTIFF'S CLAIM FOR BREACH OF AN IMPLIED WARRANTY OF HABITABILITY SHOULD BE STRICKEN.
6. WHETHER PLAINTIFF SHOULD BE REQUIRED TO IDENTIFY THE PARTICULAR LEASE TERMS AT ISSUE.
7. WHETHER THE COMPLAINT CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS SHOULD BE DISMISSED.
8. WHETHER PLAINTIFF'S CLAIM OF PROMISSORY ESTOPPEL SHOULD BE DISMISSED.
9. WHETHER PLAINTIFF'S CLAIM UNDER THE UNFAIR TRADE PRACTICES ACT SHOULD BE DISMISSED.

**RESPONSE TO ISSUES PRESENTED:**

1. NO DEMURRER WILL BE ENTERED TO PLAINTIFF'S ENTIRE THIRD AMENDED COMPLAINT, BUT PLAINTIFF WILL BE DIRECTED TO FILE A FOURTH AMENDED COMPLAINT.

2. PLAINTIFF WILL NOT BE PERMITTED TO PURSUE ITS CLAIMS ON BEHALF OF THIRD PARTIES, UNLESS PLAINTIFF SEEKS TO PROCEED PURSUANT TO PA. R. CIV. P. 1701 ET SEQ.
3. PLAINTIFF SHALL BE REQUIRED TO ATTACH ANY WRITTEN CONTRACT UPON WHICH ITS CAUSE OF ACTION IS BASED.
4. PLAINTIFF WILL BE DIRECTED TO SET FORTH IN DETAIL THE FACTUAL BASIS FOR ITS CLAIM FOR ATTORNEY'S FEES.
5. PLAINTIFF'S CLAIM FOR BREACH OF AN IMPLIED WARRANTY OF HABITABILITY WILL BE STRICKEN.
6. PLAINTIFF WILL BE REQUIRED TO IDENTIFY THE PARTICULAR LEASE TERMS AT ISSUE.
7. PLAINTIFF WILL BE REQUIRED TO SET FORTH IN DETAIL THE FACTUAL BASIS FOR ITS CLAIM AGAINST THE INDIVIDUAL DEFENDANTS, OR TO WITHDRAW THOSE CLAIMS.
8. PLAINTIFF WILL BE REQUIRED TO SET FORTH IN DETAIL THE FACTUAL BASIS FOR ITS CLAIM OF PROMISSORY ESTOPPEL, OR TO WITHDRAW THAT CLAIM.
9. PLAINTIFF WILL BE REQUIRED TO SET FORTH IN DETAIL THE FACTUAL BASIS FOR ITS CLAIM UNDER THE UNFAIR TRADE PRACTICES ACT, OR TO WITHDRAW THAT CLAIM.

**DISCUSSION:**

1. NO DEMURRER WILL BE ENTERED TO PLAINTIFF'S ENTIRE THIRD AMENDED COMPLAINT, BUT PLAINTIFF WILL BE DIRECTED TO FILE A FOURTH AMENDED COMPLAINT.

It is settled Pennsylvania law that the entry of a demurrer to one or more claims asserted in a Complaint is disfavored:

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein*, 395

Pa. 173, 149 A.2d 110 (1959); *March v. Banus*, 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts, *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust*, 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra*.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.*, 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.*, 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein, supra*; *London v. Kingsley*, 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker*, 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also Schott v. Westinghouse Electric Corp., supra*, 436 Pa. at 291, 259 A.2d at 449.

*Mudd v. Hoffman Homes for Youth, Inc.*, 543 A.2d 1092, 1093–94 (Pa. Super. Ct. 1988) (quoting *County of Allegheny v. Commonwealth*, 490 A.2d 402, 408 (Pa. 1985)), *abrogated on other grounds; accord Ritz v. Ramsay*, 305 A.3d 1056, 1061 (Pa. Super. Ct. 2023) (internal citation omitted) (“If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.”).

Although Plaintiff's Third Amended Complaint leaves much to be desired, the Court cannot conclude with certainty that Plaintiff cannot state any cause of action upon which relief can be granted. Thus, Plaintiff will be directed to file a Fourth Amended Complaint.

2. PLAINTIFF WILL NOT BE PERMITTED TO PURSUE ITS CLAIMS ON BEHALF OF THIRD PARTIES, UNLESS PLAINTIFF SEEKS TO PROCEED PURSUANT TO PA. R. CIV. P. 1701 ET SEQ.

Plaintiff's Third Amended Complaint appears to seek relief on behalf of other tenants of the Defendant. Unless Plaintiff proceeds under Pa. R. Civ. P. 1701 et seq., Plaintiff may proceed only on its own behalf.

3. PLAINTIFF SHALL BE REQUIRED TO ATTACH ANY WRITTEN CONTRACT UPON WHICH ITS CAUSE OF ACTION IS BASED.

It is undisputed that Plaintiff is asserting some of its claim under the terms of one or more written leases with one of the Defendants. Those documents must be attached to Plaintiff's Complaint, pursuant to Pa. R. Civ. P. 1019(i).

4. PLAINTIFF WILL BE DIRECTED TO SET FORTH IN DETAIL THE FACTUAL BASIS FOR ITS CLAIM FOR ATTORNEY'S FEES.

#### The American Rule of Attorney's Fees

Pennsylvania follows what is commonly known as the "American Rule," that a successful litigant cannot recover attorneys' fees from an adverse party, unless there is either an express agreement between them, statutory authority, or some established exception. *Trizechahn Gateway LLC v. Titus*, 976 A.2d 474, 482-83 (Pa. 2009) (citing *Mosaica Charter School v. Commonwealth Department of Education*, 813 A.2d 813, 822 (Pa. 2002)).

42 Pa.C.S. §2503, for example, provides that "the [] participants shall be entitled to a reasonable counsel fee as part of the taxable costs" in ten (10) enumerated circumstances, including "(7) any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of any matter" or "(9) any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith."

Since Plaintiff has not yet prevailed in this matter, there cannot be any claim pursuant to 42 Pa.C.S. §2503. Thus, the Court is at a loss to find any basis for a claim by Plaintiff for an award of attorney's fees, unless there is some express agreement between the parties. Plaintiff

has failed to allege sufficient facts to suggest that the parties have any agreement which would support a claim by Plaintiff for attorney's fees.

5. PLAINTIFF'S CLAIM FOR BREACH OF AN IMPLIED WARRANTY OF HABITABILITY WILL BE STRICKEN.

Plaintiff is asserting claims under a commercial lease, the contents of which are likely to control this matter. Thus, the Court cannot understand the basis for a claim of breach of the implied warranty of habitability, which is implied in residential leases.

6. PLAINTIFF WILL BE REQUIRED TO IDENTIFY THE PARTICULAR LEASE TERMS AT ISSUE.

Plaintiff is asserting claims under a commercial lease, the contents of which are likely to control this matter. It is not entirely clear which lease sections form the basis for Plaintiff's claims. Thus, Plaintiff will be directed to allege the lease provisions at issue, pursuant to Pa. R. Civ. P. 1019(a).

7. PLAINTIFF WILL BE REQUIRED TO SET FORTH IN DETAIL THE FACTUAL BASIS FOR ITS CLAIM AGAINST THE INDIVIDUAL DEFENDANTS, OR TO WITHDRAW THOSE CLAIMS.

It is undisputed that Defendants Mark and Suzanne Winkelman (hereinafter collectively "Winkelman") are the members of a limited liability company named P.J. Holdings, LLC, which in turn is the owner of one or more parcels of real property situate at 1307 Park Avenue, Williamsport, Pennsylvania 17701. Winkelman are the members of a separate limited liability company known as the Pajama Factory, LLC, which is the operating entity for the real estate. Thus, it appears that the real party Defendant to Plaintiff's claims under the lease should be Pajama Factory, LLC. Plaintiff has also named Winkelman and P.J. Holdings, LLC. Unless Plaintiff contends that Winkelman and P.J. Holdings, LLC, agreed to guarantee the obligations of Pajama Factory, LLC, it appears that they should not be named Defendants.



8. PLAINTIFF WILL BE REQUIRED TO SET FORTH IN DETAIL THE FACTUAL BASIS FOR ITS CLAIM OF PROMISSORY ESTOPPEL, OR TO WITHDRAW THAT CLAIM.

Defendants seek a demurrer to Plaintiff's claim of promissory estoppel. While the gravamen of Plaintiff's claim is obviously breach of the terms of a written lease, it is at least conceivable that Plaintiff also asserts promissory estoppel, in the alternative.

We begin with a review of the principles of detrimental reliance, which this Court has explained "is another name for promissory estoppel." *Peluso v. Kistner*, 970 A.2d 530, 532 (Pa. Cmwlth. 2009) (quoting *Travers v. Cameron County School District*, 117 Pa.Cmwlth. 606, 544 A.2d 547, 550 (1988)). Promissory estoppel provides an equitable remedy to enforce a "contract-like promise that would be otherwise unenforceable under contract law principles." *Id.* In promissory estoppel, the aggrieved party must show that "(1) the promisor made a promise that he should have reasonably expected to induce action or forbearance on the part of the promisee; (2) the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise." *Crouse v. Cyclops Industries*, 560 Pa. 394, 745 A.2d 606, 610 (2000). These factors are strictly enforced to guard against the "loose application" of promissory estoppel. *Peluso*, 970 A.2d at 533.

*Cornell Narberth, LLC v. Borough of Narberth*, 167 A.3d 228, 239 (Pa. Commw. Ct. 2017).

The material facts which support Plaintiff's claim for promissory estoppel are not entirely clear from the face of Plaintiff's Third Amended Complaint. Pa. R. Civ. P. 1019(a) requires that "[t]he material facts upon which a cause of action or defense is based shall be stated in a concise and summary form." Thus, Plaintiff will be directed to allege those material facts, pursuant to Pa. R. Civ. P. 1019(a).

9. PLAINTIFF WILL BE REQUIRED TO SET FORTH IN DETAIL THE FACTUAL BASIS FOR ITS CLAIM UNDER THE UNFAIR TRADE PRACTICES ACT, OR TO WITHDRAW THAT CLAIM.

Plaintiff's claim under the Unfair Trade Practices and Consumer Protection Law is largely a boilerplate recitation of the statutory list of unfair trade practices. Such a recitation does not satisfy Pa. R. Civ. P. 1019(a). Thus, Plaintiff will be directed to allege those material facts.

### **ORDER**

**AND NOW**, this 9<sup>th</sup> day of April, 2025, Defendants' Preliminary Objections filed March 3, 2025, are granted in part and denied in part, as follows:

1. Plaintiff is directed to file a Fourth Amended Complaint, within twenty (20) days of the date of filing of this Order.
2. Plaintiff's Fourth Amended Complaint will not assert claims on behalf of any third party to this action.
3. Plaintiff will attach any lease or other written document to the Third Amended Complaint, which forms the basis for any of Plaintiff's claims.
4. The Fourth Amended Complaint will not assert any claim for attorney's fees, unless the Plaintiff alleges material facts in support of that claim, pursuant to applicable law.
5. The Fourth Amended Complaint will not assert any residential claims, such as claims for breach of the implied warranty of habitability, or the like.
6. To the extent that the Fourth Amended Complaint asserts any claims under any written agreement, Plaintiff will identify that relevant portion of the agreement.
7. The Fourth Amended Complaint will not assert any claims against Mark or Suzanne Winkelman, unless the Plaintiff alleges material facts in support of those claims, pursuant to applicable law.
8. The Fourth Amended Complaint will not assert any claim of promissory estoppel, unless the Plaintiff alleges material facts in support of that claim, pursuant to applicable law.

9. The Fourth Amended Complaint will not assert any claim under the Unfair Trade Practices Act, unless the Plaintiff alleges material facts in support of that claim, pursuant to applicable law.
10. Except to the extent of the relief provided herein, Defendants' Preliminary Objections to Plaintiff's Third Amended Complaint, are denied.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator  
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