

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

ALLEN FEINGOLD	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
PA PROPERTY AND CASUALTY	:	No. 3106 EDA 2023
INSURANCE	:	

Appeal from the Order Entered November 29, 2023
In the Court of Common Pleas of Philadelphia County Civil Division at
No(s): 231001226

BEFORE: LAZARUS, P.J., KING, J., and LANE, J.

MEMORANDUM PER CURIAM:

FILED APRIL 29, 2025

Allen Feingold ("Feingold") appeals from the order sustaining the preliminary objections filed by Pennsylvania Property & Casualty Insurance Guarantee Association ("Insurer"),¹ and dismissing the complaint. We affirm.

The trial court set forth the relevant factual and procedural history underlying this appeal, as follows:

Mr. Feingold, who previously was a licensed attorney, is no stranger to the legal system. Mr. Feingold has a lengthy litigious career in both the trial and appellate courts. Mr. Feingold was disbarred in August 2008. This matter appears to relate to Mr. Feingold's prior representation of his client, Louis Viola, Sr. Mr. Feingold alleges that he settled Mr. Viola's claims against the predecessor to [Insurer]. But[,] after the settlement was reached, the insurance company allegedly failed to pay the actual proceeds. During this time, Mr. Feingold concedes that he was disbarred, and Mr. Viola sought new representation. At some

¹ Insurer indicates that it is the successor to the insurance entity Feingold identified in the complaint. **See** Appellee's Brief at 2.

point prior—the specifics of which are unknown from the complaint—Mr. Feingold advanced Mr. Viola the settlement monies due to Mr. Viola and, in exchange, Mr. Viola assigned his claim to Mr. Feingold.

[Feingold initiated this action and designated it as one sounding in breach of contract; however, his] complaint does not contain any dates, it does not contain a docket number for Mr. Viola’s case, it does not contain any specifics whatsoever about Mr. Viola’s claims, the settlement, or any alleged assignment, and it does not attach any writings or contracts.

Mr. Feingold, through counsel Elliott Tolan, Esq. [(“Attorney Tolan”)], filed this action on October 12, 2023. On October 23, 2023, Mr. Tolan filed a motion to withdraw as counsel, which this court denied. On November 2, 2023, [Insurer] filed a preliminary objection to the complaint arguing that the complaint lacks specificity, and the lack of specificity is a fatal defect that should not entitle Mr. Feingold leave to amend. Mr. Feingold filed an answer on November 13, 2023. On November 2[9], 2023, this court sustained the preliminary objection and dismissed the complaint. This court’s order of November 2[9] incorrectly stated that Mr. Feingold had not filed an answer to the preliminary objection.

On December 5, 2023, Mr. Feingold filed an appeal of this court’s order. [The notice of appeal was purportedly signed by Attorney Tolan.] On December 12, 2023, after Mr. Feingold had filed his appeal to the Superior Court, this court issued a corrective order, noting that Mr. Feingold had filed an answer to the preliminary objection, and the court had considered the answer when ruling on the preliminary objection[s]. [Both Feingold and the trial court complied with Pa.R.A.P. 1925.]

Trial Court Opinion, 3/14/24, at 1-3 (footnotes and unnecessary capitalization omitted).²

² Feingold filed a second appeal, purporting to challenge the trial court’s December 12, 2023 corrective order. However, this Court determined that the November 29, 2023 order was the final appealable order in the matter, *(Footnote Continued Next Page)*

During the pendency of this appeal, Attorney Tolan entered his appearance as counsel of record, and thereafter filed an appellate brief, a reply brief, and other motions on Feingold's behalf. However, at some point, no further filings were made by Attorney Tolan and Feingold himself began filing a series of *pro se* motions. Upon receipt of these *pro se* motions, this Court admonished Feingold that hybrid representation is generally not permitted in this Commonwealth, and therefore directed the prothonotary to forward copies of Feingold's *pro se* motions to Attorney Tolan. **See** Pa.R.A.P. 121(g) (providing that the *pro se* filing will be noted on the docket but not accepted for filing). Notwithstanding this Court's clear directives, Feingold continued to file *pro se* motions, including motions for the withdrawal of Attorney Tolan as his counsel of record, noting that Attorney Tolan had been administratively suspended from the practice of law in this Commonwealth. Additionally, although the prothonotary forwarded each of Feingold's *pro se* motions to Attorney Tolan, no response was received from Attorney Tolan. This Court then directed the trial court to determine the status of Attorney Tolan's representation of Feingold in this matter, as well as in another appeal pending in this Court for which Attorney Tolan was also counsel of record for Feingold,³ given that Feingold's numerous *pro se* filings in both matters had

and quashed the second appeal as improperly taken from a subsequent clarifying order. **See** Pa.R.A.P. 1701(b)(1).

³ **See *Feingold v. Fishman***, No. 3043 EDA 2023.

been forwarded to Attorney Tolan pursuant to Rule 121(g), but no response had been forthcoming from him. This Court also directed the trial court to provide a written statement in both matters indicating who is authorized to submit filings on Feingold's behalf so as to prevent hybrid representation.

In response to this Court's order, the trial court issued a rule to show cause to Attorney Tolan and noticed a hearing on the matter for both cases. The trial court then conducted a hearing at which neither Attorney Tolan nor Feingold attended. Counsel for the appellees in both matters appeared at the hearing. The trial court subsequently indicated in a written statement to this Court its belief that Attorney Tolan was "either intentionally or unintentionally, serv[ing] as a conduit for . . . Feingold to pursue [these] matter[s], as . . . Feingold was previously barred from the practice of law and prohibited from filing matters in the Philadelphia Court of Common Pleas." Trial Court Opinion, 11/27/24, at 2. The trial court indicated its further belief that "[i]t is plausible . . . that . . . Feingold did all of the filing, using . . . [Attorney] Tolan's attorney log-on for the electronic filing system." ***Id.*** The trial court based its suspicions on an email provided by counsel for one of the appellees, sent from Attorney Tolan to Mark Gilson, Esquire of the Office of Disciplinary Counsel, wherein Attorney Tolan expressly indicated "***I do not want to represent . . . Feingold.***" ***See id.*** (Exhibit, email dated 10/20/23). In the email, Attorney Tolan further explained that he "recall[ed] . . . Feingold asking me to sign some papers. I did so without reading them, assuming that they were

inconsequential. Perhaps that is the source.” ***Id.*** Based on these statements by Attorney Tolan, the trial court concluded that “it is this court’s view that [Attorney] Tolan does not represent, and perhaps has never represented, . . . Feingold in [these] action[s].” ***Id.***⁴ The matter then returned to this Court for disposition.

Feingold raises the following issue for our review:

Whether the trial court abused its discretion and erred as a matter of law in dismissing [Feingold’s] claim for reimbursement of payment for arbitration settlement/agreement and award, where the [Insurer was] court ordered [*sic*] and legally required by statute and law too [*sic*] fulfill, pay and provide the [Feingold] with such payment, which [it] failed to complete to this day, especially, since [its] obligation was only uncovered and came into being a little over a year ago.

⁴ Based on our independent review of the record in both of these matters, this Court shares the same belief as the trial court that Attorney Tolan is intentionally or unintentionally serving as a conduit for Feingold, who is no longer authorized to practice law in this Commonwealth, so that he may continue to commence and pursue frivolous and/or stale matters which cause aggravation and legal expense to the parties named as defendants and divert limited judicial resources to address them. If, in fact, Attorney Tolan was unaware of this matter and merely affixed his signature to the documents drafted and presented to him by Feingold, or if Feingold is using Attorney Tolan’s log-on credentials for the electronic filing system, such conduct would constitute fraud on our courts, warranting the immediate dismissal of this appeal. Going forward, prior to initiating any other legal action in this Commonwealth, Feingold must provide the lower court with clarification regarding his representation, as well as proof that he has a legitimate basis for bringing these claims before this Court will entertain any further appeal in a matter he initiates.

Feingold's Brief at 3 (unnecessary capitalization omitted).⁵

The following principles govern our review of an order sustaining preliminary objections:

Our standard of review mandates that on an appeal from an order sustaining preliminary objections which would result in the dismissal of suit, we accept as true all well-pleaded material facts set forth in the [a]ppellant's complaint and all reasonable inferences which may be drawn from those facts. . . .

Where, as here, upholding sustained preliminary objections would result in the dismissal of an action, we may do so only in cases that are clear and free from doubt. To be clear and free from doubt that dismissal is appropriate, it must appear with certainty that the law would not permit recovery by the plaintiff upon the facts averred. Any doubt should be resolved by a refusal to sustain the objections. We review for merit and correctness—that is to say, for an abuse of discretion or an error of law. This case was dismissed at the preliminary objections stage on issues of law; our scope of review is thus plenary.

Marks v. Nationwide Ins. Co., 762 A.2d 1098, 1099 (Pa. Super. 2000) (citations omitted). Preliminary objections may be filed by any party to any pleading based on, *inter alia*, insufficient specificity in a pleading. **See** Pa.R.C.P. 1028(a)(3).

The following principles govern a breach of contract claim:

A cause of action for breach of contract must be established by pleading (1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages. While not every term of a contract must be

⁵ We note with disapproval that this issue was not raised in Feingold's concise statement. **See** Pa.R.A.P. 1925(b)(4)(vii) (providing that issues not raised in the concise statement are waived). Although we could find waiver of Feingold's issue on this basis, we decline to do so.

stated in complete detail, every element must be specifically pleaded.

Pennsy Supply, Inc. v. American Ash Recycling Corp. of Pennsylvania, 895 A.2d 595, 599 (Pa. Super. 2006) (internal citations and quotation marks omitted). Additionally, if a breach of contract claim is based on written documents, the plaintiff is required to attach the documents to his complaint. **See** Pa.R.C.P. 1019(i).

A contract requires three essential elements: (1) mutual assent; (2) consideration; and (3) sufficiently definite terms. **See *Helpin v. Trustees of Univ. of Pennsylvania***, 969 A.2d 601, 610 (Pa. Super. 2009). An agreement is an enforceable contract wherein the parties intended to conclude a binding agreement and the essential terms of that agreement are certain enough to provide the basis for providing an appropriate remedy. **See *United Environmental Group, Inc. V. GKK McKnight, LP***, 176 A.3d 946, 963 (Pa. Super. 2017). If the essential terms of the agreement are so uncertain that there is no basis for determining whether the agreement has been kept or broken, there is not an enforceable contract. **See *id.***

In his brief, Feingold does not address any of the considerations governing our review and analysis of the trial court's order sustaining the preliminary objections to his breach of contract claim. Importantly, Feingold does not identify where in his complaint he pleaded (1) the existence of a contract with Insurer, including the essential terms of any such contract, (2) a breach of a duty by the Insurer—which duty was imposed by the contract;

or (3) resultant damages from a breach of the contract by the Insurer. **See *Pennsy Supply, Inc.***, 895 A.2d at 599. Feingold has similarly failed to direct this Court to the place in the complaint where he pleaded: (1) mutual assent; (2) consideration; and (3) sufficiently definite terms of any contract he purportedly entered with Insurer. **See *Helpin***, 969 A.2d at 610. Additionally, Feingold did not indicate in his complaint whether any purported contract with Insurer was written or oral; however, to the extent that such contract was written, he failed to attach it to his complaint. **See** Pa.R.C.P. 1019(i).

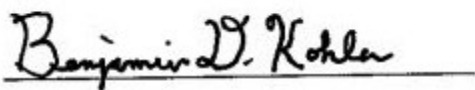
In short, Feingold has failed to provide this Court with any meaningful discussion as to whether the complaint pleaded sufficient facts to establish the existence of an enforceable contract. **See** Pa.R.A.P. 2119(a) (requiring the appellant's brief to address the specific issues raised on appeal and provide for each issue a discussion of authorities as are deemed pertinent); **see also** Pa.R.A.P. 2101 (providing that if the defects in the brief of the appellant are substantial, the appeal may be quashed or dismissed).

Instead, Feingold devotes much of the argument section of his brief to a generalized and unfocused discussion regarding numerous topics which do not seem to bear any relationship to the instant matter, including the imposition of an attorney's charging lien, equitable remedies, actions for negligence, interpleaded funds, standing to file a claim against the "stake," fraud, misrepresentation, and punitive damages. **See** Feingold's Brief at 14-

unnumbered 26.⁶ Having failed to provide this Court with any pertinent or coherent discussion regarding the sole issue he raised for this Court's review, we are constrained to find Feingold's issue waived for lack of development. ***See In re W.H.***, 25 A.3d 330, 339 (Pa. Super. 2011) (holding that where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived). We therefore affirm the trial court's order sustaining the preliminary objections filed by Insurer.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 4/29/2025

⁶ While some pages of the brief are numbered, most pages are unnumbered. Additionally, many pages and words throughout the brief appear to be copied and pasted from other cases unrelated to the instant action.