

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

ALLEN L. FEINGOLD	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
SAMUEL FISHMAN AND LAW	:	No. 3043 EDA 2023
OFFICES OF SAMUEL FISHMAN	:	

Appeal from the Order Entered November 14, 2023  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): 230801326

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 objection filed by Samuel Fishman, Esq., and the Law offices of Samuel Fishman (collectively "Fishman") 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 legal fees Mr. Feingold believes he is owed by . . . Fishman . . . dating back to the time Mr. Feingold was disbarred.

Mr. Feingold filed this action in . . . municipal court . . . [in] 2023 seeking the sum of \$ 6,472.00 from . . . Fishman for fees rendered. Mr. Feingold attached to the . . . statement of claim a letter dated November 25, 2009[,] from . . . Fishman to Carmen Nasuti, Esq., with the Office of Disciplinary Counsel, purportedly

including a check in the amount of \$6,472.00. While this court does not have the benefit of the municipal court transcript, it would appear the sum sought by Mr. Feingold in this action is the same money . . . Fishman sent to Mr. Nasuti in November 2009.

At the hearing held before the Honorable Christian DiCicco on August 8, 2023, Judge DiCicco entered judgment in favor of . . . Fishman . . . and against Mr. Feingold. Mr. Feingold, through counsel Elliot Tolan, Esq. [("Attorney Tolan")], filed an appeal to this court. After Mr. Feingold filed his complaint . . . Fishman filed the preliminary objections raising the following three issues: (i) failure to properly comply with the Philadelphia local rules regarding service of appeals from municipal court; (ii) failure to state a claim for breach of contract; and (iii) the claim, if any, is barred by the statute of limitations.

Mr. Feingold, through counsel, filed an answer to the preliminary objections. [Attorney] Tolan also filed a motion to withdraw as counsel. Later, after . . . Fishman had filed a reply, both Mr. Feingold and [Attorney] Tolan separately filed sur replies. On November 14, 2023, this court entered an order sustaining [only] the preliminary objection for failure to state a claim. On November 28, 2023, Mr. Feingold filed this appeal to the Superior Court. [Both Feingold and the trial court complied with Pa.R.A.P. 1925.]

Trial Court Opinion, 3/4/24, at 1-3 (footnotes and unnecessary capitalization omitted).

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,<sup>1</sup> given that Feingold's numerous *pro se* filings in both matters had 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

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<sup>1</sup> ***See Feingold v. PA Property and Casualty Insurance***, No. 3106 EDA 2023.

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.**<sup>2</sup> The matter then returned to this Court for disposition.

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<sup>2</sup> 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  
(Footnote Continued Next Page)

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 fees and costs where [Fishman] were court ordered [*sic*] and agreed to fulfill their obligations to provide [Feingold] with certain payments for his fees and court costs, which they failed to complete to this day, especially since they closed their old checking account and received the monies court ordered for [Feingold], to this day, but same was only uncovered a little over a year ago.

Feingold's Brief at 3 (unnecessary capitalization omitted).<sup>3</sup>

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. . . .

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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.

<sup>3</sup> 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.

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*, legal insufficiency of a pleading (demurrer). **See** Pa.R.C.P. 1028(a)(4).

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 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 objection based on the legal insufficiency of his complaint. Importantly, although the complaint generally alleged that Fishman was obligated to pay him money, Feingold does not identify where in his complaint he pleaded (1) the existence of a contract with Fishman, including the essential terms of any such contract, (2) a breach of a duty by Fishman—which duty was imposed by the contract; or (3) resultant damages from a breach of the contract by Fishman. **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 Fishman. **See *Helpin***, 969 A.2d at 610. Additionally, Feingold did not indicate in his complaint whether any purported contract with Fishman 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).<sup>4</sup>

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 a legally enforceable claim. **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 provided a "Statement of Facts Related to Cases Involving . . . Feingold." Feingold's Brief at 10-12." Therein, Feingold provided a generalized and unsupported discussion regarding the three

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<sup>4</sup> To the extent that Feingold claims that Fishman was obligated to pay him monies pursuant to a court order, Feingold did not aver that any such order was entered or attach any such order to the complaint. Instead, Feingold attached to the complaint a 2009 court order which directed the civil defendants in Ms. Perry's lawsuit to deliver a settlement check to the trial court, to be made payable to Ms. Perry, Feingold, and another attorney, which check was to be retained by the trial court "until further order." **See** Complaint, 9/19/23, at Exhibit 1. Notably, the order does not reference Fishman or order him to pay any amount to Feingold. **See id.** Feingold also attached to his complaint a 2009 letter sent by Fishman to the Office of Disciplinary Counsel enclosing two checks purportedly relating to the settlement of Ms. Perry's lawsuit, one made payable to Feingold, and another made payable to a different attorney, and requesting that the Disciplinary Counsel "distribute the enclosed checks accordingly." **See id.** at Exhibit 2. This letter does not establish that Fishman ever owed, or presently owes, any money to Feingold. Rather, it merely indicates that Fishman forwarded a check made payable to Feingold to the Office of Disciplinary Counsel, perhaps due to Feingold's disbarment status.



preliminary objections raised by Fishman, despite the fact that the trial court sustained only the preliminary objection based on Feingold's failure to state a claim in the complaint. **See id.** Moreover, Feingold made no reference to the specific averments of the complaint or any case law, statute, rule of court, or other legal authority to establish that his complaint stated a claim upon which relief could be granted. Instead, the entirety of Feingold's argument regarding his failure to state a claim is as follows:

[Fishman's] next objection was that [Feingold] does not have a cause of action, but Exhibit # 1 & ^ # 2 [*sic*] prove beyond any doubt that the court and even [Fishman] knew they owed money to [Feingold], so there is definitely no ability for them to object to this cause, as the court and even [Fishman] knew they had such an obligation.

Feingold's Brief at 12 (unnecessary capitalization omitted).<sup>5</sup>

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**

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<sup>5</sup> The trial court considered Feingold's issue and determined that it lacked merit, explaining:

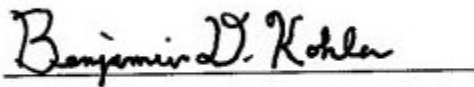
Notably, the complaint does not allege the existence of a contract between Mr. Feingold and . . . Fishman; any of the material terms of a contract; how . . . Fishman may have breached the contract; or any damages . . . Fishman caused to Mr. Feingold. . . . Mr. Feingold does not allege that there ever was any kind of agreement between Mr. Feingold and . . . Fishman.

Trial Court Opinion, 3/4/24, at 4.

**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 objection filed by Fishman and dismissing the complaint.

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