

GALEN WALTMAN, JR.,  
Plaintiff

v.

CODY LAMOREAUX,  
DONNA LAMOREAUX,  
PAUL BRACE, JR., and  
PAUL H. BRACE, SR.,  
Defendants

: IN THE COURT OF COMMON PLEAS  
: OF LUZERNE COUNTY  
:  
: CIVIL DIVISION  
:  
: *12579 of 2014 Bm*  
: NO. ~~2543~~ OF 2012

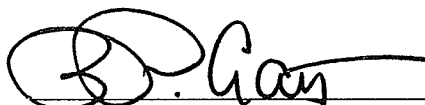
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LUZERNE COUNTY  
2015 JUN -8 PM 3:41

**ORDER**

**AND NOW**, this 8<sup>th</sup> day of June, 2015, after argument, a review of the Defendant's Preliminary Objections, the Defendant's Brief in Support of Preliminary Objections to Plaintiff's Complaint and a review of the entire record, **IT IS HEREBY ORDERED AND DECREED** that Defendant's Preliminary Objections are **GRANTED**.

The Prothonotary is directed to serve notice of the entry of this Order pursuant to Pa.R.C.P. 236.

BY THE COURT,



\_\_\_\_\_  
POLACHEK GARTLEY, J.

Copies:

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*12579 of 2014 B*

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**OPINION**

On November 7, 2014, Plaintiff, Galen Waltman, Jr., filed a Complaint against Defendants, Cody Lamoreaux, Donna Lamoreaux, Paul Brace, Jr., and Paul H. Brace, Sr. alleging breach of contract. By way of history, Defendants leased a property known as 367 Second Street, Harvey's Lake, Pennsylvania. Plaintiff alleges in his Complaint that the Defendants caused damage to said premise due to criminal conduct that took place on or about June 5, 2013. In addition, Plaintiff alleges that Defendants, Donna Lamoreaux and Paul Brace, failed to surrender the residence as per the terms of the lease.

Defendants filed Preliminary Objections raising two issues:

1. Whether plaintiff fails to state a claim in Count 1 upon which relief can be granted for Breach of Contract?
2. Whether Plaintiff's Complaint should be dismissed with prejudice for failure to join Adam Weaver as a necessary party.

**DISCUSSION:**

Prior to addressing the substantive issues raised by the Defendants, at the time of oral argument Defendant requested that the Complaint be dismissed because Plaintiff failed to file a response in a timely manner. The applicable Rule of Civil Procedure supports this position.

**Pa. Rule of Civil Procedure 1029. Denial.**

Effect of Failure to Deny

- (b) Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication.

\* \* \*

- (e) In an action seeking monetary relief for bodily injury, death or property damage, averments in a pleading to which a responsive pleading is required may be denied generally except the following averments of fact which must be denied specifically:

- (3) Averments in preliminary objections.

Comment: c. Preliminary Objections

Rule 1029(e)(3) requires that all averments of fact in preliminary objections must be denied specifically. The preparation of an answer to preliminary objections does not present the same problems of repetition, complexity and paperwork as does the preparation of an answer to a complaint in a reply to new matter.

Therefore, given that Plaintiff did not reply or answer the averments within a timely manner, and when the response was filed said answers were not specific. Plaintiff's complaint should be dismissed.

Even if the Court were to overlook Plaintiff's failure to timely and specifically respond to the Preliminary Objections, substantively, Defendants' Procedural Objection should be sustained, as reasoned below.

To state a claim for breach of contract, a plaintiff must plead (1) existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract and (3) resultant damage. *See Presbyterian Med. Ctr. v. Budd*, 822 A.2d 1066 (Pa.Super 2003).

There is no denying that a contract existed between the parties. However, Defendants argue, effectively, that Plaintiff did not allege which duty was breached by

any of the Defendants. Nor does Plaintiff identify any provision of the Rental Agreement that contractually obligates the Defendants to be held contractually liable for any damage done to the leased premises as a result of the criminal conduct of an unidentified unknown third parties. There are no allegations in the Complaint.

Pennsylvania Courts recognize that the criminal acts of third parties absolve an original actor from liability from harm caused by third parties. *Feld v. Mirriam*, 485 A.2d 742 (PA. 1984). To hold Defendant's liable for a criminal acts of third parties defies logic and has no legal justification. To allow a different result would be akin to holding the tenants in the World Trade Center responsible for the damages caused by the terrorists attack.

Turning the Court's attention to Defendants' second issue, Plaintiff did not join another tenant on the rental agreement, Mr. Adam Weaver. "An indispensable party is one whose rights or interests are so pervasively connected with the claims of the litigants that no relief can be granted without infringing on those rights or interests." *Herbert v. Greenwald*, 743 A.2d 977 (Pa. Super. 1999), appeal denied, 760 A.2d 854 (2000).

Given that Plaintiff did not allege another lease holder nor allege why he was not named it is a defect that puts into question as to whether Mr. Weaver is an indispensable party. The fact that we do not know makes Defendant's position stronger. Therefore, the Defendant's Preliminary Objection for Plaintiff's failure to join Adam Weaver as a necessary party is **GRANTED**.

**END OF OPINION**