

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

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AVONDALE RENTALS, INC.	:	July Term, 2001
	:	
Plaintiff	:	No. 02563
v.	:	
	:	Commerce Program
	:	
ROSER & EINSTEIN, INC., RICHARD S.	:	
EINSTEIN, BETTY GORMAN, FIRST UNION	:	
NATIONAL BANK, OLD GUARD MUTUAL	:	
INSURANCE COMPANY	:	
	:	Control Nos. 110417
	:	
Defendants.	:	

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**ORDER**

**AND NOW**, this           18th day of December    2002, upon consideration of the Motion of Plaintiff Avondale Rentals, Inc. (“Avondale”) to File an Amended Complaint (the “Motion”), all responses in opposition, the respective memoranda, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** as follows:

1.       Avondale’s Motion to add a claim for breach of contract against defendant Roser & Einstein, Inc. (“R&E”), as set forth in Count VII of the proposed Amended Complaint, is **GRANTED**.

2.       Avondale’s Motion to add a claim for breach of contract against defendants Richard S. Einstein and Betty Gorman is **DENIED**.

2.       Avondale’s Motion to add a claim for promissory estoppel against defendant First Union National Bank (“First Union”), as set forth in Count VI of the proposed Amended

Complaint, is **GRANTED**.

Avondale hereby is directed to file its Amended Complaint, solely to add the counts specified above, within ten (10) days from the date of entry of this Order. No other amendments will be permitted.

Further, to the extent necessary, First Union and R&E are granted leave to conduct additional discovery as to Counts VI and VII of the Amended Complaint only.

**BY THE COURT:**

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***GENE D. COHEN, J.***

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INSURANCE COMPANY	:	
	:	Control Nos. 110417
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Defendants.	:	

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**MEMORANDUM OPINION**

***GENE D. COHEN, J.***

Before the Court is the Motion of Plaintiff Avondale Rentals, Inc. (“Avondale”) to File an Amended Complaint (the “Motion”). Avondale seeks to add a claim for breach of contract against defendants Roser & Einstein, Inc. (“R&E”), Richard S. Einstein and Betty Gorman, and also a claim for promissory estoppel against defendant First Union National Bank (“First Union”). For the reasons fully set forth below, Avondale’s Motion is **granted in part** and **denied in part**.

**DISCUSSION**

Rule 1033 of the Pennsylvania Rules of Civil Procedure permits a party to amend its complaint either by filed consent of the adverse party or by leave of court. Pa.R.C.P. 1033. The rule also provides that "[t]he amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense" and also allows amendment "to conform the pleading to the evidence

offered or admitted." Id. The trial court has broad discretion in determining whether to allow amendment. Capobianchi v. BIC Corp., 446 Pa. Super. 130, 666 A.2d 344, 346 (1995).

"Amendments are to be liberally permitted except where surprise or prejudice to the other party will result, or where the amendment is against a positive rule of law." Burger v. Borough of Ingram, 697 A.2d 1037, 1041 (Pa. Commw. 1997); Roach v. Port Auth. of Allegheny County, 380 Pa. Super. 28, 30, 550 A.2d 1346, 1347 (1988)("the right to amend the pleadings should not be withheld where some reasonable possibility exists that the amendment can be accomplished successfully.") For this reason, and because no evidence of prejudice has been presented which compels this Court to rule otherwise, Avondale's Motion is granted with respect to R&E and First Union, as fully set forth in the attached Order. No other amendments will be permitted other than those included in Counts VI and VII of the proposed Amended Complaint. Further, First Union and R&E are granted leave to conduct additional discovery as to the new counts only, to the extent such discovery is necessary.

Notwithstanding the liberal amendment policy, a court is not required to allow amendment of a pleading if a party will be unable to state a claim on which relief could be granted. Werner v. Zazyczny, 545 Pa. 570, 583, 681 A.2d 1331, 1338 (1996). Applying this standard to the present case, no amendment will be permitted to allow Avondale's proposed breach of contract claim against Gorman and Einstein, since such a claim cannot survive demurrer on the facts alleged. Avondale has plead no facts in its proposed Amended Complaint which support the existence of a contract between Avondale and Gorman and/or Einstein as individuals. As such, Avondale's Motion to Amend is denied with respect to defendants Gorman and Einstein.

## CONCLUSION

For the above-stated reasons, this Court hereby **grants in part** and **denies in part**

Avondale's Motion as follows:

1. Avondale's Motion to add a claim for breach of contract against defendant R&E is **granted**.
2. Avondale's Motion to add a claim for breach of contract against defendants Richard S. Einstein and Betty Gorman is **denied**.
3. Avondale's Motion to add a claim for promissory estoppel against defendant First Union is **granted**.

Avondale is directed to file an Amended Complaint, solely to add the counts specified above, within ten (10) days from the date of entry of this Order.

Further, to the extent necessary, First Union and R&E hereby are granted leave to conduct additional discovery as to Counts VI and VII of the Amended Complaint only.

This Court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT:**

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*GENE D. COHEN, J.*

*Dated: December 18, 2002*