

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

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JANET STREET, on behalf of herself and all others similarly situated,	:	MARCH TERM, 2003
	:	
	:	No. 0885
	:	
Plaintiff,	:	
	:	COMMERCE PROGRAM
	:	
v.	:	
	:	Control No. 04078
	:	
SIEMENS MEDICAL SOLUTIONS HEALTH SERVICES CORP. f/k/a SHARED MEDICAL SYSTEMS, INC., MARVIN S. CALDWELL, TERRENCE KYLE, and FRANCIS LAVELLE,	:	
	:	
	:	
	:	
	:	
	:	
Defendants.	:	

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**ORDER**

**AND NOW**, this 8<sup>th</sup> day of July, 2003, upon consideration of the Preliminary Objections to the Complaint of defendant, Siemens Medical Solutions Health Services Corp., the response thereto, the memoranda in support and in opposition, and all other matters of record, and in accord with the contemporaneous Memorandum Opinion being filed of record, it is hereby

**ORDERED** that said Preliminary Objections are **SUSTAINED** in part and **OVERRULED** in part, and that Count II of the Complaint is hereby dismissed with prejudice. Defendant is directed to file an answer to the remaining counts of the Complaint within 20 days of the date of entry of this Order.

**BY THE COURT,**

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**C. DARNELL JONES, II, J.**

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**MEMORANDUM OPINION**

The Court hereby considers the Preliminary Objections of defendant, Siemens Medical Solutions Health Services Corp. (“Siemens”), to the Complaint. In her Complaint, plaintiff alleges that Siemens improperly decreased the earned commissions paid to her and the rest of the plaintiff class by 30%. As a result, plaintiff has brought claims against Siemens for breach of contract, breach of the duty of good faith and fair dealing, unjust enrichment, and violation of the Wage Payment and Collection Law. Siemens objects to the first three claims.

**I. Plaintiff’s Failure To Attach The Contract Referenced In the Complaint Does Not Require Dismissal of Her Breach of Contract Claim.**

Siemens objects that plaintiff did not attach to the Complaint a copy of the contract that she claims Siemens breached. Plaintiff alleges that the employment agreements that Siemens breached are in Siemens’ possession. Complaint, ¶ 27. Writings that are in the possession of the opposing party need not be attached to the Complaint. See Narcotics Agents Regional

Committee v. A.F.S.C.M.E., 780 A.2d 863, 869 (Commw. 2001). Therefore, defendant's preliminary objection to plaintiffs' breach of contract claim must be overruled.

**II. Plaintiff's Claim for Breach of the Duty of Good Faith and Fair Dealing Must be Dismissed.**

Siemens objects that plaintiff's claim that Siemens breached the duty of good faith and fair dealing is duplicative of plaintiff's breach of contract claim. "The implied covenant of good faith does not allow for a claim separate and distinct from a breach of contract claim. Rather, a claim arising from a breach of the covenant of good faith must be prosecuted as a breach of contract claim, as the covenant does nothing more than imply certain obligations into the contract itself." JHE, Inc. v. SEPTA, 2002 WL 1018941 (Phila. Com. Pl. May 17, 2002). Since plaintiff has already asserted a claim against Siemens for breach of contract, plaintiff's redundant claim for breach of the contractual duty of good faith and fair dealing must be dismissed.

**III. Plaintiff's Claim for Unjust Enrichment Is Proper.**

Siemens objects that plaintiffs' claim for unjust enrichment is duplicative of plaintiff's breach of contract claim. "While plaintiff cannot ultimately recover on both theories of contract and unjust enrichment, plaintiff may plead unjust enrichment in the alternative along with a claim for breach of contract." Duane Morris, LLP v. Todi, 2002 WL 31053839 (Phila. Com Pl. Sept. 3, 2002). Therefore, Siemens' preliminary objection to plaintiffs' unjust enrichment claim must be overruled.

## **CONCLUSION**

For all the foregoing reasons, the court sustains in part and overrules in part the Preliminary Objections of defendant, Siemens Medical Solutions Health Services Corp., to the Complaint.

**BY THE COURT,**

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**C. DARNELL JONES, II, J.**

Dated: July 8, 2003