

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

REGSCAN, INC.,	:	
Plaintiff	:	
	:	
v.	:	No. 07-00,066
	:	CIVIL ACTION
MICHAEL J. MILLER, DRINKER	:	
BIDDLE & REATH LLP, and	:	
CITATION PUBLISHING, INC.,	:	
Defendants	:	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

RegScan, Inc., (Plaintiff), appeals this Court’s Order of July 17, 2007 which granted Michael J. Miller, Drinker Biddle & Reath LLP, and Citation Publishing, Inc.’s (Defendants) June 5, 2007 Motion for Judgment on the Pleadings. Plaintiff’s Notice of Appeal and Statement of Matters Complained of on Appeal were timely filed on August 16, 2007 and September 14, 2007 respectively. In their Statement of Matters Complained of on Appeal, the Plaintiffs challenge the Court’s decision on two grounds: first, that the Court’s Order was premature; and second, that RegScan alleged a Cause of Action for Wrongful Use of Civil Proceedings.

The standard to be applied upon review of a Motion for Judgment on the Pleadings accepts all well-pleaded allegations of the complaint as true. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it." MacElree v. Philadelphia Newspapers, Inc., 544 Pa. 117, 674 A.2d 1050, 1054 (Pa. 1996) (quoting Vattimo v. Lower Bucks Hospital, Inc., 502 Pa. 241, 465 A.2d 1231 (Pa 1983)). In reviewing the Motion for Judgment on the pleadings “the court

should confine itself to the pleadings themselves and any documents or exhibits properly attached to them.” Kelly v. Nationwide Ins. Co., 606 A.2d 470, 471 (Pa. Super. 1992). Finally, the Court may grant judgment on the pleadings “when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law.” DiGregorio v. Keystone Health Plan E., 840 A.2d 361, 366 (Pa. Super. 2003). As acknowledged by the Plaintiff, in its answer, all facts were pleaded; and therefore, no outstanding issues of fact remain. As such, the Defendants are entitled to judgment as a matter of law.

The Dragonetti Act, 42 Pa. C.S. §§ 8351, *et seq.*, was designed to protect litigants from the Wrongful Use of Civil Proceedings. According to the Superior Court of Pennsylvania,

To succeed in a cause of action for wrongful use of civil proceedings, a plaintiff must allege and prove the following three elements: 1) that the underlying proceedings were terminated in their favor; 2) that defendants caused those proceedings to be instituted without probable cause; and 3) that the proceedings were instituted for an improper purpose.

Bannar v. Miller, 701 A.2d 242, 247 (Pa. Super. Ct. 1997) (and cases cited therein).

Defendants claim that it had a reasonable basis to believe that Plaintiff, through misrepresentations by Mr. Schranghamer, had accessed Defendant Citation’s prescription database without authority, on several occasions from January 2002 through December 2003, and as such, instituted the law suit *Citation Publishing, Inc. v. RegScan, Inc., et al.*, Civil Action Number 05-01621 (hereinafter referred to as “Citation v. RegScan). Here, Plaintiff alleges that Defendants lacked probable cause to bring their claim, because the claim was: (1) barred by the Statute of Limitations, (2) brought under improper motives, (3) Defendants lacked due diligence regarding alleged facts, and (4) Defendants did not believe Citation suffered any damages. In its July 17, 2007 Order, the Court ruled by granting the Motion for Judgment on the Pleadings, that the Defendants had probable cause to initiate Citation v. RegScan.

Section 8352 of the Dragonetti Act defines Probable Cause as:

A person who takes part in the procurement, initiation or continuation of civil proceedings against another has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based, and either:

- (1) Reasonably believes that under those facts the claim may be valid under the existing or developing law;
- (2) Believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information; or
- (3) Believes as an attorney of record, in good faith that his procurement, initiation or continuation of a civil cause is not intended to merely harass or maliciously injure the opposite party.

As this Court held in its July 17, 2007 Order, Plaintiff has failed to prove the three elements from Banner. First, Defendants had a reasonable basis for believing the Statute of Limitations was tolled by the discovery rule, as the Defendants claim they had no reason to know that RegScan had illegally accessed the Citation database until after September 12, 2003. Second, the Court believes that Defendants filing of motions to disqualify Mr. Schranghamer from representing RegScan, and the denial of said motions do not show an improper motive, as it was admitted by RegScan that Mr. Schranghamer had obtained a password to Citation's database which he passed onto RegScan. Third, whether the Defendants performed due diligence in determining if Citation's website contained a restrictive statement, is not relevant to this action, as such a statement is not important to the validity of Citation's claims in Citation v. RegScan. Fourth, the Court references its previous decision on Preliminary Objections in Citation v. RegScan. In that decision this Court found that Citation was at least entitled to general damages, if it prevailed against RegScan. Clearly, the Plaintiff's claim that Defendants lacked probable cause has no merit. Since probable cause was shown, the Defendants have an absolute defense to

the Dragonetti Act claim. See Broadwater v. Sentner, 725 A.2d 779, 782 (Pa. Super. 1999). The Court therefore found that the Plaintiff failed to establish a cause of action under this Act, as the Plaintiff failed to meet the second prong.

For the foregoing reasons, this Court respectfully suggests that its July 17, 2007 Order granting the Defendant's Motion for Judgment on the Pleadings and dismissing the Plaintiff's complaint be affirmed.

By the Court,

Nancy L. Butts, Judge

xc: Daniel F. Schranghamer, Esq.
John M. Humphrey, Esq.
Eileen A. Dgien, DCA
Honorable Nancy L. Butts
Gary L. Weber, Esq. (LLA)
Trisha D. Hoover, Esq. (Law Clerk)