

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SALVATORE PORCHIA and DEBORAH PORCHIA,	: NO. 09 - 02,756
Plaintiffs	:
	: CIVIL ACTION - LAW
vs.	:
	: Cross Motions for
STONEHURST GROUP, LLC.,	: Summary Judgment
Defendant	: Motion to Amend Complaint

OPINION AND ORDER

Before the Court are cross- motions for Summary Judgment, as well as a Motion for Leave to Amend the Complaint.¹ Argument was heard December 19, 2011. As the parties were attempting to resolve all issues, decision was deferred; as trial is scheduled for March 13, 2012, however, and the parties have yet to reach an agreement, the court will issue a decision at this time.

In their Third Amended Complaint for Preliminary and Permanent Injunction, Plaintiffs seek to enjoin Defendant, a Limited Liability Company, and its agents and servants, from “any further harassing behavior” toward Plaintiffs. The parties own adjoining parcels of real estate, and Plaintiffs complain that a certain Mr. Marberger, who they believe acted as manager of the building owned by Defendant company, “has participated in harassing behavior toward the Porchias, including trying to destroy a camera on the Porchias’ residence, drilling a large plywood board to their fence and shouting threats of harm.” Plaintiffs allege that Defendant Stonehurst ratified Mr. Marberger’s actions and thus the company is responsible. Defendant denies the allegations and, in a counter-claim for invasion of privacy which alleges that Plaintiffs have directed a video camera at the door to its property, seeks an injunction and compensatory and punitive damages.

In its motion for summary judgment, Defendant contends that Plaintiffs have failed to produce evidence to support the allegations that Mr. Marberger is an agent of the company and

¹ At argument, defense counsel indicated he was withdrawing his New Matter in response to Plaintiff Motion for Leave to Amend Complaint. Argument on that motion was therefore held at that time, without a response from Plaintiffs to that New Matter.

that his actions were ratified by the company, and that, without such evidence, their claims must fail.² In response, Plaintiffs point to an affidavit by Salvatore Porchia that Mr. Marberger attached a piece of plywood to his fence, the police were called and responded, Mr. Marberger stated he was “with the Stonehurst, LLC”, and that Mr. Marberger responded “yes” when asked if he was representing Stonehurst. Even if such is deemed sufficient to support the allegations of agency, it falls far short of that which would prove that Defendant ratified the actions of Mr. Marberger. Therefore, the motion will be granted.

In their motion for summary judgment, which challenges Defendant’s counter-claim for invasion of privacy of its tenants based on allegations that Plaintiffs have directed a video camera at the door to the property, Plaintiffs contend Defendant has failed to produce evidence to support the claim. Defendant argues, however, that a videotape produced in discovery by Plaintiffs shows the camera was aimed at the door and shows the tenants coming and going. Defendant will also be able to produce photographs of the camera showing it was aimed at the door to its building. The court believes this evidence is sufficient to allow Defendant to pursue the counterclaim before a fact-finder.

Finally, in their Motion for Leave to Amend the Complaint, filed November 16, 2011, Plaintiffs seek to add a claim under Restatement (2nd) of Torts, Section 837, which provides, in relevant part:

Section 837 Activities After Transfer of Land

- (1) A lessor of land is subject to liability for a nuisance caused by an activity carried on upon the land while the lease continues and the lessor continues as owner, if the lessor would be liable if he had carried on the activity himself, and
 - (a) at the time of the lease the lessor consents to the activity or knows or has reason to know that it will be carried on, and
 - (b) he then knows or should know that it will necessarily involve or is already causing the nuisance.

Plaintiffs seek to allege that Stonehurst was complicit in the nuisance behavior of its tenants which included loud music and partying three nights per week, and that Stonehurst failed to

² See *Whiteley et al. v. Mortgage Services Co. et al.*, 12 A.2d 9 (Pa. 1940)(landlord not liable for conduct of those occupying building where he exercises no control over acts of tenants and has thus neither authorized, nor participated in, creation of nuisance).

prevent harm to Plaintiffs even though it knew of the conduct and had the power and duty to prevent such harm. The claim must also satisfy the rule announced in Whiteley et al. v. Mortgage Services Co. et al., 12 A.2d 9 (Pa. 1940), however: where an owner of leased premises, exercising no control over the acts of a tenant, has neither authorized, nor directly or indirectly participated in, the creation or continuance of a nuisance, he cannot be made answerable for the objectionable conduct of those occupying the premises. Here, the evidence adduced during discovery showed that Andrew Lyon, a representative of Stonehurst, learned of the parties after the fact, and that he took affirmative steps to prevent such conduct when it was brought to his attention. Plaintiffs, on the other hand, have produced no evidence that Mr. Lyon was complicit in the tenants' nuisance behavior. Therefore, the request to amend the complaint will be denied.

ORDER

AND NOW, this 6th day of March 2012, for the foregoing reasons, it is hereby
Ordered and Directed as follows:

- 1) Defendant's Motion for Summary Judgment is hereby GRANTED.
- 2) Plaintiff's Motion for Summary Judgment is hereby DENIED.
- 3) Plaintiff's Motion for Leave to Amend is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Christopher Williams, Esq.
C. Edward Mitchell, Esq.
Gary Weber, Esq.

Hon. Dudley Anderson