

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN D. HEILMAN and BONNIE K. HEILMAN, : CV- 2013-01,517
Plaintiffs, :
vs. : CIVIL ACTION
: :
JERRY BIERLY and DEBRA BIERLY, and :
Defendants. :

ORDER

AND NOW, this ___ day of ___, 2013, following oral argument on Plaintiffs' Preliminary Objections to Defendants' Counter Claims held October 2, 2013, it is hereby ORDERED and DIRECTED that Plaintiffs' objections are SUSTAINED in part and OVERRULED in part. Specifically, it is ORDERED and DIRECTED that:

1. Plaintiffs' objections based on the legal insufficiency of the Defendants' Counterclaim for Intentional Infliction of Emotional Distress is DENIED at this time, without prejudice to raising this objection should Defendants file an amended and more specific Counterclaim.
2. Plaintiffs' objection based upon the insufficient specificity of the Defendants' Counterclaim for Intentional Infliction of Emotional Distress (IIED) is GRANTED. Defendants Counterclaim for IIED alleges that Plaintiffs "propagated falsehoods in the averments of their complaint," filed claims to harass Defendants, and "continually harassed Defendants through demands and conduct of this litigation." Defendants did not allege specific conduct that rises to the level of "extreme and outrageous conduct." "Extreme and outrageous conduct is that which goes beyond all possible bounds of decency and would be regarded as atrocious and utterly intolerable in a civilized community." See, e.g., SSSJIC 17.40 (Civ.) (PBI Fourth Edition (2005)). The Court notes that the conduct alleged in this case is not akin to the propagation of a falsehood in

Banyas v. Lower Bucks Hospital, 437 A.2d 1236 (Pa.Super. 1998) where medical records falsely stated that that a patient died solely from the actions of the Plaintiff and not medical malpractice, resulting in Plaintiff being charged with murder. It is also noted that in *Rose v. Wissinger*, 439 A.2d 1193 (Pa. Super. 1982), the Superior Court concluded that a claim involving the filing of a lawsuit, which was “unfounded in fact or law, [and filed] solely for its disruptive effect on the trial of an existing lawsuit,” did not state a cause of action for outrageous conduct causing emotional distress. *Id.* at 1198-1199.

3. Plaintiffs’ objection based on the legal insufficiency of the Defendants’ Counterclaim for Malicious Abuse of Process is GRANTED. "To establish a claim for abuse of process it must be shown that the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm has been caused to the plaintiff." *Werner v. Plater-Zyberk*, 799 A.2d 776, 785 (Pa. Super. 2002). Defendants failed to allege facts sufficient to meet these requirements.

Defendants failed to allege that Plaintiffs abused or perverted the legal process after it was issued or that the Plaintiffs’ primary purpose in instituting these proceedings was to accomplish a purpose for which the process was not designed. While Defendants broadly allege that Plaintiffs instigated the action “in order to harass defendants and cause them mental anguish,” Defendants have not established or alleged that Plaintiffs’ primary purpose was other than that set forth in Plaintiffs’ Complaint. In their complaint, Plaintiffs seek to enjoin Defendants from entering their property, to receive compensation for the cost of removal of a fence and cost to repair real property where the fence and posts were, to eject Defendants from their property, to remove Defendants fence/property

from Plaintiffs' property and to compensate Plaintiffs for damage from a fire resulting from the alleged negligence of Defendants. Therefore, Defendants failed to state a cause of action for malicious abuse of process.¹ Defendants' Counterclaim for Abuse of Process is DISMISSED with prejudice.

4. Defendants are directed to file a more specific Amended Counterclaim, if any, within twenty (20) days.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Christian D. Frey, Esq. for Plaintiffs
Mary C. Kilgus, Esq., for Defendants

¹ The Court further notes that Defendants failed to establish a claim for Wrongful Use of Civil Proceedings, 42 Pa.C.S.A. § 8351(b). Wrongful Use of Civil Proceedings requires that the proceedings have terminated in favor of the person against whom they are brought. The Defendants reference the current legal proceedings for the basis of their claim, and these proceedings are still ongoing. Therefore, Defendants failed to state a cause of action for Wrongful Use of Civil Proceedings.