IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KNISELY SECURITY, LLC., Plaintiff,	:	
vs.	:	CV- 14-02,003
KEYSTONE MOBILE SHREDDING, INC., Defendant	:	PRELIMINARY OBJECTIONS

OPINION AND ORDER

Before the Court are Defendant's preliminary objections to Plaintiff's complaint. The objections are overruled in part and sustained in part. The following opinion is provided in support of this Court's rulings.

Procedural Background

Plaintiff filed its complaint on April 1, 2015, containing three counts, count 1 is for unfair competition, count 2 is for intentional interference with existing or prospective contractual relationships, and count 3 is for defamation. On April 16, 2015, Defendant filed preliminary objections in the form of a demurrer to all three counts, a motion to strike all three counts for failure to conform to law or rule of court, a motion to strike scandalous or impertinent matter contained in the complaint, and a motion for a more specific pleading. Argument was held on May 21, 2015.

Factual Background

The well-pleaded material facts set forth in the complaint are as follows. The Plaintiff, Knisely Security, LLC, ("Knisely"), provides secure document and information destruction services. Those services include mobile shredding throughout Pennsylvania. In addition to shredding documents, Knisely safeguards documents against theft, misappropriation and unlawful taking during or after the shredding process. Knisely avers that it is the only provider

of document and information destruction services in Pennsylvania that employs a licensed private detective on staff. Defendant, Keystone Mobile Shredding, Inc. ("Keystone") competes with Knisely for customers. Keystone does not have a private detective on staff.

Knisely avers that Keystone unlawfully advertises that it performs the following services that can only be offered by a licensed detective under the Private Detective Act. First, it advertises that it safeguards documents against theft, misappropriation and unlawful taking.[1] Second, Keystone advertises that it can assist customers "in ensuring that its employees are qualified to handle confidential information" and help them comply with various standards and federal laws. Knisely avers such services can only be offered by a licensed detective under the Private Detective Act and that Keystone cannot offer such services because it does not have a private detective on staff.

Knisely avers that Keystone has used false or misleading descriptions of fact in advertising and promotion that misrepresent the nature, characteristics and qualities of Knisely's services, including the maximum shred size achievable by Knisely's grinder trucks, specifically the relative levels of destruction provided by Keystone's pierce and tear trucks as compared with Knisely's grinder trucks or other equipment. Compl. ¶¶ 110, 112. Knisely avers that Keystone has made false or misleading representations that Knisely is not a licensed private investigator and cannot provide such services.

Knisely also avers that Keystone has made false and misleading statements about the services Keystone itself provides. Specifically, it is averred that Keystone provides false and misleading statements about the capacity of its mobile shredding trucks to shred to a maximum size and to shred microfilm and microfiche. Keystone regularly misrepresents that documents shredded by its pierce and tear trucks can no longer be read. Compl. ¶ 63. Knisely avers that

[1] Keystone allegedly uses uniforms and badges to create the misimpression that it is providing security services.

disintegration equipment, and not mobile shredding equipment, is required to achieve the maximum shred size and to shred microfilm and microfiche.[2] To acquire a maximum shred size of 3/8" wide by 3/8" long or smaller, documents must be shredded using disintegration equipment. The essence of the allegation of the unfair competition appears to center on Keystone using pierce and tear trucks and representing its superiority to competitors such as Knisely who use grinder trucks or disintegration equipment at mobile cites. Compl. ¶¶ 96, 98

Knisely further avers that Keystone provides false and misleading advertising about Keystone's AAA certification, which results in unfair competition. Even though Keystone received AAA certification from NAID, Knisely avers that Keystone does not comply with the AAA certification requirements with respect to the maximum permitted shred size produced by pierce and tear trucks. Compl. ¶ 71. Nonetheless, Keystone advertises its AAA certification as meeting the compliance requirements for AAA certification from NAID and touts the certification as distinguishing Keystone from its competitors. Keystone creates the false impression that AAA certified providers produce better or more secure results than competitors that are not AAA certified. Compl. ¶¶ 71, 72. In addition to an unfair attraction of customers, Knisely avers that the false advertising also creates an unfair advantage in pricing. Compl. ¶¶ 73, 82, 84.

Knisely avers that Keystone falsely advertises that it can provide the greatest security in the mobile shredding industry and that it uses "state of the art" technology or equipment. Compl. ¶¶ 72-75. Keystone charges higher rates by falsely claiming to provide destruction and security that is greater than competitors. Compl. ¶ 85. Keystone falsely stated it would not bid on a contract knowing it could not meet required specifications but it did. Compl. ¶¶ 90-92.

[2] Pierce and tear trucks provide inferior shredding to grinder trucks. Pierce and tear trucks and grinder trucks provide inferior shredding to disintegration equipment. Knisely avers that microfilm and microfiche must generally be shred using disintegration equipment.

Demurrers

Keystone filed demurrers to all three counts. A party may file preliminary objections based on the legal sufficiency or insufficiency of a pleading (demurrer) pursuant to Pa. R.C.P. 1028(a)(4). A demurrer tests the legal sufficiency of the complaint. Sullivan v. Chartwell Inv. Partners, LP, 873 A.2d 710, 714 (Pa.Super. 2005). When reviewing preliminary objections in the nature of a demurrer, the court must "accept as true all well-pleaded material facts set forth in the complaint and all inferences fairly deducible from those facts." Thierfelder v. Wolfert, 52 A.3d 1251, 1253 (Pa. 2012), *citing*, Stilp v. Commonwealth, 940 A.2d 1227, 1232 n.9 (Pa. 2007). In deciding a demurrer "it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer." Melon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. 1994) (citations omitted). "Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are **clear and free from doubt**." Bower v. Bower, 611 A.2d 181, 182 (Pa. 1992)(emphasis added). In light of these standards, the Court will address Keystone's demurrers.

1. Demurrer to Count 1 –Unfair Competition.

Keystone demurs to count 1 on the grounds that Knisely fails to state a claim for unfair competition because no Pennsylvania appellate court has recognized such a claim under similar circumstances. No party has cited any Pennsylvania appellate court decision which adopts the Restatement 3d, Unfair Competition Section 1 or expands the scope of unfair competition to circumstances that are wholly similar to the present case.[3] Even if such a claim is recognized in

[3] As Defendant notes, President Judge Fornelli of the Court of Common Pleas of Mercer County was unable to locate any such cases in Pennsylvania when it allowed a claim for unfair competition in Lakeview Ambulance &

Pennsylvania, Keystone further demurs because Knisely failed to specify any false or misleading statements made by Keystone.

The Pennsylvania Supreme Court has long established that a cause of action for unfair competition generally requires a showing of passing off the goods of another as one's own or some type of trademark infringement.

> To make a case of unfair competition it must be shown by the person complaining that another by simulation of labels ..., by imitation of packages …, by deceptive selling practices …, by use of complainant's containers …, by misleading advertising[4] …, or by other means **has attempted to trade on the complainant's business reputation**. Trade-mark infringement, when alleged as a ground for injunction, is simply an element of unfair competition[.] Stroehmann Bros. Co. v. Manbeck Baking Co., 331 Pa. 96, 97, 200 A. 97, 98 (Pa. 1938)(emphasis added)(citations omitted)

However, as Plaintiff points out, courts in Pennsylvania have recognized claims for unfair competition beyond this traditional scope.[5] Pertinent to the present case, Plaintiff cites cases in which the courts recognized or acknowledged unfair competition claims arising from tortious conduct and where there was wrongful or defamatory statements made about the plaintiff to the

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Med. Servs. v. Gold Cross Ambulance, et. al., No. 1994-2166 (C.P.Mercer, October 19, 1995). *See*, Defendant's brief, n. 1.

[4] The citation supporting "misleading advertising" that is omitted here, is provided in Stroehmann Bros, supra, as Wirfs v. D. W. Bosley Co., 20 F.2d 632, 633-634 (8th Cir. Mo. 1927). In Wirfs, the misleading advertising that qualified as unfair competition involved the a company's passing off gaskets and weather strips of another company as its own.

[5] Many of the cases cited by Plaintiff, however**, involve matters within or closely tied to the traditional scope** of intellectual property, trade secrets or confidential proprietary information. For example, Pottstown, supra involved the potential misappropriation of news coverage and passing it off as one's own. Pottstown does not support the proposition that claims of unfair competition extend to misrepresentation of the nature and quality of ones goods or the goods of a competitor. Babiarz v. Bell Atl.-Pa., Inc., 2001 WL 1808554 (C.P. Phila., July 10, 2001) did not involve a claim for unfair competition. The conduct complained of was failing to properly credit an employee, constituting "unfair competition" by appropriation of trade secrets or intellectual property rights. Cornerstone Sys. v. Knichel Logistics, L.P., 255 Fed. Appx. 660 (3rd Cir. 2007), a non-precedential opinion, involved alleged deception related to intellectual property interests that underlie the traditionally basis for unfair competition. In Bro-Tech Corp. v. Thermax, Inc., 651 F.Supp. 2d 378 (E.D. Pa. 2009), a United States District Court for the Eastern District of Pennsylvania denied summary judgment on an unfair competition claim because there were issues of fact as to the misappropriation of proprietary secrets. Eagle v. Morgan, 2011 U.S. Dist. LEXIS 147247 (E.D. Pa., Dec. 11, 2011) involved a former and terminated employee who took a laptop computer and used a LinkedIn account to misappropriate proprietary information from the former employer, such as unauthorized access to clients and instructors. The District Court concluded that the conversion of the laptop did not state a claim for unfair competition, but the misappropriation did. Hill v. Best Med. Int'l, Inc., 2011 U.S. Dist. LEXIS 123845 (W.D. Pa., Oct. 24, 2011) involved misappropriation of confidential and trade secret information by an employee.

public or potential customers, such as statements as to violations of law, standards or regulations. For example, in Lakeview Ambulance & Med. Servs. v. Gold Cross Ambulance, et. al., No. 1994-2166 (C.P.Mercer, October 19, 1995), the Court allowed a claim for unfair competition where an ambulance company made false and defamatory statements about the Plaintiff-ambulance company. The Lakeview Court cited the opinion in Carl A. Colteryahn Dairy, Inc. v. Schneider Dairy, 415 Pa. 276, 203 A.2d 469 (1964) as an extension of unfair competition beyond trade secrets and product misidentification.[6] The Court then concluded that the tort of unfair competition extended to circumstances where one company attempts to monopolize a geographic market and preclude entry by another company by making false allegations that the company violated Medicare laws or other regulatory and licensing standards, and made false statements to the public as to the quality of services the ambulance company provided. Id.

After noting that the Lakeview Court found no case addressing the availability of the cause of action for unfair competition to the facts of the case, it turned to the Restatement 3d, Unfair Competition Section 1, which has not been expressly adopted in Pennsylvania.

The RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 1(a) (1995) provides as follows.

> § 1 General Principles
>
> One who causes harm to the commercial relations of another by engaging in a business or trade is not subject to liability to the other for such harm unless:

[6] Carl A. Colteryahn Dairy, Inc. v. Schneider Dairy, 415 Pa. 276, 203 A.2d 469 (1964) did not involve a cause of action for unfair competition. In Colteryahn Dairy the Court concluded that equity would "prevent unjustified interference with contractual relations." The unjustified interference with contractual relations arose from former employees allegedly making false and misleading statements about why the left their employment. While the Court noted that "[a]llowing this type of conduct is to countenance unfair competition," the Court was clearly enjoining the "unjustified interference with contractual relations." Id.

> (a) the harm results from acts or practices of the actor actionable by the other under the rules of this Restatement relating to:
>
> (1) deceptive marketing, as specified in Chapter Two;
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> (2) infringement of trademarks and other indicia of identification, as specified in Chapter Three;
>
> (3) appropriation of intangible trade values including trade secrets and the right of publicity, as specified in Chapter Four;
>
> or from other acts or practices of the actor determined to be actionable as an unfair method of competition, taking into account the nature of the conduct and its likely effect on both the person seeking relief and the public; or
>
> (b) the acts or practices of the actor are actionable by the other under federal or state statutes, international agreements, or general principles of common law apart from those considered in this Restatement. RESTAT. 3D OF UNFAIR COMPETITION, § 1

Comment g to that Restatement explains that:

> the traditional categories of liability specifically enumerated in Subsection (a)(1)-(3) … do not fully exhaust the scope of statutory or common law liability for unfair methods of competition, and Subsection (a) therefore includes a residual category encompassing other business practices determined to be unfair. RESTAT. 3D OF UNFAIR COMPETITION, § 1, *Comment g.*

However, "**courts have generally been reluctant to interfere in the competitive process**."

> An act or practice is likely to be judged unfair only if it **substantially interferes with the ability of others to compete on the merits** of their products or otherwise conflicts with accepted principles of **public policy** recognized by statute or common law. RESTAT. 3D OF UNFAIR COMPETITION, § 1, *Comment g.* (emphasis added)

Similar to Lakeview, the unfair competition claim in Synthes, Inc. v. Emerge Med., Inc., 2014 U.S. Dist. LEXIS 79895 (E.D. Pa. Jun. 11, 2014) was based in part on the "false and misleading letters sent to targeted customers" in an attempt to pollute the customers' opinion of them. The Court "found nothing wrongful or defamatory" in the letters. "Absent some showing that the letters of statements were "unfair" or otherwise tortious in some manner, they cannot

form the basis of an unfair competition claim." As to the wrongful appropriation of confidential information, the District Court concluded that the claim could not survive without any "underlying unlawful or tortious activity."

Pennsylvania Courts have recognized tortious interference with business relationships and defamation as potentially constituting unfair competition. *See*, Plaintiff's brief, *citing*, Hill v. Best Med. Int'l, Inc., 2011 U.S. Dist. LEXIS 123845 (W.D. Pa., Oct. 24, 2011), and Synthes (USA) v. Globus Med., Inc., 2005 U.S. Dist. LEXIS 19962 (E.D. Pa., Sept. 14, 2005). In Hill, supra, the District Court for the Western District of Pennsylvania granted summary judgement **denying** the unfair competition claim. The matter involved breach of contract for refusal to pay severance benefits. The District Court explained that it would have considered a systematic inducement to leave the competitor in order to gain an unfair market advantage a form of unfair competition. In discussing the Restatement and the expansion of unfair competition the District Court noted that ""the overwhelming majority of courts have rejected expansive dictionary definitions of 'unfair competition' that generally encompass harms to the public." Id. The Court quoted the Eastern District Court in stating that "the term [unfair competition] may not be construed as a virtual catch-all for any form of wrongful business conduct or to include all forms of modern business torts."" Hill, supra, *quoting*, Giordano v. Claudio, 714 F. Supp.2d 508, 522 (E.D. Pa. 2010) (internal quotations omitted.)

In Synthes, "two competitors in the spinal implant disc industry" accused "each other of unfair and illegal business practices." Synthes involved matters that have been within the traditional scope of unfair competition: confidential information, passing off of products, and recruitment of employees. The District Court noted that the traditional practices and categories of unfair competition "do not fully exhaust the scope of statutory or common law liability for

unfair methods of competition, and [the Restatement] therefore includes a residual category encompassing other business practices determined to be unfair." The District Court concluded that a violation of the anti-kickback provision "cannot be the basis for a Pennsylvania unfair competition law claim." However, the Court concluded that in pleading claims of "defamation, trade libel and tortious interference with contract" the plaintiff had "pleaded sufficient facts to support a cause of action for unfair competition."

In the present case, Knisely asserts claims of unfair competition based in part upon other tortious claims (defamation and intentional interference with contractual relations) and upon allegedly false and deceptive statements Keystone made to customers about the comparative abilities of each company's equipment to shred materials, including vague statements at to which company's capacity is "greatest" or "state of the art." Knisely further asserts that Keystone is unlawfully providing private detective services without employing a licensed private detective and falsely stating to its customers that Mr. Knisely is not a licensed detective when he is. Knisely further alleges that Keystone creates the false impression that its AAA certification means that it can produce superior results as compared to non AAA certified competitors. Knisely further avers that Keystone's false statements harm the industry.

This Court concludes that Knisely has failed to state a claim for unfair competition as to allegedly false statements by Keystone about its own services being the greatest or using state of the art equipment or being superior because of the AAA certification. Such statements amount to puffing or are otherwise so far afield of the traditional claims of unfair competition to be recognized. Similarly, the Court concludes that the allegations with respect to unlawfully providing and advertising private detective services fail to state a claim for unfair competition.

Such issues are more appropriately directed to a licensing board or other authority involved with enforcing who provides services related to that profession.

However, to the extent that Knisely can state a claim for defamation or tortious interference with existing or prospective contractual relations, such claims are recognized as an unfair competition claim as well. Further, to the extent that Knisely can meet the requirements of a more specific pleading as to defamatory and false statements, such as statements as to violations of law, standards or regulations, by Keystone about Knisely's capacity to provide mobile shredding, such a pleading may state a claim for unfair competition. Accordingly, the Court will deny the demurrer as to such potential claims and grant the Defendants' motion for a more specific pleading as to the alleged wrongful and false statements made by Keystone about Knisely's grinder trucks or equipment or capacity to provide mobile shredding.

2. Demurrer to Count 2 –Intentional Interference with Existing or Prospective Contractual Relations.

Our Pennsylvania Supreme Court has long recognized a "cause of action for intentional, improper interference with existing contractual relations." Walnut St. Assocs. V. Brokerage Concepts, Inc., 610 Pa. 371, 383, 20 A.3d 468 (Pa. 2011) (citations omitted) "'It is generally recognized that one has the right to pursue his business relations or employment free from interference on the part of other persons except where such interference is justified or constitutes an exercise of an absolute right.'" Walnut St. Assocs., *citing*, *Adler Barish*, 393 A.2d at 1182 (quoting from Birl, 167 A.2d at 474). A cause of action for intentional interference with existing or prospective contractual relations requires four elements:

> (1) the existence of a contractual, or prospective contractual relation between the complainant and a third party; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct." Orange Stones Co. v. City of

Reading, 87 A.3d 1014 (Pa. Comwlth. 2014), *quoting*, Pelagatti v. Cohen, 370 Pa. Super. 422, 536 A.2d 1337, 1343 (Pa. Super. 1987). *See also*, Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 412 A.2d 466 (Pa. 1979)[7]

In Thompson Coal Co., the Pennsylvania Supreme Court recognized that "defining a "prospective contractual relation" is admittedly problematic." Thompson Coal Co., supra, 412 A.2d at 471. In noting that the term "prospective contractual relation" "has an evasive quality, eluding precise definition[,]" the Court described it as "something less than a contractual right, something more than a mere hope." Thompson Coal Co., supra, 412 A.2d at 471. A plaintiff must establish a "reasonable probability" that a contractual relationship would have been established but for the defendant's tortious conduct. *See, e.g.,* Thompson Coal Co., supra, 412 A.2d at 471; *and* Santana Products, Inc. v. Bobrick Washroom Equipment, Inc., 401 F.3d 123, 140 (3d Cir. 2005).

In the present case, Knisely broadly pled the elements. It pled that Keystone or its agents "knowing and intentionally made statements about Knisely and about Knisely's agents and representatives that are false, misleading, deceptive and made with the intent of interfering with Knisely's existing or prospective contractual relationships." Compl. ¶ 122. Knisely further alleged a purposeful intent, the absence of privilege and the loss of income as damages. While Plaintiff has broadly pled the required elements for tortious interference, the averments are not made with sufficient specificity. There is no specific contract identified as an existing contract that was abandoned, breached or terminated. Further, although Knisely names some relationships interfered with, Knisely does not specify whether there were contracts that were

[7] The Pennsylvania Supreme Court has adopted Section 766 of the RESTATEMENT (SECOND) OF TORTS (1979). *See, e.g.*, Walnut St. Assocs., supra, *referencing,* Thompson Coal Co., supra. In its present form, Section 766 provides that "[o]ne who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract." RESTAT. 2D OF TORTS, § 766.

terminated or just relationships. Compl. ¶¶ 125-126. Further, Knisely failed to aver sufficient facts to establish a "reasonable probability" that a contractual relationship would have been established, with the entities named in ¶¶ 125-126 or otherwise, but for the defendant's tortious conduct. Accordingly, the Court will grant the Defendants' motion for a more specific pleading as to this count; however, the demurrer as to this Count is denied without prejudice to re-raise the demurrer in the event that Plaintiff's amended complaint remains deficient.

3. Demurer to Count 3 – Defamation

A claim for defamation must allege: "(1) the defamatory character of the communication; (2) publication; (3) that the communication refers to the complainant; (4) the third party's understanding of the communication's defamatory character; and (5) injury." Pelagatti v. Cohen, 370 Pa. Super. 422, 438, 536 A.2d 1337, 1345 (Pa. Super. 1987), *citing*, Walder v. Lobel, 339 Pa.Super. 203, 213, 488 A.2d 622, 627 (1985); 42 Pa.C.S. § 8343(a). *See also*, Raneri v. De Polo, 65 Pa. Commw. 183, 441 A.2d 1373 (Pa. Commw. 1982)("publication to an identified third person is an essential element of actionable defamation" published "to third persons" is defective.)

In Count 3 of the complaint, Knisely broadly avers the elements of defamation, namely that Keystone and/or its agents knowingly and intentionally made false oral and written statements about Knisely and its agents, knowing the statements were false and that a recipient of the statements would understand their defamatory meaning and application to Knisely and that Knisely was injured. Compl. ¶¶ 131, 139-143. Some of the defamatory statements were specified as follows: that Mr. Knisely is not a licensed private detective when in fact he is; that Knisely is not permitted to provide services permitted only by a licensed; that Knisely cannot meet the security standards achieved by Keystone due to Keystone's AAA certification; that

Knisely's grinder trucks shred equal to or larger that Keystone's pierce and tear trucks. The statements were represented to an unknown number of people at unknown dates. However, it is alleged that Eric Wartel received the statements and re-published the defamatory statements to public via Twitter on November 10, 2014. Compl. ¶ 138. Other than the publication by Mr. Wartel, Knisely fails to provide any dates or methods of publication. With respect to any of the statements, inlcuding the statements re-published by Wartel, Knisely fails to provide sufficient factual basis as to the content, defamatory meaning of the content, and application to Knisely. Accordingly, the Court will grant the Defendants' motion for a more specific pleading as to this count; however, the demurrer as to this Count is denied without prejudice to re-raise the demurrer in the event that Plaintiff's amended complaint remains deficient.

Strike for Failure to Conform to Law or Rule of Court

Keystone moves to strike all three counts for failure to conform to law or rule of court under Pa. R.C.P. No. 1019(a) which requires that material facts supporting a cause of action be stated in concise and summary form. Second, Keystone moves to strike all three counts for failure to state the material facts supporting the claims by failure to state the specific content of any alleged misrepresentations, by whom and to whom they were made, when they were made or the manner in which the representation is alleged to be false. The Court denies the motion to strike the counts. Instead the Court grants the motion for a more specific pleading, as discussed in the final section.

Strike Scandalous or Impertinent matter

Keystone moves to strike paragraphs 7, 8, 9, 10, 11, 12, 13, 16, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 50, 51, 52, 53, 54, 56, 88, 102, 103,

104, 105, 107, 112(f), 112(g) and 134 and Exhibit A of the complaint as scandalous or impertinent.

The Court grants the motion to strike paragraphs 8, 9, 10, 13, 16, 19, 20, 28, 50, 51,52, 53, 54, 56(ii), 88, 102, 103, 104, 105, 107, 112(f), 112(g) and 134 on the grounds that they are scandalous and/or impertinent.

The Court grants in part the motion to strike paragraphs 43, 44, and 45 to the extent they reference governmental contracts and "customers that incorporate the AAA certification standards established by" NAID.

The Court denies the motion to strike paragraphs 7, 11, 12, 18, 21, 22, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 46, 56(i).

More Specific Pleading.

"Pennsylvania is a fact-pleading jurisdiction. A complaint must therefore not only give the defendant notice of what the plaintiffs' claim is and the grounds upon which it rests, but it must also formulate the issues by summarizing those facts essential to support the claim."" Youndt v. First National Bank of Port Allegheny, 2005 PA Super 42, 868 A.2d 539, 544-45 (Pa.Super. 2005), *quoting*, Sevin v. Kelshaw, 417 Pa. Super. 1, 611 A.2d 1232, 1235 (Pa. Super. 1992) (citations omitted).

In the present case, the complaint fails to summarize the factual underpinnings to the elements of the claims with sufficient specificity. As to the unfair competition and defamation claims, there are no dates of the misrepresentations, no writings identified and no recipients of the misrepresentations named. As to intentional interference with existing or prospective contractual relations, there is no existing contract attached or described, there is no averment that such contract was abandoned, breached or terminated, and there is no averment as to how

Defendant caused the abandonment, breach or termination of such contract. As to prospective contractual relations, Knisely does not specify whether there were *contracts* that were terminated or just *relationships*, and Knisely failed aver sufficient facts to establish a "reasonable probability" that a contractual relationship would have been established, with the entities named in ¶¶ 125-126 or otherwise, but for the wrongful conduct of Defendant.

The Court also notes that many of the averments are overly broad and vague pursuant to Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (Pa.1983); *see also*, Pa.R.C.P. 1019(a) and any amended complaint shall eliminate averments than can easily be amplified to matters beyond what is reasonably intended at this time by the complaint.

ORDER

AND NOW this **25th day** of **September**, **2015**, it is ORDERED and DIRECTED as follows.

1. Defendants' demurrer to count 1 is OVERRULED in part and SUSTAINED in part. The demurer to the count for unfair competition is SUSTAINED as follows.
    a. The demurer is SUSTAINED as to allegedly false statements by Keystone about its own services be the greatest or using state of the art equipment or being superior because of the AAA certification.
    b. The demurer is SUSTAINED as to allegations that Keystone unlawfully provides and/or advertises private detective services.
    c. The demurer to the count for unfair competition is DENIED to the extent that Knisely can state a claim for defamation or tortious interference with existing or prospective contractual relations, and to the extent Knisely can set forth factual averments of defamatory and false statements, such as statements as to violations

of law, standards or regulations, by Keystone about Knisely's capacity to provide mobile shredding with its equipment.

2. The motion to strike all three counts for failure to conform to law or rule of court is DENIED. However, the Court has granted the motion for a more specific pleading.
3. The motion to strike scandalous or impertinent matter contained in the complaint is GRANTED in part and DENIED in part as follows.
    a. The Court grants the motion to strike paragraphs 8, 9, 10, 13, 16, 19, 20, 28, 50, 51,52, 53, 54, 56(ii), 88, 102, 103, 104, 105, 107, 112(f), 112(g) and 134 on the grounds that they are scandalous and/or impertinent.
    b. The Court grants in part the motion to strike paragraphs 43, 44, and 45 to the extent they reference governmental contracts and "customers that incorporate the AAA certification standards established by" NAID.
    c. The Court denies the motion to strike paragraphs 7, 11, 12, 18, 21, 22, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 46, 56(i).
4. The motion for a more specific pleading is GRANTED. In its amended complaint, Plaintiff shall indicate specific instances of false statements with time frames and individuals involved and shall avoid broad and vague averments. The specific facts underlying the elements shall be specified in way so that an answer may be made with specific reference to a statement or incident at issue.
5. Plaintiff must file an amended complaint within 20 days.

6. This matter is placed on the Court's September Trial Term. A separate scheduling Order will be issued this date.

BY THE COURT,

September 25, 2015
Date

_____
Richard A. Gray, J.

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