

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

TODD BARTLEY and MICHELLE :
BARTLEY, husband and wife, JOHN :
DOE and JANE DOE, and COLONIAL :
RADIO GROUP OF WILLIAMSPORT, :
LLC, :
Plaintiffs, : No. CV 23-01,364
vs. : CIVIL ACTION – LAW
JAMES A. WEBB, JR., WEBB :
WEEKLY, and DERRICK DIXON, :
Defendants. :

OPINION AND ORDER

AND NOW, this 26th day of December, 2024, upon consideration of the Defendants' preliminary objections¹ to Plaintiffs' Amended Complaint, Plaintiffs' responses to the preliminary objections,² and the arguments of the parties,³ it is hereby ORDERED and DIRECTED that the preliminary objections are SUSTAINED in part and OVERRULED in part, as explained below.

I. BACKGROUND.

Plaintiffs Todd and Michelle Bartley, John and Jane Doe, and Colonial Radio Group, LLC commenced this action by Writ of Summons on December 8, 2023

¹ (i) Defendants James A. Webb, Jr. and Webb Weekly filed "Defendant[s]' Preliminary Objections to Plaintiff[s]' First Amended Complaint" on August 12, 2024 (the "Webb Preliminary Objections"), and (ii) Defendant Derrick Dixon filed "Preliminary Objections" on August 19, 2024 (the "Dixon Preliminary Objections").

² Plaintiffs filed (i) "Plaintiff[s]' Reply to Defendant James A. Webb, Jr.[s], Webb Weekly[s] Preliminary Objections to Plaintiff[s]' First Amended Complaint" on August 29, 2024 (the "Reply to Webb") and (ii) "Plaintiff[s]' Reply to Defendant Dixon's Preliminary Objections to Plaintiff[s]' First Amended Complaint" on September 9, 2024 (the "Reply to Dixon").

³ The Court heard argument on the Webb Preliminary Objections on September 20, 2024. Scheduling Order, dated August 13, 2024 and entered August 14, 2024. Gregory Stapp, Esq. represented the Plaintiffs, and David Wilk, Esq. represented the Webb Defendants at argument. The Court heard argument on the Dixon Preliminary Objections on December 4, 2024. Scheduling Order, dated and entered September 27, 2024 (rescheduling argument on the Dixon Preliminary Objections); Scheduling Order dated and entered August 20, 2024 (scheduling argument on the Dixon Preliminary Objections). Gregory Stapp, Esq. represented the Plaintiffs, and Christian Lovecchio, Esq. represented the Defendant Dixon at argument.

against Defendants James A. Webb, Jr., Webb Weekly and Derrick Dixon.⁴

Plaintiffs thereafter filed their Complaint on June 13, 2024.⁵

Plaintiff Todd Bartley alleges that he is the owner and operator of Plaintiff Colonial Radio Group and “an investigative reporter/blogger.” In the Summer of 2018, Todd Bartley asserts that he began reporting on allegations of misconduct, including sexual assault, involving a trip to Myrtle Beach by the Williamsport High School Baseball Team (the “Underlying Incident”). He began to publish articles concerning the trip and how the resulting investigation of the misconduct was handled by the Williamsport Area School District (“WASD”) and Lycoming County (the “County”).⁶

Thereafter, Plaintiffs claim that they began to receive threats and harassment of various types as a result of Plaintiff Todd Bartley’s reporting. Among other things, Plaintiffs claim that Defendant Webb attempted to interfere with Plaintiff Colonial Radio Group’s advertisers and that Defendant Dixon made various threats to Plaintiffs.⁷ They also claim that, during the relevant period, Dixon was an employee of and acting on behalf of Defendants Webb and Webb Weekly.⁸ The Complaint alleges five causes of action: tortious interference with contractual relations (Count I, Plaintiffs v. All Defendants), tortious interference with a prospective contractual relationship (Count II, Plaintiffs v. All Defendants), vicarious liability (Count III, Plaintiffs v. Defendants Webb and Webb Weekly), negligent infliction of emotional

⁴ Praecipe to Issue Writ of Summons, filed December 8, 2023; Writs of Summons, issued December 8, 2023. See also Pa. R. Civ. P. 1007 (“An action may be commenced by filing with the prothonotary ... a *praecipe* for a writ of summons”).

⁵ “Complaint,” filed June 13, 2024. Subsequent to preliminary objections, Plaintiffs filed an amended complaint on July 29, 2024, “Amended Complaint,” filed July 29, 2024 (the “Complaint”), which is the operative complaint at this time.

⁶ Complaint, ¶ 10.

⁷ *Id.*, ¶¶ 11-23.

⁸ *Id.*, ¶¶ 24, 41-45.

distress (Count IV, Plaintiffs v. Defendant Dixon), and intentional infliction of emotional distress (Count V, Plaintiffs v. Defendant Dixon).⁹

The Defendants filed preliminary objections to the Complaint.¹⁰ The Court heard argument on the preliminary objections on September 20, 2024 and December 4, 2024,¹¹ and they are now ripe for disposition.

II. THE PRELIMINARY OBJECTIONS AND PLAINTIFFS' REPLIES TO THEM.

A. The Preliminary Objections.

The Webb Preliminary Objections allege (1) that the Complaint fails to conform to rule of court, in that many of the allegations are based upon hearsay and double hearsay statements; (2) insufficient specificity of a pleading, in that the Complaint sues on behalf of unnamed plaintiffs to whom Defendants cannot respond, fails to name individuals to whom allegedly detrimental statements were made, fails to specify the relationship among the Defendants, and fails to name the entities with which the allegedly interfered with contracts were made; (3) inclusion of scandalous or impertinent material, in that the Complaint includes scandalous allegations that are hearsay and hearsay within hearsay and that serve no legitimate purpose, other than to inject salacious and controversial statements into the case; and (4) legal insufficiency of a pleading, in that some parties are improperly included in various causes of action, and Plaintiffs fail to allege the elements of their causes of action or to plead facts in support of them and fail to substantiate damages.¹²

The Dixon Preliminary Objections essentially mirror the Webb Preliminary Objections and raise the same or similar issues.¹³

⁹ *Id.*

¹⁰ *See, supra*, nn. 1-2.

¹¹ *See, supra*, n.3.

¹² Webb Preliminary Objections.

¹³ Dixon Preliminary Objections.

B. Plaintiffs' Replies to the Preliminary Objections.

Plaintiffs' Reply to Webb alleges (1) that Plaintiffs' believe evidence will emerge through discovery to substantiate their hearsay statements and that hearsay evidence is admissible under certain circumstances; (2) that the Complaint is sufficiently specific and that any missing information can be obtained through discovery; (3) that the Complaint does not contain scandalous or impertinent material but, rather, contains information which Plaintiffs' can substantiate; and (4) that Plaintiffs named the proper parties and sufficiently alleged the elements of and facts in support of their causes of action.¹⁴

As the Dixon Preliminary Objections essentially mirror the Webb Preliminary Objections and raise the same or similar issues, the Reply to Dixon essentially mirrors and raises the same issues as the Reply to Webb.¹⁵

III. LAW AND ANALYSIS.

A. The preliminary objections for failure to conform to rule of court.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for failure of a pleading to conform to law or rule of court.¹⁶ Defendants complain that Plaintiffs base a large portion of their allegations on hearsay statements and double hearsay statements. Specifically, they complain that Plaintiffs make certain representations and attempt to introduce certain documents relating to a police investigation or investigations that occurred out-of-state.¹⁷

"Hearsay" is "a statement that ... the declarant does not make while testifying at the current trial or hearing; and ... [that] a party offers in evidence to prove the

¹⁴ Reply to Webb.

¹⁵ Reply to Dixon.

¹⁶ See Pa. R. Civ. P. 1028(a)(2).

¹⁷ Webb Preliminary Objections, ¶¶ 4-8; Dixon Preliminary Objections, ¶¶ 4-8.

truth of the matter asserted in the statement."¹⁸ Hearsay testimony is *per se* inadmissible, except as otherwise provided in the Pennsylvania Rules of Evidence, by other rule of court, or by statute.¹⁹ Nevertheless, it is well settled that "evidence that would constitute inadmissible hearsay if offered to for one purpose may be admitted for another purpose"²⁰ and that "an out-of-court statement offered to explain a course of conduct is not hearsay."²¹

The Court is unaware of any authority to suggest that a plaintiff is prohibited from pleading facts that the plaintiff "knows" on the basis of information that would be inadmissible at trial on the basis of hearsay. Indeed, the Rules of Civil Procedure permit a pleading party to assert facts "upon information and belief."²²

Under the Commonwealth's fact-pleading regime, any complaint must state facts in which the complainant reasonably believes, and under which a good faith argument may reasonably be made that Pennsylvania law provides, or under developing law may provide, relief.²³

¹⁸ Pa. R.E. 801(c). A "statement" is "a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion." Pa. R.E. 801(a).

¹⁹ *Commonwealth v. Cunningham*, 805 A.2d 566, 572 (Pa. Super. 2002), *alloc. denied* 820 A.2d 703 (Pa. 2003).

²⁰ *Commonwealth v. Underwood*, 500 A.2d 820, 822 (Pa. Super. 1985).

²¹ *Commonwealth v. Cruz*, 414 A.2d 1032, 1035 (Pa. 1980); Thus, for example, as our Supreme Court has explained, "certain out-of-court statements offered to explain a course of police conduct are admissible. Such statements do not constitute hearsay since they are not offered for the truth of the matters asserted; rather, they are offered merely to show the information upon which police acted." *Commonwealth v. Palsa*, 555 A.2d 808, 811 (Pa. 1989) (citing *Commonwealth v. Sneed*, 526 A.2d 749, 754 (Pa. 1987)).

²² See, e.g., Pa. R. Civ. P. 1023.1(c)(3) ("The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, motion, or other paper. By signing, filing, submitting, or later advocating such a document, the attorney or pro se party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, ... the factual allegations have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery"). As the explanatory comment to Rule 1023.1 makes clear, a pleader's obligation is to plead only "what was reasonable to believe at the time the pleading, motion, or other paper was submitted." Pa. R. Civ. P. 1023.1, Explanatory Comment—2003. The Rule "recognizes that sometimes a litigant may have good reason to believe that a claim or defense is valid but may need discovery, formal or informal, to gather and confirm the evidentiary basis for the claim or defense. If evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule not to persist with that contention." Accordingly, Rule 1023.1 appears to contemplate that a pleader may plead facts based upon hearsay in appropriate circumstances; however, it also appears to indicate that the pleader has a duty in at least some instances to make clear that the factual allegations "are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

²³ *McNeil v. Jordan*, 894 A.2d 1260, 1276 (Pa. 2006).

In sum, the Court will not strike factual allegations made on the basis of inadmissible hearsay. Admissibility of evidence is a matter to be addressed in the context of what may be presented to a fact-finder at trial. At the pleading stage, the parties may assert facts in their pleadings when they know those facts to be true and when they reasonably believe them to be true. This necessarily means that factual allegations based upon hearsay are appropriate in at least some instances. The Court believes that it would be inappropriate for the Court to strike facts from the pleadings when a pleader and his attorney have presented a signed and verified pleading stating that they reasonably believe the facts asserted to be true and the legal theories advanced to be supported, and, through discovery, that they will be able to gather admissible evidence to support the facts asserted and legal theories advanced.²⁴

As such, the first preliminary objection asserted by the Webb Preliminary Objections and the first preliminary objection asserted by the Dixon Preliminary Objections are OVERRULED.

B. The preliminary objections for insufficient specificity.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for insufficient specificity in a pleading.²⁵ Rule 1019(a), Pennsylvania Rules of Civil Procedure, provides that “[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form.”²⁶ “Material facts’ are ‘ultimate facts,’ *i.e.*, those facts essential to support the claim. Evidence from which

²⁴ Of course, should facts emerge through discovery making an allegation unsupported or should reasonable discovery fail to yield facts in support of it, litigants and their attorneys are expected to cease persisting with it, in accordance with Rule 1023.1.

²⁵ Pa. R. Civ. P. 1028(a)(3).

²⁶ Pa. R. Civ. P. 1019(a).

such facts may be inferred not only need not but should not be alleged.”²⁷ Although parties must plead the material facts upon which their claims are based, they need not plead the evidence upon which they will rely to establish those facts.²⁸

While “the line between pleading facts and evidence is not always bright[.]” two conditions “must always be met: [t]he pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not merely subterfuge.”²⁹ When determining whether a claim has been pled with the requisite specificity, a court does not analyze the specificity of a particular paragraph or allegation; rather, it views the allegations in the context of the pleading as a whole.³⁰

Moreover, in *Connor v. Allegheny General Hospital*, our Supreme Court held that a proposed amendment to a complaint in trespass and assumpsit arising out of alleged medical malpractice was not barred by the statute of limitations where the amendment did not add new allegations of negligence based on a different theory but merely amplified an existing allegation of the original complaint.³¹ The Court so held because the right to amend a pleading should be granted liberally at any stage

²⁷ *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974) (citing *United Refrigerator Co. v. Applebaum*, 189 A.2d 253 (Pa. 1963) (allegation of defense by accommodation parties that plaintiff was accommodated party to whom they were not liable sufficient; reason for accommodation evidentiary fact that need not be alleged); *Smith v. Allegheny County*, 155 A.2d 615 (Pa. 1959) (complaint accusing defendants of failure to provide adequate drainage sufficient; source and means of flow either through pipes or strata of rock a matter of evidence)).

²⁸ *Com. by Shapiro v. Golden Gate National Senior Care LLC*, 194 A.3d 1010, 1029-30 (Pa. 2018) (citing *United Refrigerator*, *supra*, 189 A.2d at 255; *Unified Sportsmen of Pa. v. Pa. Game Comm’n*, 950 A.2d 1120, 1134 (Pa. Commw. 2008)). “[T]he complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense.” *Unified Sportsmen*, *supra*, 950 A.2d at 1134.

²⁹ *Bata v. Cent.-Penn Nat. Bank of Philadelphia*, 224 A.2d 174, 179 (Pa. 1966).

³⁰ *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805 A.2d 579, 589 (Pa. Super. 2002) (en banc). A complaint must do more than merely “ ‘give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.’ ... It should formulate the issues by fully summarizing the material facts.” *Baker*, *supra*, 324 A.2d at 505 (quoting *Conley v. Gibson*, 78 S. Ct. 99, 103, (1957) (statement made in reference to Fed. R. Civ. P. 8(a))).

³¹ *Connor v. Allegheny General Hospital*, 461 A.2d 600, 602 (Pa. 1983).

in the proceeding, absent “resulting prejudice” to the adverse party. Thus, an amendment that merely amplifies what has already been averred must be permitted, while an amendment introducing a new cause of action after the statute of limitations has run in favor of the defendant constitutes “resulting prejudice” to the adverse party and must not be allowed.³²

When a pleading fails to satisfy the necessary requirements, the adverse party may move to strike the pleading³³ or move for a more specific pleading.³⁴ Such motions may be granted when the pleading fails to conform to law or rule of court or when it is otherwise so insufficient that the adverse party cannot understand the claims it sets forth.³⁵ When presented with a motion to strike or a motion for a more specific pleading, the court may exercise “broad discretion in determining the amount of detail that must be averred.”³⁶

Defendants first complain that the Plaintiffs inappropriately bring suit on behalf of minors using the pseudonyms “John Doe” and “Jane Doe” and that this prevents them from preparing a defense. Under our Rules of Civil Procedure, the proper way to bring a suit in which a minor is plaintiff, is to sue on behalf of “A, a Minor, by B, Guardian.”³⁷ Accordingly, Plaintiffs shall file an amended complaint that complies with the Rules of Civil Procedure regarding actions brought by and against

³² *Id.* (citing *Schaffer v. Larzelere*, 189 A.2d 267, 270 (Pa. 1963)).

³³ Pa. R. Civ. P. 1028(a)(2) (“Preliminary objections may be filed by any party to any pleading ... [for] failure of a pleading to conform to law or rule of court”).

³⁴ Pa. R. Civ. P. 1028(a)(3) (“Preliminary objections may be filed by any party to any pleading ... [for] insufficient specificity in a pleading”).

³⁵ *Connor, supra*, 461 A.2d at 602-03.

³⁶ *United Refrigerator, supra*, 189 A.2d at 255.

³⁷ Pa. R. Civ. P. 2028(a) (“An action in which a minor is plaintiff shall be entitled ‘A, a Minor, by B, Guardian,’ against the party defendant. The minor shall be designated by the initials of his or her first and last name”). Furthermore, “[t]he initial pleading filed in behalf of a minor plaintiff shall state the name and address of his or her guardian and the guardian’s relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person selected as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the initial pleading shall contain a reference to the record of the appointment.” Pa. R. Civ. P. 2028(b).

minors and shall add the necessary allegations concerning each minor and his or her guardian. Furthermore, upon filing the amended complaint, Plaintiffs shall file a motion requesting that the caption be corrected to conform to the amended pleading and the Rules of Civil Procedure.

Defendants next claim that Plaintiffs fail to name what advertisers or potential advertisers Defendants allegedly contacted, what alleged slanderous or detrimental statements Defendants allegedly conveyed to interfere with Plaintiffs' business relationships, what communications occurred among the Plaintiffs and their advertisers, what relationships exist among the Defendants, what contracts and relationships existed between Plaintiffs and their advertisers, and the like.³⁸

Under Pennsylvania law,

Tortious interference with prospective or existing contractual relations consists of the following 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.

In determining whether a particular course of conduct is improper for purposes of setting forth a cause of action for intentional interference with contractual relationships, or, for that matter, potential contractual relationships, the court must look to section 767 of the Restatement (Second) of Torts. This section provides the following factors for consideration: 1) the nature of the actor's conduct; 2) the actor's motive; 3) the interests of the other with which the actor's conduct interferes; 4) the interests sought to be advanced by the actor; 5) the

³⁸ Webb Preliminary Objections, ¶¶ 16-18; Dixon Preliminary Objections, ¶¶ 16-18.

proximity or remoteness of the actor's conduct to interference, and 6) the relationship between the parties.³⁹

Thus, to pursue their claims for interference with contractual relations and interference with prospective contractual relations, Plaintiffs must have specific contractual relations or prospective contractual relations with specific advertisers and potential advertisers and Defendants must have wrongfully taken specific action(s) to harm the existing relationship or to prevent the prospective relationship from occurring, all of which resulted in actual legal harm to the Plaintiffs. The requirement that a plaintiff plead the material facts upon which a cause of action or defense is based necessarily means that a pleader must plead the material facts supporting each element of each cause of action asserted.

In other words, our rules of pleading require the Defendants to state the material facts in support of each element of the causes of action he alleges. At a minimum, Defendant must state which advertisers Defendants allegedly contacted, how Defendants allegedly improperly interfered with existing or prospective contractual relations and the actual damages sustained as a result. Furthermore, as each contractual relationship or prospective contractual relationship Defendants allegedly interfered with to the detriment of Plaintiffs constitutes a separate claim against the Defendants, Defendants would be severely prejudiced should plaintiff not "name names," as Plaintiffs likely would be able to add additional causes of action without restriction, even after expiration of the statute of limitations, in accordance with *Connor*.

³⁹ *Maverick Steel Co., L.L.C. v. Dick Corporation/Barton Malow*, 54 A.3d 352, 354-55 (Pa. Super. 2012) (quoting *Steffy & Son, Inc. v. Citizens Bank of Pa.*, 7 A.3d 278, 288 (Pa. Super. 2010) (quoting *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super. 1997) (citations omitted))).

As such, the second preliminary objection asserted by the Webb Preliminary Objections and the second preliminary objection asserted by the Dixon Preliminary Objections are SUSTAINED. Plaintiffs shall file an amended complaint stating, in a concise and summary form, the material facts upon which each of their respective causes of action are based.

C. The preliminary objections for scandalous or impertinent material.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for inclusion of scandalous or impertinent matter in a pleading.⁴⁰ "In order to be scandalous or impertinent, 'the allegation must be immaterial and inappropriate to the proof of the cause of action.'"⁴¹

Defendants' complaints concerning inclusion of scandalous or impertinent material focus on Paragraphs 14-23 of the Complaint.⁴² Those Paragraphs recite various threats Plaintiffs allege they received, primarily via social media, as well as the destruction by arson of Plaintiff Todd Bartley's car, purportedly in retaliation for reporting stories based on Bartley's view of the investigation of the Underlying Incident.⁴³ Plaintiffs allege that many of the threatening statements were made by a "synthetic profile" owned and utilized by Defendant Dixon and that Defendant Dixon was an employee of the Webb Defendants.⁴⁴

⁴⁰ See Pa. R. Civ. P. 1028(a)(2).

⁴¹ *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 822 (Pa. Super. 2017) (quoting *Common Cause/Pennsylvania v. Com.*, 710 A.2d 108 (Pa. Commw. 1998)); see also *Biros v. U Lock Inc.*, 255 A.3d 489, 497 (Pa. Super. 2021) (striking as scandalous or impertinent corporate debtor's allegation that creditor acquired funds to lend debtor from illicit gambling where the dispute concerned failure to pay and creditor pled and proved that she paid for the property at issue expecting repayment, while debtor has remained in possession and enjoyment of the property without any apparent ability to make repayment); *Common Cause, supra*, 710 A.2d at 115 (striking petitioners' introductory statement that was "an editorialized history of lawmaking in Pennsylvania" and "include[d] allegations regarding the procedures used by the Governor and the legislative leadership in enacting certain other pieces of legislation, not here before [the court]" which "are immaterial to Petitioners' cause of action").

⁴² Webb Preliminary Objections, ¶¶ 20-22; Dixon Preliminary Objections, ¶¶ 20-22.

⁴³ Complaint, ¶¶ 14-23.

⁴⁴ *Id.*, ¶¶ 22-24.

Although the Complaint alleges that “[l]eads in this arson case were developed and suspects were identified by Pennsylvania authorities and this case was presented for prosecution,”⁴⁵ it does not appear to allege that any of the Defendants are responsible for the arson. Furthermore, it is ambiguous concerning which statements are alleged to have been made by Defendant Dixon and does not allege that the Webb Defendants were behind or involved in, or even knew about, anything purportedly done by Defendant Dixon, other than to state that Defendant Dixon was an employee of the Webb Defendants. The Complaint fails to “connect the dots.”

The allegations concerning the arson of Plaintiffs’ car and the threats allegedly made to the Plaintiffs are appropriately included in the Complaint only if they are material facts in support of one or more of the causes of action and are material and appropriate to the proof of the causes of action. The Court is unable to determine whether they are material and appropriate because the Complaint fails to connect the arson and some or all of the alleged threats to the Defendants.

As such, the third preliminary objection asserted by the Webb Preliminary Objections and the third preliminary objection asserted by the Dixon Preliminary Objections are SUSTAINED. Plaintiffs shall file an amended complaint either removing the allegations at issue or demonstrating that they are material and appropriate to the proof of the causes of action.

⁴⁵ *Id.*, ¶ 16.c.

D. The preliminary objections for legal insufficiency.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for legal insufficiency of a pleading (demurrer).⁴⁶ " [A] demurrer is a preliminary objection to the legal sufficiency of a pleading and raises questions of law.' "⁴⁷

[A] demurrer is properly granted where the contested pleading is legally insufficient.... "Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer." ... All material facts set forth in the pleading and all inferences reasonably deducible therefrom must be admitted as true.⁴⁸

Since a demurrer tests the legal sufficiency of a pleading, it will be granted only when "on the facts averred, the law says with certainty that no recovery is possible."⁴⁹

1. Plaintiffs' cause of action for tortious interference with a contractual relationship.

Tortious interference with a contractual relationship consists of the following elements: (1) the existence of a contractual relationship between the plaintiff and a third party; (2) purposeful action by the defendant that is specifically intended to harm the relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) actual legal damage resulting from the defendant's conduct.⁵⁰

Defendants complain that the Complaint fails to allege a contractual relationship involving any of the parties except Plaintiff Colonial Radio Group; that some parties are incapable of entering into contracts; that *Webb Weekly* is not a

⁴⁶ See Pa. R. Civ. P. 1028(a)(4).

⁴⁷ *Matteo v. EOS USA, Inc.*, 292 A.3d 571, 576 (Pa. Super. 2023) (quoting *Laret v. Wilson*, 279 A.3d 56, 58 (Pa. Super. 2022)).

⁴⁸ *Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208 (Pa. Super. 2012) (quoting *Cardenas v. Schober*, 783 A.2d 317, 321-22 (Pa. Super. 2001) (citing Pa. R. Civ. P. 1028(a)(4))).

⁴⁹ *Vattimo v. Lower Bucks Hospital, Inc.*, 465 A.2d 1231, 1232 (Pa. 1983) (citing *Hoffman v. Misericordia Hospital of Philadelphia*, 267 A.2d 867 (Pa. 1970)).

⁵⁰ *Maverick Steel, supra*, 54 A.3d at 354-55.

valid party; that no evidence is presented to suggest *Webb Weekly* ever contacted advertisers; that a conspiracy is alleged without identifying the members of it, their roles within it or any substantial step by any party in furtherance of it, making any conspiracy claim fail as a matter of law; that Plaintiffs present no allegation of fact in support of their claim that Defendants made any contact with advertisers that was negative or intended to interfere with a relationship; that Plaintiffs do not identify any specific advertiser that was allegedly contacted; and that Plaintiffs have not substantiated any actual legal damages.⁵¹

As indicated above,⁵² Plaintiffs have not alleged the necessary material facts in support of their causes of action for tortious interference with a contractual relationship. Accordingly, on the facts averred, the law says with certainty that no recovery is possible, and the demurrers to Plaintiffs' causes of action for tortious interference with a contractual relationship are SUSTAINED, with leave to amend.

2. *Plaintiffs' cause of action for tortious interference with a prospective contractual relationship.*

Tortious interference with a prospective contractual relationship consists of the following elements: (1) the existence of a prospective contractual relationship between the complainant and a third party; (2) purposeful action by the defendant that is specifically intended to harm the prospective relationship or to prevent it from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) actual legal damage resulting from the defendant's conduct.⁵³

Defendants complain that the Complaint fails to allege a prospective contractual relationship involving any of the parties except Plaintiff Colonial Radio

⁵¹ Webb Preliminary Objections, ¶ 24; Dixon Preliminary Objections, ¶ 24.

⁵² See, *supra*, Part III.B.

⁵³ *Maverick Steel, supra*, 54 A.3d at 354-55.

Group; that some parties are incapable of entering into contracts; that *Webb Weekly* is not a valid party; that no evidence is presented to suggest *Webb Weekly* ever contacted advertisers; that a conspiracy is alleged without identifying the members of it, their roles within it or any substantial step by any party in furtherance of it, making any conspiracy claim fail as a matter of law; that Plaintiffs present no allegation of fact in support of their claim that Defendants made any contact with prospective advertisers that was negative or intended to interfere with a prospective relationship; that Plaintiffs do not identify any specific prospective advertiser that was allegedly contacted; and that Plaintiffs have not substantiated any actual legal damages.⁵⁴

As indicated above,⁵⁵ Plaintiffs have not alleged the necessary material facts in support of their causes of action for tortious interference with a prospective contractual relationship. Accordingly, on the facts averred, the law says with certainty that no recovery is possible, and the demurrers to Plaintiffs' causes of action for tortious interference with a prospective contractual relationship are SUSTAINED, with leave to amend.

3. Plaintiffs' cause of action for vicarious liability.

The Superior Court has explained a cause of action for vicarious liability pertaining to an employer-employee relationship as follows:

It is well settled that an employer is held vicariously liable for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of the employment. In certain circumstances, liability of the employer may also extend to intentional or criminal acts committed by the employee. The conduct of an employee is considered "within the scope of employment" for purposes of vicarious liability if: (1) it is of a kind and nature that the employee is employed to perform; (2) it occurs substantially within the authorized time and

⁵⁴ Webb Preliminary Objections, ¶ 25; Dixon Preliminary Objections, ¶ 25.

⁵⁵ See, *supra*, Part III.B.

space limits; (3) it is actuated, at least in part, by a purpose to serve the employer; and (4) if force is intentionally used by the employee against another, the use of force is not unexpected by the employer.⁵⁶

Defendants complain *Webb Weekly* is not a valid party; that Plaintiffs plead no facts to support a contention that either individual Defendant was acting within the course or scope of their employment with *Webb Weekly*; that Defendants deny that an employer-employee relationship exists among either of the Webb Defendants and Defendant Dixon; that Plaintiffs make conclusory statements but no allegations of fact concerning an employer-employee relationship; that Plaintiffs rely on an allegation of apparent authority without pleading any facts in support of that contention; and that Plaintiffs do not allege any material facts in support of an allegation that any Defendant was acting within the course and scope of their employment.⁵⁷

The Complaint alleges that Defendant Dixon was an agent, servant or employee or an apparent agent of the Webb Defendants and that he acted within the scope of his employment when he interfered with the Plaintiffs existing or prospective contractual relationships, thereby proximately causing the loss of existing and potential advertisers.⁵⁸ The Defendants dispute these allegations, but the Court cannot grant a demurrer where there are disputed allegations.

A claim for vicarious liability is derivative of other claims, however, in that it holds the principal liable for the acts and omissions of his agent. Thus, "termination of the claim against the agent extinguishes the derivative [vicarious liability] claim against the principal."⁵⁹ As the Court has sustained the Defendants' demurrers to

⁵⁶ *R.A. ex rel. N.A. v. First Church of Christ*, 748 A.2d 692, 699 (Pa. Super. 2000) (citations omitted).

⁵⁷ Webb Preliminary Objections, ¶ 26; Dixon Preliminary Objections, ¶ 26.

⁵⁸ Complaint, ¶¶ 41-45.

⁵⁹ *Mamalis v. Atlas Van Lines, Inc.*, 560 A.2d 1380, 1383 (Pa. 1989).

Plaintiffs other causes of action, the law says with certainty that no recovery is possible, and the demurrers to Plaintiffs' causes of action for vicarious liability are SUSTAINED, with leave to amend.

4. Plaintiffs' cause of action for negligent infliction of emotional distress ("NIED").

Pennsylvania courts have limited a cause of action based on NIED to four theories of recovery. In order to recover, a plaintiff must prove one of four theories: (1) situations where the defendant owed the plaintiff a pre-existing contractual or fiduciary duty (the special relationship rule); (2) the plaintiff suffered a physical impact (the impact rule); (3) the plaintiff was in a "zone of danger" and reasonably experienced a fear of immediate physical injury (the zone of danger rule); or (4) the plaintiff observed a tortious injury to a close relative (the bystander rule).⁶⁰

Defendants complain that Plaintiffs do not support their claim with any factual averments but mere conclusory statements that a wrong was done and that Defendants do not plead or substantiate any damages suffered as a result of the alleged wrongdoing.⁶¹

The Complaint alleges that Defendant Dixon "negligently and/or recklessly committed multiple acts of extreme and outrageous conduct which caused severe emotional, psychological, and psychiatric injuries, distress, and harm to Plaintiffs in an extreme, outrageous and harmful manner."⁶² The Complaint does not identify which of the four theories of recovery Plaintiffs assert support their claims for NIED and does not allege material facts in support of any of them.

⁶⁰ *Jordan v. Pennsylvania State University*, 276 A.3d 751, 774 (Pa. Super. 2022) (citing *Doe v. Phila. Cmty. Health Alternatives AIDS Task Force*, 745 A.2d 25, 27 (Pa. Super. 2000), *aff'd* 767 A.2d 548 (Pa. 2001)).

⁶¹ Webb Preliminary Objections, ¶ 27; Dixon Preliminary Objections, ¶ 27.

⁶² Complaint, ¶ 47.

Accordingly, on the facts averred, the law says with certainty that no recovery is possible, and the demurrers to Plaintiffs' causes of action for NIED are SUSTAINED, with leave to amend.

5. Plaintiffs' cause of action for intentional infliction of emotional distress ("IIED").

The elements of a cause of action for intentional infliction of emotional distress are "(1) the conduct must be extreme and outrageous; (2) the conduct must be intentional or reckless; (3) it must cause emotional distress; and (4) the distress must be severe."⁶³

Defendants complain that Plaintiffs do not support their claim with any factual averments but mere conclusory statements that a wrong was done and that Defendants do not plead or substantiate any damages suffered as a result of the alleged wrongdoing.⁶⁴

The Complaint alleges that Defendant Dixon intentionally engaged in various acts and omissions "which would constitute violations" of various criminal statutes; that he committed intentional and willful misconduct; that he acted with actual malice toward Plaintiffs; and that he "intentionally committed multiple acts of extreme and outrageous conduct which caused severe emotional, psychological, and psychiatric injuries, distress, and harm to Plaintiffs in an extreme, outrageous and harmful manner."⁶⁵

Plaintiffs have failed to allege the material facts in support of their claims for IIED. Specifically, Plaintiffs have not alleged material facts in support of their

⁶³ *Jordan, supra*, 279 A.3d at 775 (citing *Madreperla v. Williard Co.*, 606 F. Supp. 874, 879-80 (E.D. Pa. 1985) (citing *Chuy v. Philadelphia Eagles Football Club*, 595 F.2d 1265, 1273 (3d Cir.1979)).

⁶⁴ Webb Preliminary Objections, ¶ 28; Dixon Preliminary Objections, ¶ 28.

⁶⁵ Complaint, ¶¶ 49-52.

allegation that the Defendants' misconduct was extreme and outrageous⁶⁶ and that it caused them severe emotional distress. Accordingly, on the facts averred, the law says with certainty that no recovery is possible, and the demurrers to Plaintiffs' causes of action for IIED are SUSTAINED, with leave to amend.

As such, the fourth preliminary objection asserted by the Webb Preliminary Objections and the fourth preliminary objection asserted by the Dixon Preliminary Objections are SUSTAINED. Plaintiffs may file an amended complaint addressing the issues identified above.⁶⁷

⁶⁶ Some of the conduct described in the Complaint could be characterized as extreme and outrageous misconduct. As indicated above, however, it is impossible for the Court to discern which acts were committed by or attributable to the Defendants. See, *supra*, Part III.C. Hence, the Court cannot conclude that Plaintiffs have alleged that the Defendants engaged in conduct that was extreme and outrageous.

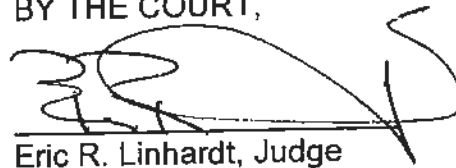
⁶⁷ "[I]t is generally an abuse of discretion to dismiss a complaint without leave to amend." *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa. Super. 1982). "There may, of course, be cases where it is clear that amendment is impossible and where to extend leave to amend would be futile.... [However], [t]he right to amend should not be withheld where there is some reasonable possibility that amendment can be accomplished successfully." *Otto v. American Mutual Ins. Co.*, 393 A.2d 450, 451 (Pa. 1978). "In the event a demurrer is sustained because a complaint is defective in stating a cause of action, if it is evident that the pleading can be cured by amendment, a court may not enter final judgment, but must give the pleader an opportunity to file an amended complaint.... This is not a matter of discretion with the court but rather a positive duty." *Framlau Corporation v. Cnty. of Delaware*, 299 A.2d 335, 337 (Pa. Super. 1972). Plaintiffs will be permitted to amend here, as the Court finds there is some reasonable possibility that amendment can be accomplished successfully.

IV. CONCLUSION AND ORDER.

For reasons explained above, the Webb Preliminary Objections and the Dixon Preliminary Objections are SUSTAINED in part and OVERRULED in part. Plaintiffs' shall file an amended complaint within twenty (20) days after entry of this Order, in accordance with the Opinion above. With their amended complaint, Plaintiffs shall also file a Motion, with a proposed Order, to correct the caption of this case to comply with the Rules of Civil Procedure concerning actions by minors.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

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