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CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on December 11, 2020, a petition for name change was filed in the Court of Common Pleas of Adams County, Pennsylvania requesting a decree to change the name of the minor Jeremiah David Garlach to Jeremiah Lee Gebhart. The court has affixed February 12, 2021 at 10:30 am in courtroom #4, third floor of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the Petition should not be granted.

Jamie Garlach
Parent

1/15

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
Change of Name Proceeding
2020-SU-1096

INRE: A.S.H.
Petition for Name Change of a Minor

NOTICE

NOTICE IS HEREBY GIVEN that on December 10, 2020, the Petitioner, Paige Nicole Flax, filed a Petition for Name Change of a Minor, said minor having the initials of A.S.H.

The Court has affixed February 12, 2021, at 11:30 a.m. in the Adams County Courthouse, Courtroom No. 4, third floor, Gettysburg, Adams County, Pennsylvania, as the time and place for the hearing of said Petition when and where all persons interested may appear and show cause, if any they have, why the prayer of Petitioner should not be granted.

Jeffery M. Cook
Attorney for Petitioner
234 Baltimore Street
Gettysburg, PA 17325
717-334-8516

1/15

FICTITIOUS NAME REGISTRATION

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on December 10, 2020 for VALHALLA TOURS at 526 York Street, Gettysburg, PA 17325. The name and address of each individual interested in the business is Penny Trate at 526 York Street, Gettysburg, PA 17325. This was filed in accordance with 54 Pa.C.S. 311.

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JONATHAN D. ROTH, ELLEN E. ROTH AND BLACK
WALNUT PRODUCTIONS, INC. VS. JOHN W. DUTTERA,
JR. AND DUTTERA SOUND SERVICE, LLC

1. In the Complaint, Plaintiffs allege that Defendant John Duttera, Jr. (“Duttera”) met with Eastern Adams Regional Police on two separate occasions falsely alleging Plaintiff Jonathan Roth (“Roth”) embezzled and otherwise unlawfully converted Defendants’ fund while in his employ. The Complaint further notes that after consultation with the Adams County District Attorney’s Office, the Eastern Adams Regional Police Department elected not to file charges.

2. For purposes of the tort of malicious prosecution, “criminal proceedings” are instituted when: (1) legal process is issued for the purpose of bringing the person before an official or tribunal whose function it is to determine guilt; (2) an indictment is returned or an information is filed against an individual; or (3) the person is lawfully arrested on a criminal charge. “The making of the charge is not actionable, however, . . . unless prosecution actually results from it, or, in other words, unless criminal proceedings are instituted against the accused by the tribunal or official before whom the charge is made . . .”

3. Defendants’ third preliminary objection seeks to strike reference to a conversation between the parties on the basis that it was illegally recorded pursuant to the Pennsylvania Wiretapping and Electronic Surveillance Control Act (“Act”), 18 Pa. C. S. A. §5701. As neither the Complaint nor the transcript indicate that the information was obtained in compliance with the Act, it will be stricken. Additionally, in order to ensure the contents of the communication are not further improperly disclosed, Exhibit G to the Complaint will be sealed of record. As it is impossible to ascertain whether future reference to the conversation will be based on memory of the actual conversation or, rather, memory of the written transcript, all evidence of the February 20, 2020 conversation will be precluded at trial.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 2020-SU-762, JONATHAN D. ROTH, ELLEN E.
ROTH AND BLACK WALNUT PRODUCTIONS, INC. VS. JOHN
W. DUTTERA, JR. AND DUTTERA SOUND SERVICE, LLC

Jeffery M. Cook, Esq., Attorney for Plaintiffs
Christopher M. Reeser, Esq., and Brittany E. Bakshi, Esq.,
Attorneys for Defendants
George, P. J., December 23, 2020

OPINION

This litigation involves the Plaintiffs’ separation from Defendants’ employ and subsequent effort to establish a competing business. Plaintiffs have brought suit against Defendants claiming they improperly took steps to sabotage the effort. Plaintiffs have brought the current litigation raising claims of intentional interference with prospective contractual relations; malicious prosecution; intentional

infliction of emotional distress; and defamation. Currently before the Court are Defendants' Preliminary Objections to the Complaint. For the reasons set forth below, the objections will be sustained in part and denied in part.

Defendants' initial preliminary objection demurs to the count of malicious prosecution. Defendants claim the allegations in the Complaint, even if true, are insufficient to establish the elements of malicious prosecution. Defendants' preliminary objection on this issue is well placed and will be granted.

In the Complaint, Plaintiffs allege that Defendant John Duttera, Jr. ("Duttera") met with Eastern Adams Regional Police on two separate occasions falsely alleging Plaintiff Jonathan Roth ("Roth") embezzled and otherwise unlawfully converted Defendants' funds while in his employ. The Complaint further notes that after consultation with the Adams County District Attorney's Office, the Eastern Adams Regional Police Department elected not to file charges.

The elements of malicious prosecution are: (1) the institution of proceedings against the plaintiff; (2) without probable cause; (3) with malice; and (4) the proceedings being terminated in favor of the plaintiff. *Bradley v. General Accident Ins. Co.*, 778 A.2d 707, 710 (Pa. Super. 2001); *Manley v. Fitzgerald*, 997 A.2d 1235, 1241 (Pa. Cmwlth. 2010). Defendants argue that the allegations in the Complaint are insufficient to meet these elements arguing that the act of providing information to a police officer, who has the ultimate discretion on whether or not to file charges, shields the informant from liability as the informant has not actually "procured" the initiation of criminal proceedings.

Although Defendants' argument is partially correct, it does not fully state the law in this area. In *Bradley*, the Superior Court stated:

A private person who gives to a public official information of another's supposed criminal misconduct, of which the official is ignorant, obviously causes the institution of such subsequent proceedings as the official may begin on his own initiative, but giving the information or even making an accusation of criminal misconduct does not constitute a procurement of the proceedings initiated by the officer if it is left entirely to [the officer's] discretion to initiate the proceedings or not....

If, however, the information is known by the giver to be false, an intelligent exercise of the officer's discretion becomes impossible, and a prosecution based upon it is procured by the person giving the false information. In order to charge a private person with responsibility for the initiation of proceedings by a public official, it must therefore appear that his desire to have the proceedings initiated, expressed by direction, request or pressure of any kind, was the determining factor in the official's decision to commence the prosecution, or that the information furnished by him upon which the official acted was known to be false.

Id. A.2d at 711 (quoting Restatement (Second) of Torts, § 653, comment g). Thus, if proceedings were initiated by a police officer as a result of false information intentionally provided to the officer, a cause of action against the informant will lie. The current Complaint alleges Duttera maliciously provided the police officer with false information.

Nevertheless, Plaintiffs' current claim suffers from a more fundamental deficiency. Simply put, prosecution was never commenced in this matter. Rather, the officer, in the exercise of discretion and at the direction of the Commonwealth's attorney, did not initiate criminal proceedings. For purposes of the tort of malicious prosecution, "criminal proceedings" are instituted when: (1) legal process is issued for the purpose of bringing the person accused before an official or tribunal whose function it is to determine guilt; (2) an indictment is returned or an information is filed against an individual; or (3) the person is lawfully arrested on a criminal charge. Restatement (Second) of Torts, § 654. "The making of the charge is not actionable, however, ... unless a prosecution actually results from it, or, in other words, unless criminal proceedings are instituted against the accused by the tribunal or official before whom the charge is made..." Restatement (Second) of Torts, § 653, comment c. Since criminal charges were never instituted against Roth, a claim of malicious prosecution clearly fails.

Defendants' next preliminary objection seeks to strike allegations in the Complaint and exhibits attached to the Complaint on the basis that they are scandalous and impertinent. Pa. R.C.P. 1028(a)(2).

In order to be scandalous or impertinent, “the allegation must be immaterial and inappropriate to proof of the cause of action.” *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 829 (Pa. Super. 2017) (quoting *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 115 (Pa. Cmwlth. 1998)). Appellate authority instructs that trial courts should exercise the right to strike such allegations sparingly and only where there is an affirmative showing of prejudice. *Id.*; *Commonwealth Department of Environmental Resources v. Hartford Accident & Indemnity Co.*, 396 A.2d 885, 888 (Pa. Cmwlth. 1979). In light of this instruction, Defendants’ objection will be denied as it is premature.

The allegations and documents at issue purport to relate to Plaintiffs’ claim of defamation. In support of their preliminary objection, Defendants argue the representations in the exhibits on their face are not defamatory and therefore are impertinent to the litigation. In addressing this issue, it is noted that Plaintiffs’ Complaint includes causes of actions for both defamation and intentional interference with prospective contractual relations. Although it is arguable the content in the exhibits is not defamatory, that issue is ultimately better left to the finder of fact in the context of the entirety of Plaintiffs’ claims. Moreover, a cursory review of the exhibits supports their materiality to a claim of intentional interference with contractual relations. Further development of Plaintiffs’ allegations is necessary before meaningful discussion of the evidentiary value of the exhibits can be held. Accordingly, objection on this basis is denied.

Defendants’ third preliminary objection seeks to strike reference to a conversation between the parties on the basis that it was illegally recorded pursuant to the Pennsylvania Wiretapping and Electronic Surveillance Control Act (“Act”), 18 Pa. C.S.A. § 5701. Unquestionably, under the Act, the recording of a telephone conversation without the consent of the participants is illegal unless otherwise subject to a statutory exception. 18 Pa. C.S.A. § 5703; *Commonwealth v. Saccol*, 557 A.2d 1095, 1097-99 (Pa. Super. 1989). Currently, no such exception is apparent in the pleadings. Moreover, the intentional disclosure of the contents of an oral communication, or evidence derived therefrom, constitutes a criminal offense. 18 Pa. C.S.A. § 5703(2).

Plaintiffs' Complaint references a telephone conversation between the parties which occurred on February 20, 2020 which "was witnessed and transcribed by" Roth's wife. Attached to the Complaint is a copy of what purports to be the transcribed telephone conversation between the parties. There is nothing in the transcript establishing all participants consented to or were aware the conversation was being recorded.

As neither the Complaint nor the transcript indicate that the information was obtained in compliance with the Act, it will be stricken. Additionally, in order to ensure the contents of the communication are not further improperly disclosed, Exhibit G to the Complaint will be sealed of record. As it is impossible to ascertain whether future reference to the conversation will be based on memory of the actual conversation or, rather, memory of the written transcript, all evidence of the February 20, 2020 conversation will be precluded at trial.

Defendants' final preliminary objection is a motion to strike several allegations in the Complaint on the basis they lack the sufficient specificity required by the Pennsylvania Rules of Civil Procedure. Pa. R.C.P. 1028(a)(3). The purpose of such a preliminary objection is to ensure that a defending party's right and ability to answer and defend against the claim will not be unduly hampered by the pleader's vagueness in stating the grounds of the suit. *Paz v. Comm., Dept. of Corrections*, 580 A.2d 452, 456 (Pa. 1990). In determining whether a particular paragraph in a complaint is stated with the necessary specificity, the allegation must be read in the context of the entire complaint. *Unified Sportsmen of Pennsylvania v. Pennsylvania Game Com'n (PGC)* 950 A.2d 1120, 1135 (Pa. Cmwlth. 2008).

Turning to the specific paragraphs to which the objection is lodged, paragraph 28 of the Complaint will be stricken. The allegation is nothing more than a broadly brushed claim that Duttera "continuously slandered" Roth to an unspecified number of people. Clearly, such an allegation improperly opens the door to a wide range of potential evidence of slander to which Defendants can't properly anticipate or prepare.

On the other hand, the objection to paragraph 40 is denied as in the context of the entire Complaint, paragraph 40 is sufficiently specific to properly frame the issues in dispute. The paragraph references defamatory statements contained throughout the Complaint

and identifies the parties allegedly impacted, or attempted to be impacted, by their utterance. Specific details of the exchanges can properly be further developed through discovery within the framework of the allegations in the Complaint.¹

For the foregoing reasons, the attached Order is entered. As it is possible that certain deficiencies in the pleading can be cured by amendment with exception of the demurer to the count of malicious prosecution, Plaintiffs will be given the opportunity to amend the Complaint. *Jones v. City of Philadelphia*, 893 A.2d 837, 846 (Pa. Cmwlth. 2006).

ORDER OF COURT

AND NOW, this 23rd day of December, 2020, it is hereby Ordered:

1. Defendants' demurer to Count II of the Complaint (malicious prosecution) is sustained;
2. Defendants' preliminary objection to the inclusion of scandalous and impertinent matter is overruled;
3. Defendants' motion to strike paragraph 32 and Exhibit G of Plaintiffs' Complaint is sustained; and
4. Defendants' preliminary objection based on lack of specificity is sustained in part and overruled in part. Paragraphs 28 and 40(i) of Plaintiffs' Complaint are stricken. The preliminary objection is overruled in regard to the remaining requests.

Plaintiffs are granted twenty (20) days from the date of this Order within which to file an Amended Complaint. In the event an Amended Complaint is filed, Defendants shall file responsive pleading in compliance with the Pennsylvania Rules of Civil Procedure. In the event Plaintiffs fail to file an Amended Complaint within twenty (20) days, Defendants are granted twenty (20) days thereafter within which to file an Answer to the remaining allegations in the Complaint as identified by this Order.

¹ The one exception to Plaintiffs' specific description of the entities allegedly affected by statements attributed to Duttera is a reference to "other entities not yet known to Plaintiffs." This allegation will be stricken.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF LAUREN N. DOUGLASS, JR., DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Adele C. Douglass, 967 Bridgewater Drive, New Oxford, PA 17350

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF THOMAS NELSON HITCHCOCK, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Barbara Ann Shorb, c/o Linda S. Siegle, Esq., Siegle Law, 1010 Eichelberger Street, Suite 3, Hanover PA 17331

Attorney: Linda S. Siegle, Esq., Siegle Law, 1010 Eichelberger Street, Suite 3, Hanover PA 17331

ESTATE OF FANNIE E. RIDINGER, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Barbara A. Ridinger, 743 West King Street, Littlestown, PA 17340

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MILDRED M. SAMPSON a/k/a MILDRED M. MEYERS SAMPSON, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Doug Sampson, 5499 Carletans Lane, The Plains, VA 20198

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

TRUST NOTICE

The undersigned First Successor Trustees under the Vernon Sarro Family Trust dated September 21, 2015, hereby gives notice that as a result of the death of Vernon L. Sarro, late of Germany Township, Adams County, Pennsylvania, they have assumed title to the assets

held in such trust, and all persons indebted to Vernon L. Sarro are requested to make payment without delay and those having claims against the same, shall make them known to the Co-Trustees c/o Clayton A. Lingg, Esquire, Mooney Law, 230 York Street, Hanover, PA 17331.

Co-Trustees: Daniel T. Sarro and
Christine N. Garvin
Clayton A. Lingg, Esq.,
Mooney Law
230 York Street
Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF HELEN G. MARKLE, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Co-Executrices: Ann E. Madison and Virginia M. Davis, c/o Craig A. Diehl, Esq., CPA, Law Offices of Craig A. Diehl, 3464 Trindle Road, Camp Hill, PA 17011

Attorney: Craig A. Diehl, Esq., CPA, Law Offices of Craig A. Diehl, 3464 Trindle Road, Camp Hill, PA 17011

ESTATE OF CORETTA E. REDDING, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Co-Executors: Michael A. Redding and Jo Ann Prehn, c/o Craig A. Diehl, Esq., CPA, Law Offices of Craig A. Diehl, 3464 Trindle Road, Camp Hill, PA 17011

Attorney: Craig A. Diehl, Esq., CPA, Law Offices of Craig A. Diehl, 3464 Trindle Road, Camp Hill, PA 17011

ESTATE OF EDITH C. SHULL a/k/a EDITH K. SHULL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Bonnie Willard, 14406 Tower Road, Waynesboro, PA 17268

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF BRENDA G. ALTHOFF, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Donald W. Althoff, 388 Oak Drive, Orrtanna, PA 17353

Attorney: Puhl & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY K. GRAY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Allen R. Weikert, 2559 Fairfield Road, Gettysburg, PA 17325; Amy L. Weikert, 2559 Fairfield Road, Gettysburg, PA 17325

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARTHA E. KLINGER, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executors: Elaine E.K. Gilbert, 1635 Cranberry Road, York Springs, PA 17372; Mary Ann K. Oyler, 400 Pleasant Valley Road, Biglerville, PA 17307

Attorney: Adam D. Boyer, Esq., Barley Snyder, 123 Baltimore Street, Suite 101, Gettysburg, PA 17325

ESTATE OF SHIRLEY W. ROTH a/k/a SHIRLEY WILSON ROTH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Steven J. Roth, 20 Chinkapin Drive, New Oxford, PA 17350

Attorney: Matthew L. Guthrie, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF EDWIN S. WEIKERT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Adam R. Deluca, Esq., P.O. Box E, New Cumberland, PA 17070

Attorney: Adam R. Deluca, Esq., P.O. Box E, New Cumberland, PA 17070



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