

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

JOSEPH A. NARDUCCI and	: MARCH TERM, 2005
JOSEPH E.NARDUCCI	
Plaintiffs,	: No. 0109
v.	: (Commerce Program)
REGIS DEVELOPMENT CORP., <i>et al.</i>	:
Defendants.	: Control No. 052832

**ORDER**

AND NOW, this 7<sup>TH</sup> day of July 2005, upon consideration of plaintiffs' Preliminary Objections to defendants' Counterclaims, the responses in opposition, the respective memoranda, all other matters of record and in accord with the Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** that plaintiffs' Preliminary Objections are **SUSTAINED** and defendants' Counterclaims are **DISMISSED**.

**BY THE COURT:**

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**ALBERT W. SHEPPARD, JR., J.**

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**OPINION**

**Albert W. Sheppard, Jr., J. .... July 7, 2005**

Before the court are plaintiffs’ Preliminary Objections to defendants’ Counterclaims.

For the reasons discussed, the Preliminary Objections are sustained.

**DISCUSSION**

This equity action was brought by plaintiffs against, *inter alia*, adjoining property owners (“Moving Defendants”) to compel them to remove their backyard fences from what plaintiffs claim is their property. Moving Defendants filed counterclaims for slander of title (Count I) and tortious interference with prospective contractual relations (Count II). Moving Defendants assert that plaintiffs’ claims are false and malicious and caused them to lose a buyer for their townhouse(s). Plaintiffs filed Preliminary Objections to each Count.

Count I purports to state a cause of action for slander of title. Disparagement of title is “the false and malicious representation of the title or quality of another's interest in goods or property.” Pro Golf Mfg, Inc. v. Tribune Review Newspaper Co., 570 Pa. 242; 809 A.2d 243 (2002); Triester v. 191 Tenants Association, 272 Pa. Super. 271, 277, 415 A.2d 698, 701 (1979).

The elements required to succeed are set forth in § 651 of the Restatement (Second) of Torts. *See* Forman v. Cheltenham Nat'l Bank, 348 Pa. Super. 559, 562, 502 A.2d 686 (1985). One such element is “the defendant's intent to affect plaintiff's interests in an unprivileged manner.” Restatement 2d of Torts, § 651 (k).

A person is conditionally privileged to disparage another's property in land, chattels or intangible things “by an assertion of an inconsistent legally protected interest in himself.” *Id.* at § 647. That is what plaintiffs have done here. Plaintiffs have brought the instant lawsuit in order to assert their legal rights to that property currently occupied by Moving Defendants, which plaintiffs are entitled to do, assuming they have a good faith basis for their claims. Thus, at this stage of the litigation, plaintiffs’ “motive” in bringing the lawsuit is to prevail on their claim and to have this court compel Moving Defendants to remove their backyard fences. Should plaintiffs prevail, Moving Defendants have no rights to the parcel in question, and therefore, no basis for a claim for slander of title. Thus, this objection is sustained.

This court also finds that defendants’ counterclaim for intentional interference with prospective contractual relations fails. The elements of a cause of action for intentional interference with contractual relations, whether existing or prospective, are as follows: (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. Al Hamilton Contracting Co. v. Cowder, 434 Pa. Super. 491, 497, 644 A.2d 188, 191 (1994) (*emphasis added*). Again, this court recognizes that plaintiffs enjoy a conditional privilege to “disparage” Moving Defendants’ right to the parcel of land in question by the filing of a lawsuit which asserts an inconsistent legally protected interest in that same property.<sup>1</sup>

Based on the foregoing, plaintiffs’ Preliminary Objections are sustained and Moving Defendants’ Counterclaims are **DISMISSED**.

This Court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT:**

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**ALBERT W. SHEPPARD, JR., J.**

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<sup>1</sup> Nothing in this Order precludes Moving Defendants from bringing an action should they prevail in this case if the evidence demonstrates that Plaintiffs lacked a good faith basis for bringing this action.