

**IN THE COURT OF COMMON PLEAS of PHILADELPHIA COUNTY**

**FIRST JUDICIAL DISTRICT of PENNSYLVANIA**

**CIVIL TRIAL DIVISION**

KENNETH HANTMAN	:	
Plaintiff	:	NOVEMBER TERM, 1997
v.	:	
	:	
PAUL WESSELT	:	
and	:	
JOHN VENCIUS	:	
and	:	
JOSEPH TRAFKA	:	
Defendants	:	No. 939

**MEMORANDUM OPINION**

APRIL 12, 1999

GOODHEART, J.

**INTRODUCTION**

This is the Plaintiff's appeal from my Order of January 26, 1999, granting the Defendants' Motion for Summary Judgment, and dismissing the action with prejudice.

At the time that the events giving rise to this action occurred, the Plaintiff was the principal of Eagle Fence Company, Inc., and the Defendants were all employees of the City of Philadelphia Water Department.

On June 10, 1993, Eagle entered into a contract with the City of Philadelphia Water Department for the installation of certain chain link fencing at the Queen Lane Water Treatment Plant. Work to be performed under the contract was to be overseen on behalf of the Water Department by the Defendants.

Work under the contract commenced in October, 1993, and was completed in September,

1995 (Letter dated October 25, 1995, labelled "Hantman-2", Exhibit "B" to Motion for Summary Judgment). Allegedly, the Defendants deliberately interfered with the ability of Eagle and its subcontractors to perform the contracted work, by harassing them in various ways.

In February, 1996, Eagle filed suit against the City -- but not the present Defendants individually -- at February Term, 1996, No. 1091 (the "**Eagle Suit**"). In substance, the Eagle Suit alleged that the Defendants' actions amounted to a breach of the contract, by forcing Eagle to perform much additional work not required by its terms.

The Eagle Suit was tried to a verdict, and then settled for a lesser amount. A General Release was executed by Eagle and the City in July or August, 1997. This action was filed just three months later.

## **DISCUSSION**

The Plaintiff's Amended Complaint contains two counts, both sounding only in tort.

The Statute of Limitations for tort claims in Pennsylvania is two years, 42 P.S. §5524, though a "discovery rule" can be applied to extend the limitations period, when the existence of an injury is not known to, or reasonably discoverable by, the complaining party. McCauley v. Owens-Corning Fiberglas Corp., 715 A.2d 1125 (May 11, 1998); Dalrymple v. Brown, 549 Pa. 217; 701 A.2d 164 (1997). A person must, however, use reasonable diligence to be "informed of the facts and circumstances upon which a potential right of recovery is based and to institute suit within the prescribed statutory period." McCauley, supra; see also, Pocono International Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, at 84; 468 A.2d 468, at 471 (1983).

Even a cursory reading of the Amended Complaint reveals that Mr. Hantman was intimately involved in every step of the contracted work, which was completed -- by his own

admission -- in September or October, 1995. There is thus no basis for application of a "discovery rule" here, and this action -- filed on November 7, 1997 -- is therefore time-barred.

Further, Count I of the Complaint, for Intentional Infliction of Emotional Distress, must be dismissed in the absence of competent medical evidence of physical manifestations of the injury. Kazatsky v. King David Memorial Park, Inc., 515 Pa. 183; 527 A.2d 988 (1987); Wecht v. PG Publishing Company, 1999 Pa. Super. 28; 1999 PA. Super LEXIS 120 (2/16/99).

Since it does not appear that the Plaintiff has obtained any such evidence, Count I was properly dismissed.

Finally, Count II must also fail, for two separate reasons. First, it is axiomatic that one must be a party to a contract in order to sue for tortious interference with that contract. Clearly, the contract herein at issue was between the City of Philadelphia and Eagle Fence Company, Inc., and Mr. Hantman -- as a non-party -- simply lacks the standing to bring a claim arising from tortious interference with the contract between the City and Eagle.

Second, even if Mr. Hantman has some sort of vicarious standing to bring suit on the tortious interference claim -- and I seriously doubt that he does -- the General Release executed by Eagle Fence in the summer of 1997 extinguished Eagle's tortious interference claim, and by necessary implication, also extinguished any derivative claim held by Hantman personally.

## **CONCLUSION**

In granting Summary Judgment, I tried to forestall this appeal by including a brief explanation of my decision in the Order granting Summary Judgment.

Unfortunately, Plaintiff's counsel failed to take the hint, filing both a Motion for Reconsideration, and the instant appeal.

In my opinion, this action is completely meritless -- and in fact borders upon being outright frivolous. My decision to summarily dismiss it should be affirmed.

**BY THE COURT:**

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**Goodheart, J.**