

VINNY CLAUSI,
Plaintiff
vs

IN THE COURT OF COMMON
PLEAS FOR THE
NORTHUMBERLAND COUNTY
BRANCH, PENNSYLVANIA
CIVIL ACTION - LAW

GREGORY A. STUCK, MICHAEL
BORIS, AND JOSEPH JONES,

CASE NO: CV-10-353

Defendants

APPEARANCES:

GREGORY T. MORO, ESQUIRE and FRANKLIN E. KEPNER, ESQUIRE,
Attorneys for Plaintiff

SHARON M. O'DONNELL, ESQUIRE, Attorney for Defendant

Gregory A. Stuck

DOUGLAS ENGLEMAN, ESQUIRE, Attorney for Defendants Michael
Boris and Joseph Jones

October 24, 2012. JAMES, J.

OPINION

Procedural History

Plaintiff filed this action sounding in abuse of process and intentional infliction of mental distress. The matter is now before the court to determine defendants' motions for summary judgment on both claims.

Plaintiff commenced this claim by filing a complaint on March 2, 2010. Defendants Boris and Jones filed an answer with new matter on March 23, 2010. Defendant Stuck filed his answer with new matter on April 19, 2010.

After receiving leave of Court, on July 7, 2010, Defendants Boris and Jones filed an amended answer to plaintiff's complaint with new matter and a cross-claim against defendant Stuck. The cross-claim purports to state causes of action for professional negligence and breach of contract against defendant Stuck. Plaintiff filed his reply to defendants Boris and Jones' new matter on July 28, 2010

On January 30, 2012, Plaintiff sought and obtained leave to file an amended complaint, which was filed on or about March 2, 2012. Defendant Stuck filed timely preliminary objections to plaintiff's amended complaint. By Order of May 29, 2012, this Honorable Court sustained defendant Stuck's preliminary objections to plaintiff's amended complaint and dismissed plaintiff's claim for wrongful use of civil proceedings, with prejudice.

On July 26, 2012, defendant Stuck filed a motion for summary judgment. Defendants Boris and Jones also filed a motion for summary judgment. The parties filed briefs and argument was heard on October 10, 2012.

Factual History

Plaintiff is a Northumberland County Commissioner. Defendants Michael Boris and Joseph Jones were Northumberland County Deputy Sheriffs.

In his complaint, plaintiff alleges that on December 29, 2009, during a public meeting, plaintiff made various statements regarding the presence of pornography on certain computers located in the Sheriff's Office. Defendants Boris and Jones complained that the statements made by plaintiff were defamatory to the entire Sheriff's staff, including defendants Boris and Jones. Shortly after this public meeting, on January 13, 2010, Defendants Boris and Jones were terminated.

Defendants retained the legal services of defendant Stuck. Defendant Stuck filed a Writ of Summons on December 30, 2009, against plaintiff and Northumberland County on behalf of defendants Boris and Jones and other deputy sheriffs. He then filed a civil complaint on January 13, 2010, against plaintiff and Northumberland County on behalf of his clients Boris and Jones and the other deputies. The "defamation" Complaint alleged claims for defamation of character and sought money damages and an apology.

Following the filing of the defamation complaint, two of the plaintiffs to that action advised defendant Stuck

that they no longer wished to be part of the litigation. Subsequently, additional plaintiffs advised defendant Stuck that they no longer wished to pursue litigation against plaintiff and Northumberland County, since plaintiff had purportedly apologized to those parties.

On March 1, 2010, approximately two (2) months after the commencement of the defamation Complaint, plaintiff commenced this litigation, claiming Abuse of Process, Wrongful Use of Civil Proceedings, and Intentional Infliction of Emotional Distress against defendant Stuck and defendants Boris and Jones. Plaintiff's claim for Wrongful Use of Civil Proceedings was dismissed by Order of May 29, 2012, leaving plaintiff's claims for abuse of process and intentional infliction of emotional distress remaining. (The "defamation" complaint action is docketed in Northumberland County at CV-2009-3052 and is still proceeding, albeit by amended pleadings.)

Voluminous discovery is completed and all defendants have filed motions for summary judgment claiming that both the Abuse of Process and Intentional Infliction of Emotional Distress causes of action should be dismissed.

Summary Judgment Standard of Review

The standard for determining whether summary judgment should be granted is set forth in Pa.R.C.P. 1035.2:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

- (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
- (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

"The essence of the revision set forth in new Rule 1035.2 is that the motion for summary judgment encompasses two concepts: (1) the absence of a dispute as to any material fact and (2) the absence of evidence sufficient to permit a jury to find a fact essential to the cause of action or defense. The former rule was unclear as to whether it encompassed the type of motion which is based upon a record which is insufficient to sustain a prima facie case. Rule 1035.2(2) is explicit in authorizing such a motion." Pa.R.C.P. 1035.2, Explanatory Comment—1996.

In determining the merit of a motion for summary judgment, the court must examine the record in the light most favorable to the non-moving party. Ward v. Rice, 828 A.2d 1118, 1120 (Pa.Super. 2003). All doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party on motion for summary judgment. Id.

Discussion

There is one issue regarding each cause of action: whether based on the undisputed material facts, the defendants are entitled to judgment as a matter of law. This court finds that both the abuse of process claim and the intentional infliction of mental distress claim fail as a matter of law.

Abuse of Process

In order to maintain a cause of action for abuse of civil process, a plaintiff must plead and prove three elements, i.e., that the defendant: (1) used a legal process against the plaintiff; (2) primarily to accomplish a purpose for which the process was not designed; and (3) that the plaintiff suffered harm as a result. Hart v.

O'Malley, 436 Pa. Super. 151, 168, 647 A.2d 542, 551 (1994).

Moreover, a claim for abuse of process requires "some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process...; there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." Hart v. O'Malley, 436 Pa. Super. 151, 170, 647 A.2d 542, 552 (1994) (quoting DiSante v. Russ Financial Co., 251 Pa. Super. 184, 189, 380 A.2d 439, 441 (1977)). If a plaintiff alleges only the existence of a *collateral* bad intention and cannot establish a definitive act or threat in furtherance thereof, he cannot sustain his *prima facie* burden. Id. (Emphasis supplied).

Thus, a plaintiff pursuing a common law abuse of process claim must establish that the legal process was used for some unlawful purpose for which the process was not designed. Dietrich Industries v. Abrams, 309 Pa. Super. 202, 206, 455 A.2d 119 (1982) (citing Morphy v. Shipley, 351 Pa. 425, 41 A.2d 671 (1945); see also Casa DiSardi, Inc. v. Alpha Motors, Inc., 227 Pa. Super. 415, 323 A.2d 288 (1974)). Stated differently, abuse of process occurs when the original, lawful action is somehow

perverted to accomplish an unrelated, unlawful result. Generally, abuse of process claims manifest as some form of extortion, such as using the legal process to put pressure upon a party to compel him to pay a different debt, or to take or refrain from taking some action wholly unrelated to the process. Rosen v. American Bank of Rolla, 426 Pa.Super. 376, 381, 627 A.2d 190, 192 (1993).

Plaintiff's claim for abuse of process fails for two main reasons. First, plaintiff contends that a request for an apology was included in the complaint's ad damnum clause. An element of abuse of process is that the process must be used "*primarily* to accomplish a purpose for which the process was not designed..." Hart v. O'Malley, 436 Pa. Super. 151, *supra*, (emphasis supplied). Plaintiff fails to acknowledge that the defendant's defamation suit *primarily* requests money damages in "the sum of not less than fifty thousand (\$50,000.00) dollars per Plaintiff..." The subsequent inartful request for an apology would be stricken through preliminary objections (see Pa.R.C.P. 1028), as would be the case in a myriad of situations where complaints seek non-actionable relief (e.g., baseless punitive damages, baseless attorneys' fees, equitable relief in cases at law, etc.). The crux of the defamation

case would remain intact. Seeking damages for defamation is perfectly proper and not a "perversion of the process."

Second, "abuse of civil process is concerned with the perversion of a process *after it is issued.*" Rosen v. Teroso Petroleum Corp., 399 PA Super 226, 236, 582 A.2d 27, 32 (1990) (alloc. denied, 527 Pa. 636, 592 A.2d 1303 (1991)) (emphasis supplied). See also, Rosen v. American Bank of Rolla, supra. Although a writ was filed, the defamation suit process in question began when the factual pleading was issued and the plaintiff here was apprised of the factual allegations and the request for relief. It cannot be said that the process was perverted after it was issued.

There is simply no legal basis for this abuse of process claim under these facts. Moreover, if the court were to allow such a claim on these facts, it would spawn a host of other cases alleging improper motives for legitimate claims. Abuse of process claims cannot be used defensively where a prima facie case is stated for an actionable claim, even if the prima facie case is disputed.

Intentional Infliction of Mental Distress

In Pennsylvania, the tort of intentional infliction of emotional distress is defined as when "[o]ne who by extreme

and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." Hoy v. Angelone, 720 A.2d. 745, 753 (Pa. 1998).

Conduct has been deemed to be extreme and outrageous where the action "go[es] beyond all possible bounds of decency, and [is] to be regarded as atrocious, and utterly intolerable in a civilized community." Swisher v. Pitz, 868 A.2d 1228, 1230 (Pa. Super. 2005). Likewise, "[i]t is not enough that the defendant has acted with intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort" Id. at 1231.

In addition, in order to meet his *prima facie* burden, like negligent infliction of emotional distress, the plaintiff must show some "resulting physical harm due to the defendant's outrageous conduct." See Reeves v. Middletown Athletic Assoc., 866 A.2d 1115, 1122-23 (Pa. Super. 2004).

Here, plaintiff alleges mental and physical harm. *For the purposes of this issue*, the court accepts as true

plaintiff's allegations of physical harm and that defendants' motives were to embarrass plaintiff and to secure an apology from him. However, these allegation do not even remotely rise to the level of extreme and outrageous behavior or go "beyond all possible bounds of decency" as to be regarded as "atrocious, and utterly intolerable in a civilized community." Thus, plaintiff's claim for intentional infliction of mental distress fails.

Based on the law and the undisputed material facts, plaintiff's complaint against the defendants must be dismissed. As a result, defendants Boris and Jones' cross-claim against defendant Stuck must also be dismissed.

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ORDER

AND NOW, this 23rd day of October 2012,
defendants' Motions for Summary Judgment are **GRANTED**. Judgment
is entered in favor of defendants Gregory A. Stuck, Michael
Boris, and Joseph Jones and against plaintiff. Defendants Boris
and Jones' cross-claim against defendant Stuck is **DISMISSED**.

BY THE COURT

HONORABLE THOMAS A. JAMES, JR., J.