IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

RICHARD G. PHILLIPS, and RICHARD G. PHILLIPS ASSOCIATES, P.C.	: JULY TERM, 2000 : No. 1550
v.	:
ALAN H. "BUD" SELIG, *et al.*	
WORLD UMPIRES ASSOCIATION	: JULY TERM, 2001
v.	: No. 1255
RICHARD G. PHILLIPS ASSOCIATES, PC, *et al.*	: (Commerce Program) : Control Nos. 011140, 011190, 011148

O R D E R

AND NOW, this 8TH day of February 2007, upon consideration of defendants' three separate Motions for Summary Judgment relative to plaintiffs' claims of interference with existing and prospective contractual relations (Counts I and II) and conspiracy (Count VIII), the plaintiffs' response in opposition, the respective memoranda, all matters of record, the oral argument conducted on December 15, 2006 and in accord with the Opinion being contemporaneously filed with this Order, it is **ORDERED** that said Motions are **Granted** and plaintiffs' claims are **Dismissed**.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

RICHARD G. PHILLIPS, and RICHARD G. PHILLIPS ASSOCIATES, P.C.	: JULY TERM, 2000 : No. 1550
v.	:
ALAN H. "BUD" SELIG, *et al.*	
WORLD UMPIRES ASSOCIATION	: JULY TERM, 2001
v.	: No. 1255
RICHARD G. PHILLIPS ASSOCIATES, PC, *et al.*	: (Commerce Program)
	: Control Nos. 011140, 011190, 011148

……

O P I N I O N

ALBERT W. SHEPPARD, JR., J. ……..……...….. February 8, 2007

Currently before the court are defendants' three separate Motions for Summary Judgment with respect to Counts I and II (interference with existing and prospective contractual relations) and VIII (conspiracy). For the reasons discussed, the court grants the Motions.

I. Background

A. Procedural History

On October 12, 2006, this court granted summary judgment with respect to plaintiffs' claims for defamation (Count III), invasion of privacy/false light (Count IV), commercial disparagement (Count V) and injurious falsehood (Count VII). The court held defendants' Motions regarding plaintiffs' claims for interference with existing and prospective contractual relations and conspiracy under advisement pending further oral argument. Specifically, the court

requested:

> The parties agree that 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). Specifically, this court would like to hear further argument from the parties concerning the second and third elements, as well as with respect to the issue of causation. The parties should also be prepared to discuss what effect, if any, the NLRB's conclusions have on the remaining claims.

See October 12, 2006 Opinion at 11. Oral argument was held on December 15, 2006.

B. Factual Background

This court incorporates the operative facts set forth previously in its October 12, 2006 Opinion.

II. Discussion

A. Summary Judgment Standard

Pa.R.C.P. 1035.2 (2) provides that summary judgment is appropriate:

> (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.

Pa.R.C.P. 1035.2 (2). As stated by the Superior Court, "[o]ur rules of civil procedure are designed to eliminate the poker game aspect of litigation and compel the players to put their cards face up on the table before trial begins." Paparelli v. GAF Corp., 379 Pa. Super. 62, 549 A.2d 597 (1988); Roland v. Kravco, Inc., 355 Pa. Super. 493, 513 A.2d 1029 (1986). The fact that defendants bear the burden as the moving parties does not mean that plaintiffs are entitled to a trial based simply on the allegations of the complaint. In order to withstand summary

judgment, plaintiffs must set forth specific facts showing that there is a genuine issue for trial. Pa.R.C.P. 1035.2 (2); s*ee also* Fennell v. Nationwide Mut. Fire Ins. Co., 412 Pa. Super. 534, 540, 603 A.2d 1064, 1067 (1992); Aimco Imports, Ltd. v. Industrial Valley Bank & Trust Co., 291 Pa. Super. 233, 236, 435 A.2d 884 (1981); Amabile v. Auto Kleen Car Wash., 249 Pa. Super. 240, 376 A.2d 247 (1977). Plaintiffs cannot merely claim that evidence exists in opposition to summary judgment and expect their claims to survive.

B. Plaintiffs Have Failed To Produce Evidence of Wrongdoing By Defendants Sufficient to Support Their Tortious Interference Claims

Counts I and II purport to state claims against the Umpire Defendants, the Shapiro Defendants and the MLB Defendants for interference with both an existing and prospective contractual relationship, namely the Phillips firm's Retainer Agreement with the MLUA (the "Retainer Agreement"). It is undisputed that the elements of this cause of action, whether existing or prospective, are:

> (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, supra., 644 A.2d at 191.

Plaintiffs' claim for interference with prospective contractual relations fails to satisfy the first element. A prospective contract is "something less than a contractual right, something more than a mere hope." Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 209, 412 A.2d 466, 471 (1979). To prove the existence of a prospective contractual relationship, plaintiffs must present this court with facts sufficient to give rise to a "reasonable probability" that particular anticipated contracts would have been entered into, but for the conduct of defendants. Id. This is an objective standard which, of course, must be supported by adequate proof. Id. The mere possibility that an existing contract could be renewed is not sufficient to create a triable issue of fact as to the existence of prospective relations. Id.

Certainly, as representatives of the MLUA since 1979, plaintiffs may arguably have had some expectation that their contract with the union would have been renewed in the future. Nevertheless, the Retainer Agreement was set to expire in April 2003 and was terminable at will by either party after April 2002. Plaintiffs have failed to provide any evidence to establish a "reasonable likelihood" that Phillips or his firm would have been retained following the expiration of the Retainer Agreement, especially in light of the negative publicity and fallout from the failed mass resignation strategy. Nor have plaintiffs identified any other prospective contracts with which defendants allegedly interfered. Plaintiffs themselves admit that they are in possession of no such evidence and such information was "difficult if not impossible to ascertain." Phillips Dep. at 687-9. Accordingly, Count II is dismissed.

With respect to plaintiffs' interference with existing contractual relations claim (Count I) the plaintiffs have satisfied the first element, that is, the existence of a contract. But, the court continues to have concerns about plaintiffs' ability to satisfy the remaining elements. For this reason, the court asked the parties to address these issues at a second oral argument. Based upon the record, this court finds that, even when construing the record in a light most favorable to

plaintiffs, plaintiffs have failed to satisfy their burden.

In order to satisfy the second essential element of an interference with existing contractual relations claim, plaintiffs must prove that the defendants harbored a specific intent to harm them.[1] In analyzing such a claim, Pennsylvania Courts have traditionally applied the Restatement (Second) Torts § 767 (1979) which provides:

> In determining whether an actor's conduct in intentionally interfering with a contract …of another is improper or not, consideration is given to the following factors: (a) the nature of the actor's conduct; (b) the actor's motive; (c) the interests of the other with which the actor's conduct interferes; (d) the interests sought to be advanced by the actor; (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other; (f) the proximity or remoteness of the actor's conduct to the interference; and, (g) the relations between the parties.

Small v. Juniata College, 452 Pa. Super. 410, 682 A.2d 350 (1996); Strickland v. University of Scranton, 700 A.2d 979, 985, 1997 Pa. Super. 2894 (1997) ("[i]n order for intentional interference with contract to be actionable as a tort, the interference must be improper"). Comment "j" to § 766 expands upon the issue of intent:

> . . . If the actor is not acting criminally nor with fraud or violence or other means wrongful in themselves but is endeavoring to advance some interest of his own, the fact that he is aware that he will cause interference with the plaintiff's contract may be regarded as such a minor and incidental consequence and so far removed from the defendant's objective that as against the plaintiff the interference may be found to be not improper.

Id. Thus, in order to succeed on their claim, the plaintiffs must demonstrate that defendants acted solely – or at least primarily – to cause specific harm to plaintiffs' relationship with the MLUA. In this regard, plaintiffs have failed to satisfy their burden. Plaintiffs have not set forth a sufficient factual basis to prove that any of these defendants' actions were motivated by a desire to harm Phillips rather then to further their own specific interests. That some of the

1 Because the issues of intent to harm (second element) and the absence of privilege or justification (third element) are interrelated and often overlap, they will be discussed together where applicable.

defendants "may" have personally disliked Phillips alone is insufficient to withstand summary judgment; it is not the same as intent to harm.

With respect to the MLB Defendants, plaintiffs argue that, when faced with the prospect of needing umpires to officiate the baseball playoffs and after assembling an emergency meeting of top executives to determine how to respond to the umpire crisis, Selig replaced the umpires - - not to protect MLB's paramount business interests and operational needs - - but rather to deprive plaintiffs of the financial benefits of their Retainer Agreement with the MLUA. Neither logic nor the record supports this conclusion.

Further, following a full hearing on the matter, the NLRB concluded that MLB did not violate the CBA by trying to encourage umpires to rescind their resignations and by hiring replacement umpires to meet MLB's operational needs. Def. Exh. 9 at I, 83. Thus, in that it was determined (by the entity charged with deciding these matters) that the MLB Defendants acted lawfully with respect to the umpires, it follows that MLB could not simultaneously have acted unlawfully with respect to the umpires' agent, that is the plaintiffs.

Plaintiffs have also failed to prove a specific intent to harm on the part of the Shapiro Defendants. Plaintiffs have produced no evidence which demonstrates that the Shapiro Defendants, or any of them, acted specifically to harm plaintiffs. The Phillips Firm did not represent the individual umpires, it represented the union as a whole. It would not be improper for Shapiro to advise umpires to consult personal counsel when they were well within their right to do so. At worst, the facts could demonstrate that Shapiro was trying to put himself in a position which would enable him to take over Phillips' job which, in and of itself, was not improper under the circumstances. *See* Gilbert v. Otterson, 379 Pa. Super. 481, 489, 550 A.2d 550, 554 (1988), *citing* Restatement (Second) Torts § 768 (1979) ("[o]ne's privilege to engage in business and to compete with others implies a privilege to induce third persons to do their

business with him rather than with his competitors").[2] This situation is unique and differs from the traditional attorney/client relationship insofar as a majority vote by the entire union was required to change union representation. It is not as if one phone call could result in the replacement of the Phillips firm.

Plaintiffs have likewise failed to produce evidence of actionable conduct by the Umpire Defendants. This court has previously held that plaintiffs can not base any claim of impropriety on the NLRA. *See* September 19, 2001 Opinion at 14. Nor can plaintiffs' claims be based on statements made by the umpires. This court has already dismissed plaintiffs' defamation and related claims, finding that each of the proffered statements constituted expressions of opinion based on public facts. *See* October 12, 2006 Opinion at 9.

Neither the actions nor the statements of the Umpire Defendants were unlawful. Plaintiffs concede that it is within the power of the union membership to "oust the existing leadership." Pl. Mem. at 28. Under the NLRA, all the umpires had the right to select by a majority vote which union, if any, they preferred as their exclusive bargaining agent. The Umpire Defendants also had a protected statutory right to question the MLUA's leadership and to form and elect a new union to serve as their bargaining agent with MLB. 29 U.S.C. § 157. The decertification election was directly supervised by the NLRB. The NLRB rejected the petition of the MLUA (which was filed by the Phillips Firm) to overturn the decertification election, concluding that the election had not been improperly influenced. This court should not and will not disturb this finding.

As a further argument, plaintiffs stress that certain telephone conversations took place

---

2 Arguably, Shapiro's conduct, if proven, may be that which is considered sanctioned by the rules of the game, a form of privilege and cannot be the basis of a tortious interference claim. *See* Glenn v. Point Park College, 441 Pa. 474, 272 A.2d 895 (1971); Labor Ready, Inc. v. Labor, 2001 Phila. Ct. Com. Pl. LEXIS 99 (2001). (Competition without unlawful means is a justified interference and is not actionable).

between defendant, Selig and defendants, Shapiro and Hirschbeck, on July 22, 1999. Specifically, plaintiffs argue that the telephone conversations at issue caused MLB to change its strategy with respect to the hiring replacements for those umpires who had rescinded. Plaintiffs also cite evidence that MLB was "seemingly provoking the umpires" regarding the strike zone and other issues. But, it is unclear how these allegations support Phillips' claims. Surely, plaintiffs cannot contend that Selig's actions were nothing more than a means to cause harm to Phillips. There is no evidence to support such an accusation, an accusation which defies both logic and the record. Plaintiffs further claim that before the Summer of 1999, Selig announced that he would "never do a deal with Richie Phillips," however, plaintiffs concede that Selig was required by law to bargain with whomever the appropriate umpire's union chose as its representative.

This is where plaintiffs' conspiracy claim[3] overlaps with their tortious interference claims, in that plaintiffs urge it was this "conspiracy" between the parties which caused the decertification election which ultimately led to the replacement of the MLUA as the umpires' union. Under Pennsylvania law, in order to establish conspiracy, a plaintiff must produce evidence that the substance of the communications demonstrated the unlawful agreement. Goldstein v. Phillip Morris, Inc., 2004 Pa. Super. 260, 854 A.2d 585 (2004). The mere fact that the July 22, 1999 phone calls took place, alone, is insufficient to establish a conspiracy. Plaintiffs have proffered no evidence - - other than the fact that the conversations indeed took place - - to support their claims. It is improper to infer an unlawful agreement based merely upon the existence and timing of a telephone call, absent other evidence of improper conduct. "The mere fact that two or more persons, each with the right to do a thing, happen to do that thing at the same time is not by itself an actionable conspiracy." Thompson Coal Co. v. Pike

Coal Co., 488 Pa. 198, 209, 412 A.2d 466, 471 (1979); Burnside v. Abbott Laboratories, 351 Pa. Super. 264, 505 A. 2d 973, 980 (1985). While this court concedes that direct evidence is not required to support a conspiracy or tortious interference claim, it is necessary that plaintiffs put forth evidence sufficient for a jury to infer that the content of the conversations was improper and conspiratorial. Goldstein, 854 A.2d at 585. Plaintiffs' contention that the timing of these calls demonstrates an illegal conspiracy is based on speculation. It does not constitute circumstantial evidence.

In addition to failing to prove a specific intent to harm, plaintiffs' claims are fatally flawed with respect to the issue of causation. Defendants can be held responsible for plaintiffs' alleged damages only if plaintiffs can prove that the alleged improper conduct caused the resulting injury. The record demonstrates that it was the decertification of the MLUA which resulted in payments being discontinued under the Retainer Agreement. The record is likewise clear that the decision to decertify the MLUA was made by the individual umpires exercising their own independent judgment in a secret ballot election administered, supervised and validated by the NLRB (the entity charged with such duties).

Plaintiffs have likewise failed to produce any evidence which demonstrates that the telephone conversations of July 22, 1999 resulted in any act or conduct on the part of the defendants in furtherance of the alleged conspiracy. Plaintiffs contend that following the telephone conversations, the League presidents were instructed to hire more permanent replacements with an intention to replace as many umpires as possible and to avoid encouraging the remaining umpires to rescind. However, even if this were so, this court fails to see how this demonstrates that the defendants were engaged in a conspiracy to tortuously interfere with the Retainer Agreement. Such a connection is unsupported by facts and too attenuated and

---

3 Plaintiffs' conspiracy claim is discussed in further detail, *infra* at 10.

speculative to survive these motions.

In sum, then, this court finds that plaintiffs have failed to produce sufficient evidence to withstand summary judgment as to Counts I and II. Accordingly, these claims are dismissed.

C. Plaintiffs' Conspiracy Claim Fails As A Matter of Law

Count VIII purports to state a claim for conspiracy against the MLB Defendants and the Shapiro Defendants. To prove a claim of conspiracy, plaintiff must demonstrate: 1) a combination of two or more persons acting with a common purpose to do an unlawful act by unlawful means or for an unlawful purpose; 2) an overt act done in furtherance of the common purpose; and 3) actual legal damage. Baker v. Rangos, 229 Pa. Super. 333, 324 A.2d 498, 506 (1974). Proof of malice, or an intent to injure, is an "essential part" of this cause of action. GMH Assoc. v. Prudential Realty Group, 2000 Pa. Super. 59, 752 A.2d 889 (2000).

In Pennsylvania, proof of a conspiracy must be made by "full, clear and satisfactory evidence." Fife v. Great Atlantic & Pacific Tea Co., 356 Pa. 265, 267, 52 A.2d 24 39 (1947). As the two claims are quite similar, plaintiffs' conspiracy claim fails for the same reasons as its tortious interference claim. "[A]bsent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act." McKeeman v. Corestates Bank, N. A,, 2000 Pa. Super. 117, 751 A.2d 655, 660 (2000). Since plaintiffs have failed to demonstrate a "wrongful act" by defendants, their conspiracy claim fails as a matter of law.

III. Conclusion

For these reasons, defendants' separate Motions for Summary Judgment relative to plaintiffs' claims for interference with existing and prospective contractual relations (Counts I and II) and conspiracy (Count VIII) will be granted. The court will enter an Order consistent with this Opinion.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.