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

ALLAN J. NOWICKI, and DIANE NOWICKI,	:	April Term, 2001
Plaintiffs,	:	No.: 0763
v.	:	COMMERCE PROGRAM
FIRST UNION NATIONAL BANK, CORESTATES BANK, N.A., MERIDIAN BANK, COUNTY NATIONAL BANK, COMMONWEALTH BANK, STOCKPORT FOREST PRESERVATION, INC., and NORCROSS-STOCKPORT FOREST PRESERVATION, INC.,	:	
Defendants.	:	Control Nos.: 110708 and 100232

MEMORANDUM OPINION

Before the Court are the (1) Motion for Summary Judgment of First Union National Bank ("First Union"), the Motion for Summary Judgment of Stockport Forest Preservation, Inc. and Norcross-Stockport Forest Preservation, Inc. (jointly "Stockport") and the responses in opposition thereto filed by Allan J. Nowicki and Dianne Nowicki (the "Plaintiffs"). For the reasons more fully set forth below, the motions for summary judgment of First Union and Stockport are **granted**. As a result, Plaintiffs' complaint is **dismissed**.

I. BACKGROUND[1]

The plaintiffs in this matter are Allan and Dianne Nowicki. In or about April 1990, the Plaintiffs purchased approximately 1,937 acres of land in Wayne County (the

[1] The litigation history among these parties is quite extensive and need not be entirely repeated for the purposes of this motion. Suffice to say, the plaintiffs have been litigating in both state and federal court for the past decade.

"Property"). In relation to financing on the Property, the Plaintiffs executed promissory notes and two mortgages in favor of County National Bank. Thereafter, through a series of mergers and acquisitions, First Union became the holder of the notes and mortgages.[2] Plaintiffs admittedly defaulted on the notes and First Union commenced foreclosure proceedings. After several bankruptcies and extensive litigation in state and federal bankruptcy court, First Union assigned its interest in the notes and mortgages to Stockport. Stockport successfully foreclosed on the Property and purchased it at the Sheriff's sale.

Plaintiffs believe that the defendants in this matter committed numerous wrongful acts in their efforts to foreclose on the Property. Based upon these beliefs, the Plaintiffs commenced this action against First Union by filing a writ of summons on April 6, 2001. Subsequently, on January 8, 2002, the Plaintiffs filed the civil action complaint (the "Complaint") presently at issue. At the time the Complaint was filed, the Plaintiffs added Stockport as a defendant since Stockport was not a defendant when the writ of summons was filed. After what appears to be extensive discovery by all parties, both First Union and Stockport filed the present motions for summary judgment seeking the dismissal of the Complaint. The Plaintiffs assert that there are numerous factual issues preventing summary judgment from being entered at this time.

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[2] Late in 2003, the Plaintiffs filed a motion to amend their complaint in order to: (1) reflect First Union's name change to Wachovia National Bank and (2) reflect Stockport Forest Preservation, Inc.'s name change to Stockport Forest Preservation LLC. See Plaintiffs' Motion to Amend Complaint, ¶5. The Plaintiffs also allege that Stockport Forest Preservation LLC needed to be added as a defendant based upon facts revealed during discovery. Id. The Court granted the Plaintiffs' motion on December 11, 2003, permitting them to file an amended complaint in 20 days from the date of the order. No amended complaint was ever filed.

The Court, having reviewed the proposed amended complaint which was attached to the motion to amend, finds that the amended complaint is essentially identical to the original complaint. Therefore, this Court's decision would not have changed had the proposed amended complaint actually been filed. Moreover, since the Plaintiffs never raised this issue at oral argument, the Court finds that the Plaintiffs waived any objection to the entry of summary judgment based upon the original complaint of record.

II. DISCUSSION

The Plaintiffs complaint contains 13 counts of liability that are asserted against the defendants. The counts are as follows:

I. Breach of Contract.
II. Conversion.
III. Breach of the Covenant of Good Faith and Fair Dealing.
IV. Tortious Interference with Contract.
V. Defamation.
VI. Slander of Title.
VII. Negligence.
VIII. Civil Conspiracy.
IX. Unjust Enrichment.
X. Negligence (mortgagee in possession).
XI. Negligent Misrepresentation.
XII. Fraudulent Misrepresentation.
XIII. Breach of Contract.

In its motion for summary judgment, First Union addresses each of the thirteen counts alleged against it. Stockport, in its motion, seeks summary judgment on those counts that they believe pertain only to it.[3] In response to First Union's motion, the Plaintiffs only make significant effort to support their breach of contract and defamation claims. The remaining counts are treated in a summary manner and the Plaintiffs do not respond to any of the legal and factual arguments made by First Union. In response to Stockport's motion, the Plaintiffs only address the unjust enrichment and defamation claims, remaining silent on the other counts. After a review of the record, in the light most favorable to the Plaintiffs, the Court finds that the Plaintiffs have failed to sustain their burden in defending against the motions for summary judgment of First Union and Stockport.

[3] Stockport asserts that through discovery the claims against it have been narrowed down to five counts, specifically, (1) conversion, (2 and 3) the defamation counts, (4) conspiracy and (5) unjust enrichment. The Plaintiffs neither admit nor deny this assertion. Based on its own review, the Court finds that Stockport is correct in believing that only certain of the thirteen counts are applicable to it.

A. First Union Is Entitled to Summary Judgment On All Counts.[4]

1. Count I - Breach of Contract.

Plaintiffs allege that First Union breached a global settlement agreement reached among the parties that would have allowed a reduction in their debt and the possible retention of the Property. The Plaintiffs acknowledge that there is no written agreement and, instead, assert that there was an oral contract formed based upon conversations between the bankruptcy lawyers for the Plaintiffs and First Union. In support of their position, the Plaintiffs essentially rely on the following:

1. A sentence in First Union's brief that the Plaintiffs believe is an admission that there was a global settlement agreement; and,

2. Deposition testimony of the Plaintiffs' bankruptcy counsel and Mr. Nowicki.

Turning first to the sentence in First Union's brief, it is clear that the comment is taken out of context by the Plaintiffs. The sentence is as follows:

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[4] Regarding Counts II through IV and VII through XIII, the Plaintiffs at most devote only three or four bullet point paragraphs in response to First Union. See Plaintiffs' Response to First Union's Motion For Summary Judgment, pg. 9-13. Plaintiffs do not attempt to refute any of First Union's factual or legal positions in these pages and the Court notes that the responses regarding these counts appear to be a simple recitation of the allegations in the Complaint. The Court reminds the Plaintiffs that in moving for summary judgment:

> Under Rule 1035.2(2), if a defendant is the moving party, he may make the showing necessary to support the entrance of summary judgment by pointing to materials which indicate that the plaintiff is unable to satisfy an element of his cause of action. Id. *Correspondingly, the non-moving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party.*

Rauch v. Mike-Mayer, 783 A.2d 815, 824 (Pa.Super. 2001)(emphasis added). Additionally, "[p]arties seeking to avoid the entry of summary judgment against them may not rest upon the averments contained in their pleadings. On the contrary, they are required to show, by depositions, answers to interrogatories, admissions or affidavits, that there is a genuine issue for trial." Washington Federal Savings and Loan Assoc. v. Stein, 357 Pa.Super. 286, 288, 515 A.2d 980, 981 (1986).

The Court realizes that it is not the Plaintiffs' burden to try their case at this juncture. But Plaintiffs must at least cite to the record and/or proffer evidence in support of the essential elements for each cause of action they assert in their Complaint. It is not the job of this Court to slog through the record in order to find a way to legitimize the Plaintiffs' claims. Nevertheless, this Court has reviewed the record in its entirety and finds no evidence to support the Plaintiffs' claims.

> The evidence shows that First Union gave the Plaintiffs every opportunity to pay of their debt by, among other things, agreeing to allow the Plaintiffs to harvest timber on the Property.

Brief of First Union, pg. 46. This statement read correctly indicates that First Union was willing to agree to allow the Plaintiffs to harvest timber in order to pay down their debt. By no means is this sentence an admission regarding the existence of an actual agreement. The fact that the Plaintiffs place great emphasis on this single sentence to prove the existence of an agreement is alarming.

Regarding the Plaintiffs proffered deposition testimony, it is clear that there was no agreement or contract formed by the parties. Under Pennsylvania law, in order to have a contract, there must be an agreement on the essential terms of the contract, in particular, offer, acceptance, consideration and/or a mutual meeting of the minds. See Jenkins v. County of Schuykill, 658 A.2d 380, 383 (Pa.Super. 1995), Liss v. Liss, 2002 WL 576510 (Pa.Com.Pls. 2002).

Plaintiffs present no evidence of and agreement on the essential terms of the contract or a mutual meeting of the minds. Most noteworthy is the fact that there was no agreement between the parties on the final payment figure First Union would accept from the Plaintiffs. Plaintiffs freely admit that a final figure was never reached or even offered by First Union. Instead, the Plaintiffs claim that the pay off number would be whatever was owed and that was enough to form an agreement. Common sense dictates there can be no "global settlement" when there was not even a final payoff figure agreed to by the parties.[5]

[5] Even if there was an agreement for the Plaintiffs to pay off the entire debt, there is a question of consideration. The agreement as outlined by the Plaintiffs would have been nothing more than an agreement to do what the Plaintiffs were legally required to perform already.

Most telling is the deposition testimony of Plaintiffs' own bankruptcy counsel. His testimony indicates that he believed that Mr. Nowicki would pay whatever was legally owed. Plaintiffs' Brief in Response, Exhibit 4, pg. 55. He further qualifies this statement by stating that if First Union was going to include fees and costs, Mr. Nowicki was only going to pay what would be reasonable under state law. Id. Lastly, he testified that when a person asks for a pay off figure, there might not necessarily be an agreement with the offered number. Id. This testimony does not support the Plaintiffs' position that there was an agreement with First Union. At most, the Plaintiffs had an agreement in principle regarding the parameters of a settlement. Therefore, the Court finds that there was never any agreement as to the most essential term of the contract; the actual number First Union was going to accept to settle the matter.[6] As a result, there was no agreement and the breach of contract claim must fail.

2. Counts II, IX and XIII – Conversion, Unjust Enrichment and Breach of Contract.

All three of these counts appear to stem from the Plaintiffs' allegation that First Union failed to credit the Plaintiffs' account with certain funds allegedly received from harvesting on the Property. In Count II, the Plaintiffs assert that First Union converted approximately $23,000 in mineral royalties tendered by Tompkins Bluestone Co. when it retained the funds without crediting the amount against the Plaintiffs' debt. In Count IX, the

[6] As another example of a lack of any meeting of the minds, Plaintiffs assert that the settlement agreement was to be a global settlement encompassing all claims between the parties, including the Plaintiffs' tortious interference claim. Plaintiffs' Brief in Response, pg. 14. Yet, nowhere in the record is there even a modicum of evidence to support such a conclusion. The deposition testimony is devoid of any discussion of a release of claims.

The Plaintiffs portray the global settlement agreement as including their tortious interference claim in order to avoid the statute of frauds argument of First Union. The Plaintiffs assert that because the global settlement included the tortious interference claim, the statute of frauds is not applicable because it does not relate solely to an agreement to refrain from foreclosure on land. It is hard to believe that the Plaintiffs suggest that the settlement espoused by the Plaintiffs was not an agreement to settle a mortgage foreclosure. In fact, the Plaintiffs allege in ¶55 of their Complaint the agreement was to settle the underlying foreclosure proceedings.

Plaintiffs allege that First Union was unjustly enriched by "accepting assignment of the mineral rights, without timely crediting them to the principal." Complaint, ¶86. In Count XXII, the Plaintiffs allege that pursuant to a stipulation entered into by the parties; First Union was required to apply proceeds from an assignment of mineral royalties to the debt. Complaint, ¶102, 103.

The Court notes that the Plaintiffs fail to provide any further specifics that would assist the Court in distinguishing these claims. Under Count II, the Plaintiffs allege that approximately $23,000 was converted by the Plaintiffs. The Plaintiffs do not allege any specified sum in Counts IX and/or XIII. Furthermore, the Plaintiffs in Counts IX and XIII do not provide any time frame in which the alleged improper application or retention of royalties occurred. Therefore, the Court assumes that the same $23,000 is at issue in all three claims.

In support of these claims, the Plaintiffs do not proffer any documents or testimony that would evidence First Union acted as alleged. For example, the Plaintiffs do not present payment histories, checks, funds transfers, or other evidence of royalties generated by the Property. More importantly, the Plaintiffs do not even attempt to provide a rudimentary loan balance calculation showing the money allegedly received by First Union, where that money went and what should have been credited. After over a year of discovery, the Court expects some documentary or testimonial evidence that would indicate this most basic information. Plaintiffs cannot merely rest upon general and conclusory allegations made in their complaint and reiterated in their briefs.[7]

[7] Plaintiffs also did not respond to First Union's statute of limitations argument concerning the conversion claim. First Union alleges that the Plaintiffs were aware of the claim for misapplication of the $23,000 in December of 1998. First Union cites to the Plaintiffs' Petition to Stay Execution and Petition to Strike Judgment, filed by the Plaintiffs in the Court of Common Pleas of Wayne County. Specifically, in ¶30, the Plaintiffs allege:

3. **Count III - Breach of Covenant of Good Faith and Fair Dealing**

In this count, the Plaintiffs allege that First Union failed to honor their obligations under a "global settlement agreement" and that First Union's "secret" assignment of its interest to Stockport was done in bad faith. In JHE, Incorporated v. Southeastern Pennsylvania Transport Authority, the court held "that a breach of the covenant of good faith is nothing more than a breach of contract claim and that separate causes of action cannot be maintained for each, even in the alternative." 2002 WL 1018941, *7 (Pa. Com. Pl. 2002). This claim is merely a repetition of Count I, wherein the Plaintiffs allege a breach of the global settlement agreement and, therefore, this count may be dismissed on this ground alone. However, the Court has already found that there was no "global settlement" between the Plaintiffs and First Union in the first place. As a result, there can be no claim for a breach of good faith and fair dealing when there is no contract that such an obligation can attach to. Therefore, the Plaintiffs' claim must fail.

3. **Count IV - Tortious Interference With Contract.**

In this Count, the Plaintiffs allege that First Union tortiously interfered with the Plaintiffs' contractual relations by assigning its rights to Stockport. From a review of the Complaint and the Plaintiffs' briefs, it appears that time frame for this claim is after the global settlement was allegedly reached between the parties. The Plaintiffs are also

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> On November 2, 1998, Tompkins Bluestone Co. Inc. tendered two checks in the total amount of $23,032.68 payable to the Bank's Philadelphia counsel. To date, the Bank has not credited this payment to Defendants as per joint stipulation.

Exhibit "O", Motion for Summary Judgment of First Union.

Rather then refute this argument head on, the Plaintiffs bury in their factual background a statement that they did not discover the conversion claim until after April 6, 1999. Not surprisingly, the Plaintiffs' writ of summons commencing this action was filed on April 6, 2001. Based upon the Plaintiffs own pleading in the Wayne County action, which was personally signed and verified by the Plaintiffs, the Court also finds that the conversion claim is barred by the two year statute of limitations. It is abundantly clear Plaintiffs were aware of the claim in 1998.

presumably talking about the agreement with Stanley Spangenberger, Jr., Logging Contractor, a copy of which is attached to Mr. Nowicki's affidavit.[8]

Under Pennsylvania law:

> The tort of inducing breach of contract or refusal to deal is defined as inducing or otherwise causing a third person not to perform a contract with another, or not to enter into or continue a business relation with another, without a privilege to do so. Restatement, Torts § 766 (1939). Numerous cases in this Commonwealth are in accord with this definition. See Restatement, Torts, Pa.Annot. § 766 (Supp.1953).
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> * * *
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> Our courts have also indicated that there may be recovery under this tort theory where a defendant has interfered with prospective contracts or business relationships of third parties with a plaintiff. See Neel v. Allegheny County Memorial Park, 391 Pa. 354, 358, 137 A.2d 785, 787 (1958) and Locker v. Hudson Coal Company, 87 Pa. Dist. & Co. 264, 267 (1953).

Glazer v. Chandler, 414 Pa. 304, 307, 200 A.2d 416, 418 (Pa. 1964).

The Plaintiffs present and/or cite to no evidence in support of this claim. Again, although not specifically stated, the act the Plaintiffs rely upon as the predicate for this claim is the assignment of First Union's rights to Stockport. First, the Plaintiffs do not argue that First Union did not have the right under the applicable loan documents to make the assignment. Second, the Plaintiffs failed to provide any evidence that First Union was not privileged to act as it did and that it intended to interfere with the Plaintiffs' contractual relationships. Third, and last, if the Plaintiffs are arguing that under the alleged global settlement agreement First Union forfeited its right to make the assignment; this claim is barred by Pennsylvania's gist of the action doctrine and the Court's decision that there was

[8] The Court is left to make these presumptions because the Complaint and briefs fail to identify the contract allegedly interfered with in connection with this claim in the context of the tortuous interference claim.

no global settlement agreement.[9] Therefore, this claim must fail.

4. Count VII - Negligence

In this count, the Plaintiffs assert First Union was negligent by not acting in a commercially reasonable manner, thereby causing the Plaintiffs significant damages. The Court notes that, under Pennsylvania law, the economic loss doctrine bars the recovery of economic damages for torts when the only harm is to the product itself and not to other property. See Werwinski v. Ford Motor Company, 286 F.3d 661 (3d. Cir. 2002). Therefore, if the only damages from the alleged tort are economic, the tort claims cannot stand. Id. Such is the case here and, accordingly, the claim must be dismissed.[10]

5. Count VIII - Civil Conspiracy.

In this count, the Plaintiffs allege that First Union and Stockport intentionally took steps to prevent the development of the Property in order to "assure the Plaintiffs would be unable to consummate the global settlement. . . ." Plaintiffs' Brief, Page 11. Under Pennsylvania law, conspiracy is defined as follows:

> To prove a civil conspiracy under Pennsylvania law, a plaintiff must show the following elements: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage. Proof of malice or an intent to injure is essential to the proof of a conspiracy. Strickland v. University of Scranton, 700 A.2d 979, 987-88 (Pa.Super.Ct.1997); see also Skipworth v. Lead Indus. Ass'n, Inc., 547 Pa. 224, 690 A.2d 169, 174 (Pa.1997).

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[9] Pennsylvania's gist if the action doctrine bars tort claims that: (1) arise solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; and (4) where the tort essentially duplicates a breach of contract claim or the success of which is wholly dependent on the terms of the contract. Etoll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 19 (Pa. Super. 2002). According to the Plaintiffs, the breach of the alleged settlement agreement is the triggering act of the tortious interference claim. Therefore, the claim would be barred.

[10] Once again, the Court notes that the Plaintiffs do not expand upon the general allegations made in their Complaint by introducing any evidence to show that First Union acted negligently.

SNA, Inc. v. Array, 51 F.Supp.2d 554, 560 (E.D.Pa. 1999).

First, the Court finds that there was no global settlement agreement that the defendants could have conspired against. Second, even if the Court were to find there was a global settlement agreement, the Plaintiffs fail to adduce any evidence of the elements of conspiracy. Rather than break down the elements of conspiracy and set forth the evidence supporting each element, the Plaintiffs make nothing more than generalized and conclusory allegations. As a result, the claim must fail.

6. Count X - Negligence (Mortgagee in Possession)

This count is a variation of the negligence count previously asserted. Here the Plaintiffs assert that First Union was negligent when it was in possession of the Property and that First Union failed in their fiduciary duty under the circumstances during this time. Again, the Plaintiffs rely on conclusory statements and generalizations set forth in the background sections of the Complaint and briefs in order to rebut First Union's position. The Court notes that the Plaintiffs do not even establish that First Union was actually a mortgage in possession of the Property and, even assuming such proof was proffered, the Plaintiffs fail to specify how First Union was negligent in its duties. Therefore, the claim must fail.

7. Counts XI and XII - Negligent Misrepresentation and Fraudulent Misrepresentation.

In these counts, the Plaintiffs allege that First Union made false and misleading representations in order to induce the Plaintiffs into entering the alleged settlement agreement and forgoing certain appeals. Specifically, the Plaintiffs allege that First Union led them to believe that they would settle the litigation in exchange for accepting logging proceeds all the while planning to sell the Property to Stockport. Because the Court finds that there was no

global settlement agreement, these claims are without its supporting pillar. Therefore, the Plaintiffs' claims must fail.

8. Counts V and VI, Defamation and Slander of Title Against First Union.

Plaintiffs allege that when First Union filed a writ of execution in Bucks County, the writ acted as a judgment lien on the property of Mrs. Nowicki in Bucks County. Therefore, the Plaintiffs argue that the "judgment" should have been satisfied by First Union after the Sheriff's sale of the Property. By not satisfying this writ/judgment hybrid, the Plaintiffs allege that Mrs. Nowicki was defamed. Initially, the Court notes that at the time of the Sheriff's sale, First Union had already assigned all of its interest in the loan documents and any judgment connected therewith. Therefore, it would not have been First Union's responsibility to mark any judgment satisfied.

The Court also notes that the Plaintiffs *completely* ignore the statute of limitations argument asserted by Fist Union regarding the defamation counts. Under Pennsylvania law, under both of these counts, there is a one year statute of limitations. See 42 Pa.C.S.A. § 5523; Pro Golf Manufacturing v. Tribune Review Newspaper Company, 570 Pa. 242, 809 A.2d 243 (2002)(holding slander of title has the same one year statute of limitations as slander). The Sheriff's sale after which the Plaintiffs allege the debt should have been satisfied occurred in August 1999. Therefore, for any claim to be timely it would have had to been brought in August 2000. Plaintiffs did not commence this action by writ of summons until April 2001.[11]

[11] No attempt is made by the Plaintiffs to explain the failure to file a claim within the one year after they assert the writ should have been satisfied. Instead, without any legal or factual support, the Plaintiffs assert that because the writ is still on the docket, it continues to slander Mrs. Nowicki. The fact remains that the time to file begins from the date of publication. Under the Plaintiffs' novel theory, the writ became defamatory when the judgment should have been marked satisfied.

On a more fundamental note, disregarding the statute of limitations argument for a moment, the Court does not believe that the existence of an unserved and returned writ of execution is the equivalent of a judgment of record in the sense that the Plaintiffs argue. The Plaintiffs base their entire argument on a local Bucks County rule of procedure that provides that if a writ of execution is issued in Bucks County, the writ shall have the same effect as an indexing of the judgment. Bucks County Local Rule of Procedure 3014(a)(b). Therefore, they assert that the writ acts as a judgment lien on all of Mrs. Nowicki's property in Bucks County.

First, the writ of execution was directed *only* at Union National Bank as garnishee. Therefore, only the property of Mrs. Nowicki at Union National Bank was to be subject to the writ. A more grounded interpretation of the Bucks County rule is that when the writ is actually served on the garnishee, it places a judgment lien on the property in possession of the garnishee. Therefore, the writ would act as a judgment lien for the strict purpose of execution on the property that is described in the writ and held by the garnishee in this case.

Second, the writ was never served due to an insufficient address and was returned to First Union's counsel. Because the operative writ was never served, the Court does not believe there was any judgment lien placed on any of the property of Mrs. Nowicki. Plaintiffs proffer no title searches, judgment searches or credit reports that evidences a judgment lien against Mrs. Nowicki by virtue of the unserved writ of execution. Plaintiffs also do not present any evidence that a judgment lien is on the judgment index of Bucks County.

Third, and last, the Plaintiffs fail to proffer any evidence of damages suffered as a result of the alleged defamation and slander of title. Under Pennsylvania law, the Plaintiffs

are still required to prove special damages for slander of title and defamation. See Pro Golf, 570 Pa. 242, 248, 809 A.2d 243, 247 (2002)(holding that unless there is slander *per se*, plaintiffs must prove special damages). Therefore, the Plaintiffs are also without evidence essential to their defamation claims and the claims must fail.

B. Stockport Is Entitled to Summary Judgment On All Counts.

The Court initially notes that in their response to Stockport's motion for summary judgment, the Plaintiffs focus their argument entirely on two points. First, that their unjust enrichment claim is not barred by the statute of limitations. Second, Stockport is liable under the defamation counts as a result of failing to mark the writ/judgment satisfied. The Plaintiffs do not even make a cursory effort to defend against summary judgment on the conversion and conspiracy counts.[12]

1. Count IX – Unjust Enrichment.

Regarding the unjust enrichment claim, the Plaintiffs make virtually no effort to establish how Stockport was unjustly enriched. Looking at the Complaint, Count IX states that the defendants accepted the assignment of mineral rights without properly crediting them against the balance.[13] First, the Plaintiffs offer absolutely no evidence in support of this

[12] Although the Plaintiffs do not appear to admit that the counts asserted against Stockport do not include counts I, III, IV, VII and X through XII, the Court finds that these counts address the alleged global settlement agreement with First Union. Therefore, these counts are not applicable to Stockport. However, to the extent that the Plaintiffs are in any way asserting these counts against Stockport, the claims also fail for the same reasons they fail against First Union.

[13] The purchase of the Property by Stockport at Sheriff's sale was the subject of lengthy litigation in Wayne County. The Plaintiffs repeatedly attempted to stay the sale and challenged the sale after it occurred. Plaintiffs accuse Stockport of committing a fraud upon the courts of Wayne County through its alleged loose corporate practices when purchasing the Property and receiving the assignment from First Union. The bottom line is that the courts of Wayne County, and the appellate courts of this state, have consistently upheld Stockport's purchase of the Property. If the Plaintiffs believe that Stockport obtained the Property though fraud and/or misrepresentations to the courts of Wayne County, then such allegations should properly be brought in Wayne County. Plaintiffs' allegations regarding the circumstances of Stockport's obtaining the Property is nothing more than an attempt to collaterally attack the court decisions affirming the sale.

claim concerning Stockport. The Plaintiffs provide no proof that Stockport received any royalties or funds earned from the Property after its assignment. Therefore, it is unclear to the Court how Stockport was unjustly enriched. In fact, in context of the Complaint, the Plaintiffs' unjust enrichment allegations do not make sense as to Stockport. Plaintiffs simply cannot explain what benefit *the Plaintiffs* conferred upon Stockport and how such a benefit was unjustly retained.[14] Therefore, the claim must fail.

2. Counts II, V, IV and VIII – Slander and Slander of Title.

The Court finds that these counts fail for the same reasons set forth above in relation to First Union.[15]

III. CONCLUSION

For the reasons more fully set forth above, the motions for summary judgment of First Union and Stockport are **granted**. As a result, Plaintiffs' complaint is **dismissed**.

BY THE COURT:

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GENE D. COHEN, J.

Dated: 4/15/04

[14] The Plaintiffs attempt to tie in Stockport's alleged misdeeds regarding the assignment from First Union and the alleged misrepresentations in front of the Wayne County courts into their unjust enrichment claim. The Court finds these arguments without merit and simply an attempt to collaterally attack the Sheriff's sale of the Property which was confirmed by the Wayne County courts.

[15] The Court also notes that Stockport was not joined as a defendant(s) until January, 2002. Therefore, the defamation claims are even more untimely as alleged against Stockport.

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

ALLAN J. NOWICKI, and DIANE NOWICKI,	:	April Term, 2001
Plaintiffs,	:	No.: 0763
v.	:	COMMERCE PROGRAM
FIRST UNION NATIONAL BANK, CORESTATES BANK, N.A., MERIDIAN BANK, COUNTY NATIONAL BANK, COMMONWEALTH BANK, STOCKPORT FOREST PRESERVATION, INC., and NORCROSS-STOCKPORT FOREST PRESERVATION, INC.,	:	
Defendants.	:	Control Nos.: 110708 and 100232

ORDER

AND NOW, this ____ day of April 2004, upon consideration of the Motion for Summary Judgment of First Union National Bank ("First Union"), the Motion for Summary Judgment of Stockport Forest Preservation, Inc. and Norcross-Stockport Forest Preservation, Inc. (jointly "Stockport"), the responses in opposition to both motions filed by Allan J. Nowicki and Dianne Nowicki (the "Plaintiffs"), the parties respective memoranda, all matters of record and after oral argument, it is hereby

ORDERED and **DECREED** that the motions for summary judgment of First Union and Stockport are **GRANTED** in their entirety, it is further

ORDERED and **DECREED** that Counts one through thirteen of the Plaintiffs' complaint are **DISMISSED**, it is further

ORDERED and **DECREED** that the Plaintiffs' complaint is **DISMISSED** in its entirety.

BY THE COURT:

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GENE D. COHEN, J.