

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

JMS PROPERTIES, INC.,	:	December Term, 2004
Plaintiff,	:	
v.	:	No. 0087
AMERICAN RECYCLING	:	
CORPORATION (ALR), AMERICAN	:	COMMERCE PROGRAM
LAND RECYCLING (PHILADELPHIA)	:	
CORPORATION and SUSAN L. STANN,	:	Control Numbers 030010/041288/
Defendants.	:	041670

**ORDER**

**AND NOW**, this 18<sup>TH</sup> day of May, 2005, upon consideration of the Preliminary Objections of defendants (Control No. 030010), the Preliminary Objections of defendants to the Preliminary Objections of plaintiff to defendants' Preliminary Objections (Control No. 041288), the Preliminary Objections of defendants to plaintiff's Reinstated Complaint (Control No. 041670), all pertinent responses, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion being filed, it is

**ORDERED** that defendants' Preliminary Objections are **Sustained, in part**, as follows:

1. Count III (abuse of process) is dismissed with prejudice.
2. Plaintiff is directed to file a proper verification within twenty-two (22) days from the date of this Order to comply with Pa. R. Civ. P. 1024.
3. Plaintiff's demand for Attorney Fees is Stricken.

It is **ORDERED** that all other Preliminary Objections are **Overruled**.

**BY THE COURT,**

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

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**OPINION**

**Albert W. Sheppard, Jr., J. .... May 18, 2005**

Presently before the court are three sets of Preliminary Objections filed by defendants, American Recycling Corporation (ALR), American Land Recycling (Philadelphia) Corporation and Susan L. Stann (collectively referred to as “defendants”). For the reasons discussed, the Preliminary Objections are Sustained, in part, and Overruled, in part.

**BACKGROUND**

On April 6, 2001, defendant American Land Recycling Corporation signed an Agreement of Sale to purchase 1826-1870 West Lehigh Avenue (“Property”) for One Hundred Thousand Dollars (\$100,000.00) with a settlement date of July 18, 2001. The property is located in a heavy industrial zoned district and is a vacant industrial site,

containing approximately 89,000 square feet and improved with a multi-story masonry warehouse and two steel structures with four non-accessory outdoor sign faces.

On May 14, 2002, defendant signed an Amendment to the Agreement of Sale which reduced the purchase price to Fifty Thousand Dollars (\$50,000.00), with a settlement date of October 12, 2002. On June 5, 2003, defendant signed a Second Amended Agreement of Sale which reduced the purchase price to Thirty Two Thousand Five Hundred Dollars (\$32,500) with settlement to occur on or about September 15, 2003.

Defendants' obligation to proceed to the closing under the Second Amendment was subject to a Property Inspection and Planning Contingency, continuing for a forty-five day period. Defendants inspected the property on seven different dates over a period of seven months. However, the defendants claimed that the property was rendered inaccessible for inspection due to debris, weeds, unknown liquids, alleged hazardous material, barrels and rotted flooring. As a result defendants took the position that the inspection period would not terminate as set forth in the second Amendment, but rather would continue indefinitely.

By letter dated May 28, 2004, plaintiff informed defendants that the Second Amended Agreement of Sale was terminated. Defendants allegedly refuse to file a notation with the Recorder of Deeds to remove, cancel, withdraw or terminate the purported equitable interest asserted in the Agreement of Sale and First Amended Agreement of Sale that were each recorded without notice to plaintiff.

On December 6, 2004, plaintiff filed this action asserting a claim for quiet title (Count I), slander of title (Count II) and abuse of process (Count III). Presently the court

is burdened with three sets of Preliminary Objections filed by the same defendants to plaintiff's Complaint. After reviewing the Preliminary Objections the court finds only the following objections to be meritorious.

## **DISCUSSION**

### **I. Plaintiff failed to Verify Its Complaint in Accordance With Pa. R. Civ. P. 1024.**

Pa. R. Civ. R. 1024 requires every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact to be verified. The signer need not aver the source of the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder. *Id.* The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party. Pa.R.C.P. 1024 (a),(c).

The verification in the instant case does not conform to the requirements of Rule 1024. Accordingly, defendants' Preliminary Objection is sustained. Plaintiff is granted leave to substitute counsel's verification or file a verification in compliance with Pa. R. Civ. P. 1024 within twenty two (22) days from the date this Order.

## **II. Plaintiff's Claim for Attorney's Fees is Stricken.**

Under Pennsylvania law, “a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of parties, or some other established exception.” Synder v. Snyder, 620 A.2d 1133, 1138 (Pa. 1993). Because the plaintiff has not provided any basis for their demand, it is improper and must be stricken.

## **III. Count III Fails to State a Claim for Abuse of Process.**

Count III of plaintiff's Complaint purports to state a claim for abuse of process. Defendants argue that Count III is legally insufficient. The court agrees. For purposes of reviewing preliminary objections based upon a demurrer, “all well-pleaded material, factual averments and all inferences fairly deducible therefrom” are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 942 (Pa. Super. 2000). When presented with preliminary objections whose end result would be the dismissal of a cause of action, a court should sustain the objections only where “it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief.” Bourke v. Kazaras, 746 A.2d 642, 643 (Pa. Super. 2000).

“It is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer...Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.” Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. 1999).

To establish a claim for abuse of process it must be shown 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) harm has been caused to the plaintiff. Rosen v. American Bank, 627 A.2d 190 (Pa. Super. 1993). An abuse of process arises when a party employs legal process for some unlawful purpose, and not for the purpose for which it was intended. Triester v. 191 Tenants Assoc., 415 A.2d 698 (Pa. Super. 1979).

The word "process" has been interpreted broadly to encompass the entire range of procedures incident to the litigation process. Rosen, 627 A.2d 192 (see also Hart v. O'Malley, 647 A.2d 542, 551 (Pa. Super. 1994) ("The word 'process' as used in the tort of abuse of process has been interpreted broadly and encompasses the entire range of procedures incident to the litigation process."); Nienstedt v. Wetzel, 133 Ariz. 348, 651 P.2d 876, 880 (Ariz. 1982) ("Process' as used in the tort . . . is not restricted to the [traditionally] narrow sense of that term."); 72 C.J.S. § 106 at 694 ("For purposes of the tort, the word 'process' may encompass a range of court procedures incident to the litigation.")).

Here, the Complaint alleges that the "legal process" used by defendants was recording the Agreement and the Amendments with the Recorder of Deeds as an equitable interest in the Property. Complaint ¶¶ 85-86. Recording the Agreement and the Amendments with the Recorder of Deeds is not encompassed within the range of procedures incident to the litigation process. Accordingly Count III fails to state a cause of action for abuse of process and is dismissed with prejudice.

## CONCLUSION

For the foregoing reasons, defendants' Preliminary Objections are Sustained, in part, as follows: Count III (abuse of process) is dismissed with prejudice; plaintiff is directed to substitute counsel's verification within twenty-two (22) days from the date of this Order to comply with Pa. R. Civ. 1024; and all claims for attorney fees are stricken.

All remaining Preliminary Objections are **Overruled**.

An Order consistent with this Opinion will be filed of record.

**BY THE COURT,**

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