

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

RASKIN, LISS AND FRANCIOSI, P.C.,	:	DECEMBER TERM, 2004
	:	
Plaintiff,	:	No. 02364
	:	
v.	:	COMMERCE PROGRAM
	:	
STEVEN T. FRANCIOSI,	:	Control No. 030363
	:	
Defendant.	:	

ORDER

AND NOW, this 6TH day of April, 2005, upon consideration of plaintiff's Preliminary Objections to defendant's Answer with Counterclaim, the response thereto, the briefs in support and opposition, and all other matters of record, and in accord with the Memorandum Opinion issued simultaneously herewith, it is hereby

ORDERED that said Preliminary Objections are **SUSTAINED** in part, defendant's Counterclaims for Defamation, Injurious Falsehood, Fraud, and Tortious Interference with Contractual Relations are **DISMISSED**, and the remaining Preliminary Objections are **OVERRULED**.

BY THE COURT:

HOWLAND W. ABRAMSON, J.

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MEMORANDUM OPINION

The present dispute arises out of plaintiff Raskin, Liss and Franciosi, P.C.'s (the "Law Firm's") employment and termination of defendant Steven T. Franciosi. The Law Firm asserts claims against Mr. Franciosi based on his alleged violations of a settlement agreement entered into between the parties regarding the allocation of fees earned after his termination with respect to certain clients. Mr. Franciosi filed counterclaims against the Law Firm for defamation, injurious falsehood, fraud, intentional interference with contractual relations, and unjust enrichment based on the Law Firm's alleged continued use of his name after his termination. The Law Firm filed Preliminary Objections to all such claims, which are presently before the court.

I. Defendant's Counterclaims for Defamation and Injurious Falsehood Must Be Dismissed.

Mr. Franciosi alleges that the Law Firm's "everday stationary identified [him] as working for [the Law Firm] for a significant period of time after [he] left [the Law Firm's] employment on December 16, 2002." Answer with Counterclaim, Count I, ¶ 6. Mr. Franciosi further alleges that, by holding him out as part of the firm when he was not, the Law Firm defamed him and published an injurious falsehood.

To create liability for defamation there must be: (a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Restatement (Second) Torts, § 558 (1977). Under the tort of injurious falsehood

the publication of a disparaging statement concerning the business of another is actionable where: (1) the statement is false; (2) the publisher either intends the publication to cause pecuniary loss or reasonably should recognize that publication will result in pecuniary loss; (3) pecuniary loss does in fact result; and (4) the publisher either knows that the statement is false or acts in reckless disregard of its truth or falsity.

Pro Golf Mfg. v. Tribune Review Newspaper Co., 570 Pa. 242, 246, 809 A.2d 243, 246 (2002)

(citing Restatement (Second) Torts § 623(A) (1977)).

Both causes of action require that the publication be more than merely false; it must also be “defamatory” or “disparaging.” The court does not see how holding Mr. Franciosi out as member of the Law Firm after he was terminated could be viewed as sufficiently negative to be actionable under these two tort theories.¹ Since Mr. Franciosi claims that the Law Firm gained clients by making such a misrepresentation, he can hardly argue that it was a defamatory or disparaging statement. Instead, Mr. Franciosi’s claims for defamation and injurious falsehood are really claims against the Law Firm for stealing his potential clients, i.e. tortious interference with prospective contractual relations. Therefore, the defamation and injurious falsehood claims will be dismissed.

¹ Mr. Franciosi alleges that the Law Firm’s “course and conduct in the practice of law, in that, as a matter of law [sic] acted negligently or in malpractice of their client’s concerns caused [Mr. Franciosi] damage to [his] reputation due to [the Law Firm’s] representation” that he was still a member of the Law Firm. Answer with Counterclaim, Count I, ¶ 8. If Mr. Franciosi had been sued by a client of the Law Firm for malpractice that occurred after he left the Law Firm, then he would presumably have a claim for damages. However, a general allegation, that the Law Firm may have committed malpractice during the period that Mr. Franciosi’s name was improperly listed on the letterhead, is not specific enough to survive Preliminary Objections.

II. Defendant's Counterclaim for Fraud Must Be Dismissed.

Mr. Franciosi also alleges that the law firm committed fraud by representing to the public that he was an employee when he was not.

One who fraudulently makes a misrepresentation . . . for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.

Restatement (Second) Torts, § 525 (1977). In other words, the person who may bring a claim for fraud is the person who relied upon the misrepresentation and was damaged thereby. In this case, Mr. Franciosi alleges that “perspective [sic] third party clients” relied on the alleged misrepresentations made by Law Firm and that he was damaged thereby. *See Answer with Counterclaim, Count III, ¶ 3-4.* Since he was not the party who allegedly relied upon the misrepresentation, he has not made out a claim for fraud on him by the Law Firm.

III. Defendant's Counterclaim for Intentional Interference with Contractual Relations Must Be Dismissed.

Mr. Franciosi has brought a claim for intentional interference with prospective client relations against the Law Firm. The elements of a cause of action for intentional interference with contractual relations 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);

Strickland v. Univ. of Scranton, 700 A.2d 979, 985 (Pa. Super. 1997). Mr. Franciosi has failed to identify any particular client(s) with whom he had a potential contract and whom the Law

Firm improperly gained as a client after he was terminated. Therefore, his claim for intentional interference must be dismissed.

IV. Defendant May Pursue His Counterclaim for Unjust Enrichment.

Mr. Franciosi alleges that the Law Firm has been unjustly enriched by its continued use of his name past the time when he was employed by the Law Firm. A claim for unjust enrichment requires that plaintiff plead the following elements:

benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. . . . Where unjust enrichment is found, the law implies a contract, . . . which requires that the defendant pay to plaintiff the value of the benefit conferred. In short, the defendant makes restitution to the plaintiff in *quantum meruit*.

Schenck v. K.E. David, Ltd., 446 Pa. Super. 94, 97-8, 666 A.2d 327, 328-9 (1995). In this case, the alleged benefit conferred on the Law Firm was the improper use of Mr. Franciosi's name. Although Mr. Franciosi may ultimately have difficulty proving the value of any such benefit to the Law Firm, the court will not dismiss the claim at this stage in the proceedings.

CONCLUSION

For all the foregoing reasons, plaintiff's Preliminary Objections to defendant's Counterclaims are sustained in part and overruled in part.

BY THE COURT:

HOWLAND W. ABRAMSON, J.