

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

LAPENSOHN & ASSOCIATES, P.C.	:	December Term 2004
	:	
Plaintiff,	:	No. 2518
v.	:	
	:	Commerce Program
RICHARD TOMOLO	:	
	:	Control No. 021705
Defendant.	:	

ORDER and MEMORANDUM

AND NOW, this 20TH day of April 2005, upon consideration of Defendant's Preliminary Objections to Plaintiff's Complaint, all responses in opposition, the respective memoranda and all matters of record, it hereby is **ORDERED** and **DECREED** as follows:

1. Defendant's Preliminary Objection to Count III (interference with contractual relations) is **SUSTAINED** and Counts III is **DISMISSED**. To the extent Plaintiff is able to do so, it will be permitted amend Count III within twenty (20) days from the date of entry of this Order.

2. Defendant's Preliminary Objection concerning attorney's fees is **SUSTAINED** and all such references hereby are stricken from the Complaint.

3 The remainder of Defendant's Preliminary Objections are **OVERRULED** without prejudice.¹

BY THE COURT:

C. DARNELL JONES, J.

¹ This court finds that, at this preliminary stage, the remainder of Plaintiffs' Complaint has been pled sufficiently to withstand the instant Preliminary Objections. However, this court makes no finding as to the future viability of any of the counts contained therein and enters this Order without prejudice so that Defendant may later file a motion challenging same, if warranted.

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

LAPENSOHN & ASSOCIATES, P.C.	:	November Term 2004
	:	
Plaintiff,	:	No. 02782
	:	
v.	:	
	:	Commerce Program
RICHARD TOMOLO	:	:
	:	Control No. 021705
Defendant.	:	

MEMORANDUM OPINION

Before the court are Defendant's Preliminary Objections to Plaintiff's Complaint. For the reasons fully set forth below, Defendant's Preliminary Objections are **sustained in part** and **overruled in part**.

DISCUSSION

I. Plaintiff Has Failed To Plead A Valid Claim for Interference With Contractual Relations

Defendant's Preliminary Objection to Count III (interference with contractual relations) is sustained. 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).

An essential element of such a claim is "the existence of a contractual relationship between plaintiff and a third party." Strickland v. Univ. of Scranton, 1997 Pa. Super. LEXIS 2894, 700 A.2d 979 (1997). At bar, Plaintiff has failed to identify a specific contract between itself and an identifiable third party. As such, Counts III is dismissed. To the extent Plaintiff is able to do so, it will be permitted to amend Count III within twenty (20) days from the date of entry of this Order.

II. Plaintiff Is Not Entitled To Attorney's Fees

Plaintiff has also requested an award of attorney's fees, which are not recoverable at bar. "[T]he parties to litigation are responsible for their own fees unless otherwise provided by statutory authority, agreement of the parties or some other recognized exception." Equibank v. Miller, 422 Pa. Super. 240, 619 A.2d 336, 338 (1993). Plaintiff cites no statute, agreement or recognized exception authorizing an award of attorney's fees in this matter. Accordingly, the court sustains Defendants' Preliminary Objection and strikes all demands for attorney's fees from the Complaint.

III. Remaining Preliminary Objections Are Overruled

The remainder of Defendant's Preliminary Objections are overruled without prejudice. This court finds that, at this preliminary stage, the remainder of Plaintiff's Complaint has been sufficiently pled to withstand the instant Preliminary Objections. However, this court makes no finding as to the future viability of any of the claims contained therein and enters this Order without prejudice so that Defendant may later file a motion challenging same, if warranted.

CONCLUSION

For the above-stated reasons, this Court hereby **sustains in part** and **overrules in part**

Defendant's Preliminary Objections as follows:

1. Defendant's Preliminary Objections to Count III (interference with contractual relations) is **sustained** and Counts III is **dismissed**. To the extent Plaintiff is able to do so, it will be permitted to Count amend Count III within twenty (20) days from the date of entry of this Order.
2. Defendant's Preliminary Objection concerning Attorney's Fees is **sustained** and all such references hereby are stricken from the Complaint.
3. The remainder of Defendant's Preliminary Objections are **overruled** without prejudice.

BY THE COURT:

C. DARNELL JONES, J.