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.	
	:
ALLEN H. "BUD" SELIG, etal.	: Control Nos. 50500, 51083, 51448 and 51760

O R D E R

AND NOW, this 19th day of September 2001, upon consideration of the defendants' Preliminary Objections to the Complaint and the plaintiffs' responses, it is **ORDERED** that

(1) The Preliminary Objections to the fraudulent conveyance claim (Count VI), the unjust enrichment claim (Count IX) and the contract claim (Count X) are **Sustained** and those claims are **Dismissed**;

(2) All other Preliminary Objections are **Overruled**; and

(3) The defendants shall answer the Complaint within twenty-two (22) days after entry of this Order.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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O P I N I O N

Albert W. Sheppard, Jr., J. ..... September 19, 2001

The plaintiffs are an attorney and his law firm. They allege that the defendants interfered with their relationship with their client, a labor union, and defamed them by calling them incompetent, dishonest and unethical. At issue are Preliminary Objections to the Complaint. One of the objections is that the National Labor Relations Act preempts the plaintiffs' claims. The court overrules that objection. The court sustains, in part, the other objections.

BACKGROUND

For present purposes, the court accepts as true the facts alleged in the Complaint. Smith v. Wagner, 403 Pa.Super. 316, 588 A.2d 1308, 1310 (1991). The plaintiffs are attorney Richard Phillips and his firm, Richard G. Phillips Associates P.C. Since 1979, they have been counsel to the Major League Umpires Association (MLUA), the union for baseball umpires. The plaintiffs signed a retainer agreement with the MLUA which was due to expire in April 2003. Under that agreement, the plaintiffs were the exclusive counsel for the MLUA in return for an annual retainer fee and other compensation.

Defendant Allan "Bud" Selig is the Commissioner of Major League Baseball. Defendants Robert Manfred, Richard "Sandy" Alderson and Francis X. Coonelly are employees of the defendant Office of the Commissioner of Baseball. Defendants National League of Professional Baseball Clubs and American League of Professional Baseball Clubs employ the umpires. This opinion refers to these seven defendants as the MLB defendants.

In 1999, there was unrest between the umpires and the MLB defendants. The umpires' collective bargaining agreement was set to expire at the end of the year. Some MLUA members called for a strike. Phillips and the president of the MLUA suggested an alternative to a strike: a mass resignation. The umpires agreed on this plan at a July 14, 1999 meeting. All umpires submitted written notices of their intent to resign effective September 2, 1999.

Some umpires did not like this strategy and did not like Phillips. Defendants Joseph Brinkman, John Hirschbeck, David Phillips and Timothy Welke were among the dissenters, and they wanted to get rid of Phillips. These umpire defendants and their attorney, defendant Ronald Shapiro,[1] allied themselves with the

[1]The Complaint alleges that, at all times, Shapiro acted for his two firms, defendants Shapiro & Olander and Shapiro Negotiations Institute. This Opinion refers to Shapiro and his firms collectively as Shapiro.

MLB defendants to sever the plaintiffs' relationship with the umpires by getting rid of the MLUA. The umpire defendants and Shapiro carried out their part of the plan by attacking the resignation strategy and publicly accusing Phillips of incompetence, dishonesty and ethical breaches. The umpire defendants and Shapiro convinced the other umpires to rescind their resignations. By July 27, 1999, all of the umpires had rescinded their resignations. The MLB defendants took back all but twenty-two umpires, and hired replacement umpires for those twenty-two.

As part of the plot to get rid of the plaintiffs, the umpire defendants formed a rival union, defendant World Umpire Association (WUA), to replace the MLUA as the umpires' union. On February 24, 2000, the umpires voted to decertify the MLUA and to certify the WUA as their new union. The plaintiffs allege that the vote resulted from the defendants' negative statements about the plaintiffs. Defendant Shapiro now represents the WUA. The MLUA, now member less, is apparently defunct and effectively no longer the plaintiffs' client.

The plaintiffs filed this action on January 2, 2001 alleging tortious interference and conspiracy against all defendants (Counts I, II and VIII); defamation, false light invasion of privacy, commercial disparagement and injurious falsehood against the WUA, the umpire defendants and Shapiro (Counts III, IV, V and VII); and fraudulent conveyance, unjust enrichment and breach of contract against the WUA (Counts VI, IX and X).

On January 24, 2001, the Shapiro defendants removed the action to federal district court. The plaintiffs filed a petition for remand. On March 28, 2001, the district court granted the petition and remanded to this court. In its memorandum opinion, the district court rejected the defendants' argument that the

plaintiffs' claims arose under § 301 of the Labor Management Relations Act. 29 U.S.C. § 185;[2] Phillips v. Selig, No. 01-CV-363, slip op. at 6 (E.D.Pa. Mar. 29, 2001).

After remand, all defendants filed preliminary objections to the Complaint arguing that the National Labor Relations Act preempted the claims. In addition, the umpire defendants, the WUA and Shapiro argue that the claims are legally insufficient and insufficiently specific.[3]

DISCUSSION

The court sustains, in part, the defendants' Preliminary Objections. The NLRA does **not** preempt any of the plaintiffs' claims. However, the plaintiffs' fraudulent conveyance, unjust enrichment and contract claims against the WUA are legally insufficient and will be dismissed.

I. THE NATIONAL LABOR RELATIONS ACT DOES NOT PREEMPT THE PLAINTIFFS' CLAIMS.

All defendants argue that the National Labor Relations Act preempts the plaintiffs' claims. 29 U.S.C. § 151 et seq. The court disagrees.

Under the Garmon preemption doctrine, the NLRA presumptively preempts a state-law claim if the claim concerns conduct that NLRA § 7 actually or arguably protects, or that NLRA § 8 actually or arguably

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[2]Section 301(a) provides that "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any District Court of the United States having jurisdiction over the parties". 29 U.S.C. § 185(a). In addition to conferring jurisdiction on federal courts, § 301 authorizes federal courts to fashion a body of federal law for the enforcement of collective bargaining agreements. Beidleman v. Stroh Brewery Co., 182 F.3d 225, 231-32 (3d Cir. 1999). Because of the need for uniform interpretation of agreements governed by § 301, § 301 completely preempts state law claims for violation of these agreements. Id.

[3]The plaintiffs filed Preliminary Objections to those Preliminary Objections, arguing that the Preliminary Objections were untimely. The court has overruled plaintiffs' Preliminary Objections to the Preliminary Objections by separate Order.

prohibits.[4] San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 243-45 (1959), explained in Belknap, Inc. v. Hale, 463 U.S. 491, 498-99 (1983); 29 U.S.C. §§ 157, 158. Section 7 of the NLRA protects employees' rights, among other things, to organize, choose their bargaining agents and engage in concerted activities. 29 U.S.C. § 157. Section 8(a) of the NLRA prohibits employers from, among other things, restraining or coercing employees in the exercise of their § 7 rights, encouraging or discouraging membership in a union by discriminating in the terms of employment, and refusing to bargain collectively with employees' chosen bargaining agents. 29 U.S.C. § 158(a).

There are two exceptions to Garmon. The NLRA does not preempt a claim if the conduct (1) is of only "peripheral concern" to the NLRA or (2) "touches interests deeply rooted in local feeling and responsibility." Belknap, 463 U.S. at 498. In such cases, the court must balance the state's interest in regulating the conduct against the interference with the Board's ability to adjudicate controversies committed to it by the NLRA and the risk that the state will sanction conduct that the NLRA protects. Id. at 498-99.

The plaintiffs' claims concern conduct that the NLRA arguably protects and prohibits. The plaintiffs allege that the defendants interfered with their relationship with the umpires by causing the umpires to switch unions. They accomplished this by defaming the plaintiffs. The claims implicate § 7, which protects the employees' right to choose their union. 29 U.S.C. § 157. They also implicate § 8, which prohibits employers and unions from coercing employees in exercising that choice, prohibits employers from encouraging or discouraging membership in a union by discriminating in the terms of employment, and prohibits unions from causing such discrimination by the employers. 29 U.S.C. §§ 158(a)(1), 158(a)(3) and 158(b)(1) and (3).

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[4]A second NLRA preemption doctrine, the Machinists doctrine, bars state law regulations and claims concerning conduct that Congress intended to be left unregulated and to remain as part of the self-help remedies left to the combatants in labor disputes. Local 76, Int'l Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n, 427 U.S. 132, 147-148 (1976). The Machinists doctrine is not applicable here.

Here, the NLRA does not preempt the plaintiffs' claims, however, because the claims fall within the two exceptions to Garmon. In Belknap, the Supreme Court discussed the Garmon exceptions:

> [A] critical inquiry in applying the Garmon rules, where the conduct at issue in the state litigation is said to be arguably prohibited by the Act and hence within the exclusive jurisdiction of the NLRB, is whether the controversy presented to the state court is identical with that which could be presented to the Board.

Belknap, 463 U.S. at 510, citing Sears, Roebuck & Co. v. Carpenters, 436 U.S. 180 (1978). Where the controversy is not identical to that which could be presented to the NLRB, the claims are not preempted. Belknap, 463 U.S. at 510. Here, the plaintiffs' claims allege conduct that is only a peripheral concern of the NLRA because the controversy presented to the court is not the same as any controversy that could be presented to the NLRB. Belknap, 463 U.S. at 510. The plaintiffs are neither an employer nor a union. They are not parties to the collective bargaining agreement. They are not subject to the NLRA's protections. Since they cannot bring a claim before the NLRB, their claims in this action cannot be identical to any claim before the NLRB.

The MLUA or the umpires – but not the plaintiffs – could possibly bring claims before the NLRB based on the same conduct. If so, the NLRB would focus on the rights of the umpires to choose their union, whether the defendants interfered with those rights, and whether the defendants committed unfair labor practices. In analyzing the plaintiffs' state law claims, the court will focus on the rights of third party attorneys to protect their reputations and their economic relationships with a client. The court can consider whether the defendants' conduct was tortious without encroaching on the NLRB's jurisdiction to determine whether that conduct was an unfair labor practice.[5] The remedies sought by the plaintiffs, damages, would not overlap with any remedy available to them before the NLRB, because there is simply no remedy available

[5]The Complaint is full of allegations of unfair labor practices and violations of the umpires' collective bargaining agreement. These allegations are not relevant to the plaintiffs' state law claims.

to them before the NLRB. See Belknap, 463 U.S. at 510. Whether the defendants' conduct also violated the NLRA will not be relevant.

In spite of their extensive analyses of Garmon protection, none of the defendants have cited a decision holding that Garmon preempted a claim by a third party plaintiff not subject to the NLRA's protections.[6] Citing Belknap, some courts have indicated that the NLRA does not preempt such claims. See Young v. Caterpillar, Inc., 629 N.E.2d 830, 834 (Ill.App.Ct. 1994); Beaman v. Yakima Valley Disposal, Inc., 807 P.2d 849, 856 (Wash. 1991)(en banc). See also Anderson v. Ford Motor Co., 803 F.2d 953, 960 (8th Cir. 1986) (Bright, J. dissenting).

Though the claims in this action may concern conduct that is arguably protected or prohibited by the NLRA, that conduct is only a peripheral concern to the NLRA. Moreover, the state's interest in providing redress for tortious conduct and breaches of contracts is one that "touches interests deeply rooted in local feeling and responsibility."[7] The plaintiffs are not parties to the collective bargaining agreement, are outside of the scope of the NLRA's protection and have no redress for this conduct outside of state law. In such a case, the state's interest in providing relief outweighs any risk that the state will sanction conduct that the

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[6]The defendants cite two decisions where claims against third party defendants were preempted by the NLRA. Lumber Production Indus. Workers v. West Coast Indus. Rel'ns Ass'n, 775 F.2d 1042, 1048-49 (9th Cir. 1985); Richardson v. Krucchko & Fries, 966 F.2d 153, 156-57 (4th Cir. 1992).

[7]

> The relationship between a lawyer and his client is a serious, vital and solemn one. No third person may interfere with the relationship any more than he may with propriety intervene between a doctor and his patient. A claimant or patient may, of course, disengage himself from a professional relationship provided he has met all obligations owing to his legal or medical counsellor, but if that disassociation is the result of coercion or misrepresentation practiced by others, the intervenors are answerable in law as anyone else would be liable for causing the rupture of a binding contract.

Richette v. Solomon, 410 Pa. 6, 187 A.2d 910, 912 (1963).

NLRA protects. The NLRA does not preempt the claims.[8] The court overrules these objections.

II. THE COURT OVERRULES THE OBJECTION BASED ON THE NOERR-PENNINGTON DOCTRINE.

The WUA, the umpire defendants and Shapiro argue that Noerr-Pennington immunity bars the plaintiffs' tortious interference, conspiracy and fraudulent conveyance claims.[9] United Mine Workers of Am. v. Pennington, 381 U.S. 657 (1965); Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961). Because immunity raises fact issues, a court cannot sustain a preliminary objection asserting immunity unless immunity is clear from the face of the pleadings. Logan v. Lillie, 728 A.2d 995, 998 (1999); Pa.R.C.P. 1030(a) (immunity is an affirmative defense that the defendant shall plead as new matter in the answer). Noerr-Pennington immunity is not clear from the face of the pleadings. The court overrules the objections.

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[8]The NLRA does not preempt defamation claims arising from labor disputes if the plaintiff shows that the defendant made the statements "with knowledge of their falsity or with reckless disregard of whether they were false" and that the statements actually injured him. Linn v. United Plant Guard Workers of Am., Local 114, 383 U.S. 53, 65-66 (1966) (adopting standard for defamation of public figures of New York Times Co. v. Sullivan, 376 U.S. 254 (1964)). See also Meyer v. Joint Council 53 Int'l Brotherhood of Teamsters, 416 Pa. 401, 206 A.2d 382, 389 (1965) (holding that Garmon does not preempt libel claims). The purpose of this higher burden for defamation claims is to guard against abuse of libel actions in labor disputes and to prevent such actions from intruding upon the free debate that the NLRA envisions. Linn, 383 U.S. at 65. This court need not decide if the more stringent standard applies to claims by persons like the plaintiffs who are third parties not subject to the NLRA. If it does apply, the plaintiffs have satisfied it. They allege that the defendants made their defamatory statements "with malice, with specific knowledge of the falsity of the statements and with reckless disregard for the truth of their statements" and that the statements caused actual damage. Complaint ¶¶ 115-16, 128.

[9]Under this doctrine, "[t]hose who petition government for redress are generally immune from antitrust liability." Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., 508 U.S. 49, 56 (1993). Under the sham exception to the Noerr-Pennington doctrine, however, there is no immunity if the effort to influence or obtain government action is in fact only an attempt to interfere with the business relationships of a competitor. Id. Some courts have extended the Noerr-Pennington doctrine to immunity from tort claims. See Brownsville Golden Age Nursing Home, Inc. v. Wells, 839 F.2d 155, 159-60 (3d Cir. 1988).

III. THE COURT OVERRULES THE OBJECTION TO THE TORTIOUS INTERFERENCE CLAIMS (COUNTS I & II).

Count I alleges tortious interference with existing contractual relations against all defendants. Count II alleges tortious interference with prospective contractual relations against all defendants. The WUA, the umpire defendants and Shapiro argue that the claims are legally insufficient. The court disagrees.

The elements of a claim for tortious interference with existing or prospective contractual relations 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 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.

Strickland v. University of Scranton, 700 A.2d 979, 985 (Pa.Super. Ct. 1997) (citations omitted), quoted in Flynn Corp. v. Cytometrics, June 2000, No. 2102, op. at 11 (C.P. Phila. Nov. 17, 2000) (Sheppard, J.). "Absence of privilege or justification" means that the defendant's conduct was "improper." Cloverleaf Dev., Inc. v. Horizon Fin., F.A., 347 Pa.Super. 75, 500 A.2d 163, 167 (1985).

The plaintiffs allege these elements. They allege that there was an existing and prospective[10] contractual relationship between them[11] and a third party, the MLUA. They allege that the WUA, the umpire defendants and the Shapiro defendants purposefully acted for the specific purpose of

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[10]Contrary to the defendants' arguments, the plaintiffs sufficiently allege a prospective relationship between the plaintiffs and the MLUA. See Cloverleaf Dev., 500 A.2d at 167 (stating that averment of interference with a prospective relation be "sufficient to allege a reasonable likelihood or probability that an anticipated business arrangement would have been consummated.").

[11]The retainer agreement is between Phillips Associates and the MLUA. Since no defendant has argued that Richard Phillips has failed to allege the existence of a contract between him and the MLUA, the court does not address the issue.

harming that relationship.[12] Since they allege that these defendants maliciously defamed them, the plaintiffs sufficiently allege that the defendants acted improperly.[13] See Birl v. Philadelphia Elec. Co., 402 Pa. 297, 167 A.2d 472, 474-75 (1960) (allegation that defendant made false statements to plaintiff's employer with purpose and result of inducing employer to terminate plaintiff employee stated legally sufficient claim of intentional interference with contract); Evans v. Philadelphia Newspapers, Inc., 411 Pa.Super. 244, 601 A.2d 330, 333 (1991) (stating that plaintiff may base claim of intentional interference on a variety of torts, including defamation). They allege that the defendants caused them actual legal damage: the loss of fees that the plaintiffs would have earned under the retainer agreement and future retainer agreements. The court overrules the objections to Counts I and II.[14]

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[12]The defendants allegedly caused the union members to sever their relationship with the MLUA, which interfered with the relationship between the MLUA and the plaintiffs. Though the alleged interference was indirect, the claim is legally sufficient because the plaintiffs allege that the defendants acted for the specific purpose of interfering with the plaintiffs' contract with the MLUA. See Restatement (Second) of Torts § 766, cmt. p. ("[I]f A induces B to break a contract with C, persons other than C who may be harmed by the action as, for example, his employees or suppliers, are not within the scope of the protection afforded by this rule, *unless A intends to affect them*. Even then they may not be able to recover unless A acted for the purpose of interfering with their contracts.")

[13]The defendants argue that their conduct is privileged because the umpires were exercising their right to choose a labor union. The court disagrees. The NLRA does not grant one the privilege to defame another maliciously. See Linn v. United Plant Guard Workers of Am., 383 U.S. 53, (1966) (holding that the NLRA does not preempt state law malicious libel claims). Moreover, privilege in this case raises fact issues that the court cannot determine by preliminary objection. See Small v. Juniata College, 452 Pa.Super. 410, 682 A.2d 350, 354 (1996) (citing six factors in Restatement (Second) of Torts § 767 that a court must weigh in determining whether an interference was privileged).

[14]The Complaint does not allege that the MLB defendants defamed them, and it is not clear how the MLB defendants acted improperly. The plaintiffs cannot base any claim of impropriety on the NLRA. But, the MLB defendants have not objected on any grounds except preemption.

IV. THE COURT OVERRULES THE OBJECTION TO THE DEFAMATION CLAIM (COUNT III).

Count III alleges defamation against the WUA, the umpire defendants and Shapiro. Only Shapiro objects to this claim. He argues that the defamation claim against him is legally insufficient and is insufficiently specific. The court disagrees.

A claim for defamation must generally allege: "'1) the defamatory character of the communication; 2) publication; 3) that the communication refers to the plaintiff; 4) the third party's understanding of the communication's defamatory character; and 5) injury.'" Walder v. Lobel, 339 Pa.Super. 203, 448 A.2d 622, 627 (1985), quoting Raneri v. DePolo, 65 Pa.Commw. 183, 441 A.2d 1373, 1375 (1982); 42 Pa.C.S.A. 8343(a).

The plaintiffs allege a legally sufficient defamation claim based on two sets of defamatory statements that the WUA, the umpire defendants and Shapiro published about the plaintiffs. First, the plaintiffs allege that Brinkman, Hirschbeck and Shapiro, publicly attacked Phillips as "incompetent." Complaint ¶ 78. Second, plaintiffs allege that Hirschbeck, Brinkman, Phillips, Welke and Shapiro "made various false, misleading and defamatory statements and communications to members of the MLUA and generally to the radio, television and print media concerning plaintiff R. Phillips' reputation for honesty, reputation for the ethical discharge of his professional obligations, and his professional competence, including accusations of dishonesty, failing to communicate material information to MLUA members, utilizing funds of a corporation owned by plaintiff R. Phillips to provide financial services and benefits to MLUA Board Members in exchange for support of

plaintiff R. Phillips, and other similar improper or unethical activities." Complaint ¶ 100.[15] These statements are capable of defamatory meaning because they attack Phillips' competence in the legal profession and his honesty. Agriss v. Roadway Express, Inc., 334 Pa.Super. 295, 483 A.2d 456, 461 (1984) ("A publication is defamatory if it tends to blacken a person's reputation or expose him to public hatred, contempt, or ridicule, or injure him in his business or profession."); Restatement (Second) of Torts § 573 ("Slanderous Imputations Affecting Business, Trade, Profession or Office).[16]

These allegations are sufficiently specific. A defamation claim must allege with particularity, among other things, the content of the defamatory statements, the identity of the persons making such statements, and the identity of the persons to whom the statements were made. Itri v. Lewis, 281 Pa.Super. 521, 422 A.2d 591, 592 (1980). The plaintiffs identify the makers of the statements, including Shapiro. They identify the recipients: the public, the MLUA membership and the media. And they identify the contents of the statements. Itri, 422 A.2d at 592 ("In an action for slander the complaint is sufficient if it contains the substance of the spoken words."). The court overrules the objection to Count III.

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[15]The Complaint sets forth allegations of false statements that are too vague to support a defamation claim. See Complaint ¶¶ 42, 48-52, 68, 101. Furthermore, the defendants' alleged statements that the resignation plan was doomed and flawed and that Phillips had caused umpire dissension are mere opinion and are not actionable. Complaint ¶ 78. Baker v. Lafayette College, 516 Pa. 291, 532 A.2d 399, 402 (1987) ("[O]pinion without more does not create a cause of action in libel [unless] the communicated opinion may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion.")

[16]The court does not decide whether the Linn standard for labor dispute defamation applies, because the plaintiffs have alleged malice and actual harm.

V. THE COURT OVERRULES THE OBJECTIONS TO THE FALSE LIGHT CLAIMS (COUNT IV).

Count IV alleges false light invasion of privacy against the WUA, the umpire defendants and Shapiro. The plaintiffs base these claims on the statements accusing them of dishonesty, incompetence and unethical conduct. The defendants argue that the claim is legally insufficient and insufficiently specific. The court disagrees.

The elements of false light invasion of privacy are as follows:

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if
> (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
> (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Restatement (Second) of Torts § 652E, quoted in Curran v. Children's Serv. Ctr. of Wyoming County, 396 Pa.Super. 29, 578 A.2d 8, 12 (1989).

Publicity "means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge."[17] Restatement (Second) of Torts § 652E, cmt e, quoted in Curran, 578 A.2d at 12. To be highly offensive to a reasonable person, "a major misrepresentation of a person's character, history, activities or beliefs is made that could reasonably be expected to cause a reasonable man to take serious offense." Restatement (Second) of Torts § 652E, cmt c, quoted in Curran, 578 A.2d at 13.

The false light claim is sufficiently specific. The plaintiffs allege the makers, the recipients and the contents of the statements. The claim is legally sufficient. The plaintiffs allege that these defendants publicly

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[17]Publicity differs from publication, an element of defamation. Curran, 578 A.2d at 13. "[P]ublication occurs whenever a defamatory statement is communicated to another person." Flaxman v. Burnett, 393 Pa.Super. 520, 574 A.2d 1061, 1066 (1990).

accused them of dishonesty and incompetence, with knowledge that the accusations were untrue, and with knowledge that the statements would place the plaintiffs in a false light before the union membership. The court overrules the objections to Count IV.

VI. THE COURT OVERRULES THE OBJECTIONS TO THE COMMERCIAL DISPARAGEMENT AND INJURIOUS FALSEHOOD CLAIMS (COUNTS V & VII).

Count V alleges commercial disparagement against the WUA, the umpire defendants and the Shapiro defendants. Count VII alleges injurious falsehood against those defendants. As commercial disparagement is a type of injurious falsehood, these counts appear to allege the same thing. Pro Golf Mfg., Inc. v. Tribune Review Newspaper Co., 761 A.2d 553, 555-56 (Pa.Super.Ct. 2000), appeal granted, 775 A.2d 808 (Pa. 2001). The defendants argue that the claims are legally insufficient and insufficiently specific. The court disagrees.

To state a claim for commercial disparagement, a plaintiff must allege that (1) the defendant published a disparaging statement concerning the business of the plaintiff, (2) the statement was false, (3) the defendant intended that the publication cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss, (4) the publication caused actual pecuniary loss, and (5) the publisher knew the statement was false or acted in reckless disregard of its truth or falsity. Id., citing Restatement (Second) of Torts § 623A ("Liability for Publication of Injurious Falsehood"). See also Restatement (Second) of Torts § 626 ("Disparagement of Quality --Trade Libel").

The plaintiffs allege these elements. They allege that the defendants published disparaging statements about the quality of legal services that they provide. They allege that the statements were false and that the defendants knew that they were false. He alleges that the defendants published the statements with the intent to damage the plaintiffs' pecuniary relationship with the MLUA and that the publications did in fact cause the plaintiffs to lose the pecuniary value of their relationship with the MLUA. The court overrules the objections to Counts V and VII.

VII. THE COURT SUSTAINS THE OBJECTION TO THE FRAUDULENT CONVEYANCE CLAIM (COUNT VI).

Count VI alleges fraudulent conveyance[18] against the WUA. The WUA argues that the claim is legally insufficient, and the court agrees.

The Uniform Fraudulent Transfer Act allows creditors to avoid certain transfers by debtors. 12 Pa.C.S.A. §§ 5104, 5105. To see why the Phillips claim is faulty, one can look at the definitions section of the UFTA. The UFTA defines transfer as "[e]very mode . . . of disposing of or parting with an asset or an interest in an asset." 12 Pa.C.S.A. § 5101. An asset is "[p]roperty of a debtor." Id. A debtor is a "person who is liable on a claim." Id. A claim is a "right to payment." Id. A creditor is a "person who has a claim." Id.

These provisions, read together, show that the transferred asset must be the property of the transferor, i.e., the debtor. Though the Complaint does not clearly identify the debtor and the asset transferred, the plaintiffs' brief does. The plaintiffs explain that the asset was their contractual right to be the umpires' attorney and that the WUA fraudulently transferred that right to Shapiro. As the UFTA grants remedies only to creditors, the plaintiffs, who seek a remedy, are presumably the creditors. 12 Pa.C.S.A. § 5107.

The plaintiffs' theory of fraudulent transfer fails as a matter of law because, as they admit in their brief, the transferred asset was not the property of debtor, the WUA, but of the alleged creditors, the plaintiffs. The UFTA does not apply to such a situation. The court sustains the demurrer to the fraudulent conveyance claim and dismisses Count VI.

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[18]The UFTA replaced the Uniform Fraudulent Conveyances Act, 39 P.S. § 351 et seq., in 1994.

VIII. THE COURT OVERRULES THE OBJECTION TO THE CONSPIRACY CLAIM (COUNT VIII).

Count VIII alleges civil conspiracy against all defendants. The WUA, the umpire defendants and Shapiro argue that the claim is legally insufficient. The court disagrees.

To state a claim for conspiracy, the plaintiffs must allege (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).

The plaintiffs allege these elements. First, they allege that the defendants combined with a common purpose to defame the plaintiffs and to interfere with their relationship with the MLUA. Second, they allege actual overt acts – the making of defamatory statements – done in furtherance of the conspiracy. Third, they allege actual legal damage: the loss of the value of the retainer agreements. The court overrules the objections to Count VIII.

IX. THE COURT SUSTAINS THE OBJECTION TO THE UNJUST ENRICHMENT CLAIM (COUNT IX).

In Count IX, the plaintiffs allege that the WUA is liable for unjust enrichment. The WUA argues that the claim is legally insufficient, and the court agrees. To state a claim for unjust enrichment, the plaintiffs must allege that they conferred a benefit on the WUA, that the WUA appreciated the benefit, and that the WUA accepted and retained the benefit under circumstances that would make it inequitable for the WUA to retain the benefit without payment for value. Burgettstown- Smith Twp. Joint Sewage Auth. v. Langeloth Townsite Co., 403 Pa.Super. 84, 588 A.2d 43, 45 (1991). The plaintiffs do not allege these elements. They allege that they conferred a benefit, legal services, on the MLUA, not on the WUA. They do not allege that the MLUA failed to pay for those benefits. Maybe the WUA has appreciated the value of these benefits,

but any cause of action for unjust enrichment would then belong to the MLUA, not to the plaintiffs. The court sustains the demurrer to the unjust enrichment claim and dismisses Count IX.

X. THE COURT SUSTAINS THE OBJECTION TO THE CONTRACT CLAIM (COUNT X).

In Count X, plaintiffs allege that WUA is the successor to the MLUA's obligations and the WUA has breached the MLUA's retainer agreement with the plaintiffs. The WUA argues that the claim is legally insufficient, and the court agrees.

In the February 20, 1999 retainer agreement, the MLUA agreed that Phillips Associates would be the MLUA's exclusive representative for all matters until April 10, 2003. The WUA was not a party to the retainer agreement. The plaintiffs argue that the WUA succeeded to MLUA's rights and obligations under the retainer agreement when it replaced the MLUA as the umpire's bargaining agent. The plaintiffs argue that, by employing Shapiro as its counsel, the WUA breached the retainer agreement.

The WUA is not a party to the retainer agreement between Phillips Associates and the MLUA. The plaintiffs have not cited any case where a court imposed liability on a labor union for its predecessor's contractual obligations to a third party.[19] Even if a labor union could be held liable for its predecessor's contractual obligations, the plaintiffs have not pleaded any facts that would support imposing successor liability in this case. See Sehl v. Vista Linen Rental Serv., Inc., 763 A.2d 858, 863-64 (Pa.Super.Ct. 2000) (stating that, though a successor corporation usually does not acquire the liabilities of its predecessor, a successor corporation is liable for its predecessor's debts if the successor is merely a continuation of the predecessor,

[19]Under the NLRA, the NLRB may impose liability on a union for its predecessor's unfair labor practice if there is "substantial continuity" between the two unions. Local Union No. 5741, United Mine Workers of Am. v. N.L.R.B., 865 F.2d 733, 736-37 (6th Cir. 1989). Labor law successor liability, which courts derived to further the NLRA policy of preventing labor unrest, Id. at 736, is not applicable in determining whether a union may be held liable for another union's debts outside the labor law context.

the two corporations fraudulently entered into the transaction to escape liability, or the transfer was for inadequate consideration without provisions for the predecessor's creditors.); Granthum v. Textile Machine Works, 230 Pa.Super. 199, 326 A.2d 449, 451 (1974) (applying successor liability to a contract claim). The court sustains the demurrer to the contract claim and dismisses Count X

CONCLUSION

For the reasons stated, the court will enter a contemporaneous Order sustaining the WUA's Preliminary Objections to the plaintiffs' fraudulent conveyance, unjust enrichment and contract claims. But, all other Preliminary Objections will be overruled.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.