

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

WRH MORTGAGE, INC.,	:	MAY TERM, 2003
	:	
Plaintiff,	:	No. 01453
	:	
v.	:	Commerce Program
	:	
CORECARE SYSTEMS, INC.,	:	Control No. 061998
THOMAS FLEMING, and	:	
ROSE DIOTTAVIO,	:	
Defendant.	:	

**ORDER**

**AND NOW** this 4<sup>th</sup> day of September, 2003, upon consideration of plaintiff's Preliminary Objections to defendants' Counterclaim, defendants' response thereto, the memoranda in support and opposition, and all other matters of record, and in accord with the contemporaneous Opinion being filed of record, it is hereby

**ORDERED** that said Preliminary Objections as **SUSTAINED**, and Counts II, IV, and V of the Counterclaim are **DISMISSED**. It is further

**ORDERED** that plaintiff shall file an Answer to the remaining averments of the Counterclaim within twenty (20) days from the date of this Order.

**BY THE COURT:**

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**GENE D. COHEN, J.**

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Defendant.	:	

**OPINION**

The court hereby considers the Preliminary Objections of plaintiff to defendants' Counterclaim. Plaintiff brought this action to recover under an alleged written guaranty of debt executed by defendants. Defendants have counterclaimed that plaintiff breached an oral standstill agreement by bringing this suit, that plaintiff intentionally and tortiously interfered with defendants' contractual relations and/or prospective economic advantage, that plaintiff breached its fiduciary obligation to defendants, that plaintiff has harassed defendants, and that plaintiff has intentionally inflicted emotional distress upon defendants.

Plaintiff does not, at this point, challenge defendants' claims for breach of contract and breach of fiduciary duty, but it does object to the other three claims. Defendants agree that they have no basis for claiming harassment and intentional infliction of emotional distress, so the only count of the Counterclaim at issue here is that for tortious interference with existing or prospective contracts.

In support of their claim for tortious interference, defendants allege that, by filing this suit and thereby breaching the parties' alleged standstill agreement, plaintiff has caused defendants

“to endure grave injury to their business relations with trade creditors and potential lenders and [to] have suffered serious injury to their good will as well as their reputations.” Answer, New Matter and Counterclaim, ¶ 36. Mere injury to reputation or good will is not sufficient damage upon which to base a claim for intentional interference with contract.<sup>1</sup> See Pelagetti v. Cohen, 370 Pa. Super. 422, 435-6, 536 A.2d 1337, 1343-4 (1988). Furthermore, such vague allegations of injury to “business relations” do not satisfy the requirement that defendants identify with some specificity an existing contract or prospective contract with which plaintiff interfered. See Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 209-10, 412 A.2d 466, 471 (1979); Sylk v. Bernsten, 2003 WL 1848565 \* 7 (Phila. Co. Feb. 4, 2003).

The best that defendants have done is allege that they tried for 18 months prior to the filing of this lawsuit to obtain financing from a third party. See Answer, New Matter and Counterclaim, ¶ 22. However, defendants have failed to allege facts showing that there was a reasonable probability that they would have entered into a specific financing arrangement with that third party and, but for the filing of this lawsuit, they would have done so. See Thompson Coal Co., 488 Pa. at 209-10, 412 A.2d at 471. Therefore, defendants have not made out a claim for tortious interference against plaintiff.

Even if defendants could point to a prospective contract with which plaintiff allegedly interfered, it would be wiser for defendants to proceed on the remaining counts of their counterclaim rather than to try to re-plead their tortious interference claim against plaintiff.

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<sup>1</sup> The court notes that most litigation has the potential to give the defendant’s creditors and lenders pause in dealing with defendant, but the doctrine of judicial immunity generally protects plaintiffs from liability for filing claims in court. See Pelagetti v. Cohen, 370 Pa. Super. 422, 536 A.2d 1337 (1988); Todi v. Stursberg, 2001 WL 1557517 \*1 (E.D. Pa. Dec. 4 2001).

Basically, defendants claim that plaintiff's actions were tortious 1) because plaintiff breached the standstill agreement, and/or 2) because plaintiff has no basis for its claims against defendants. If the former, then it appears that the gist of defendants' counterclaim sounds in (breach of) contract, rather than in tort(ious interference). See Etoll v. Elias/Savion Advertising, Inc., 811 A.2d 10 (Pa. Super. 2002). If the latter, then defendants might later be able to assert a claim against plaintiff under the Dragonetti Act, but only if the plaintiff's action terminates in the defendants' favor, there was no arguable basis for plaintiff's claims, and plaintiff's purpose in bringing the action was malicious and improper. See 42 Pa. C. S. §§ 8351-4.<sup>2</sup>

### CONCLUSION

For all the foregoing reasons, plaintiff's Preliminary Objections to defendants' Counterclaim are sustained.

**BY THE COURT:**

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**GENE D. COHEN, J.**

Dated: September 4, 2003

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<sup>2</sup> At least one court has held that where "defendants' counterclaim [for tortious interference] is predicated upon identical facts to those which would support a malicious use of process claim," the tortious interference claim must be dismissed as unripe if the comparable Dragonetti claim is not yet viable due to the pendency of the underlying action. University Patents, Inc. v. Kligman, 1990 WL 29668 \*1 (E.D. Pa. Mar. 16, 1990). Under this reasoning, defendants' claim for tortious interference likewise fails.