

84-1117-1000-48

: April Term 2016  
:  
: No. 3513  
:  
: Commerce Program  
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: 1668 CD 2018<sup>1</sup>

: Commerce Program  
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: 1668 CD 2018<sup>1</sup>

## OPINION

January 3, 2019



Plaintiff Ronald P. Cooley (“Cooley”) commenced this action individually and derivatively on behalf of Lofts at 1243 Condominium Association (“Association”) against

COPIES SENT PURSUANT TO Pa.R.C.P. 236(b) D. KELLY 01/25/2019

defendants 1234 Condominium Association and the members of the Executive Board of the Association, Thomas Marrone and Echo Volla. The Lofts at 1234 Condominium is a condominium building situated at 1234 Hamilton Street, Philadelphia, Pa. 19123. On February 13, 2017 and May 1, 2017, the court appointed two well respected members of the bar to serve as discovery and settlement masters in this matter. Plaintiff now appeals the appointment of these individuals. This court's orders appointing the Honorable Samuel M. Lehrer (retired) to act as a discovery/settlement master on February 13, 2017 and Dean R. Phillips, Esquire to act as a settlement master on May 1, 2017 should be affirmed.

The appointment of discovery/settlement masters was necessary in the instant matter since the parties hotly disputed what discovery was appropriate. Moreover, as the matter progressed through the litigation process, motions were more frequently filed and counsel and parties became less congenial and more hostile toward one another. In an attempt to contain the hostilities, the court in its discretion appointed Judge Lehrer as a discovery master/settlement master<sup>2</sup> and Mr. Phillips as a settlement master, respectively, in an attempt to achieve expeditious resolution of the parties' dispute. Discovery/settlement masters may be appointed if the court deems appropriate for the supervision of discovery and for mediation.<sup>3</sup> Moreover, trial courts possess the inherent authority to appoint special masters to assist in the resolution of discovery disputes.<sup>4</sup> In this instance, the court found it appropriate to appoint Retired Judge

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<sup>2</sup> Judge Lehrer was appointed discovery master/settlement master after a discovery hearing on the issuance of subpoenas to third parties on February 13, 2017.

<sup>3</sup> Administrative Docket No. 01 of 2016 In re Commerce Case Management Program – Revised.

<sup>4</sup> *Sandvik, Inc. v. Mecca C & S, Inc.*, 2014 WL 11210395, at \*8 (Pa.Com.Pl. 2014) citing *See, e.g., Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 937 A.2d 503, 515 (Pa.Super.2007), *aff'd*, 603 Pa. 198, 983 A.2d 652 (2009).

Lehrer and Mr. Phillips as special masters to assist the parties in their discovery disputes and mediation and to assuage the brewing enmity between the parties and counsel. In fact, a review of the docket shows that motions were frequently filed, massive, contentious and obscure. Counsel's inappropriately aggressive behavior did not improve and the court was constrained to 1) caution the parties about the ongoing degree of hostility and admonished them that continuation of such behavior would not be tolerated<sup>5</sup>, 2) stayed discovery pending the resolution of preliminary objections and partial motion for summary judgment and allowed discovery to resume under the strict supervision of the Discovery Master<sup>6</sup>, 3) denied joint requests to extend the discovery deadline due to the uncooperative nature of counsel<sup>7</sup>, and 4) refused to order further depositions in the case due to the parties unwillingness to abide by court orders and the rules of civility.<sup>8</sup>

Moreover, the court submits that plaintiff waived his right to appeal the orders appointing the special masters since he failed to raise an objection at the time of appointment or at any other pertinent time. The failure to raise any objection deprived this court the opportunity to resolve the objection. Plaintiff waived his right to appeal the February 13, 2017 and May 1, 2017 orders and both orders should be affirmed.

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<sup>5</sup> See this court's order dated September 5, 2017 denying plaintiffs' motion for sanctions footnote 1.

<sup>6</sup> See this court's order dated September 5, 2017 disposing of plaintiffs' motion objecting to the Discovery Master's Recommendation to Stay Discovery. See transcript dated September 5, 2017 dated pp. 20, 62-63, 66-67.

<sup>7</sup> See this court's order dated June 21, 2018 denying plaintiffs' motion for extraordinary relief.

<sup>8</sup> See August 20, 2018 transcript pages 21-26.

Plaintiff also appeals this court's order dated March 13, 2017 which granted defendant Marrone's motion for protective order regarding the issuance of plaintiff's subpoenas to attend and testify directed to certain third parties. On December 6, 2016, plaintiff served a notice on defendants of intent to serve document subpoenas to the following third parties: Association attorneys, Sirlin, Lesser, Bernson, P.C., Salmon, Ricchezza, and Singer and Turchi, LLP, insurers, Claims Worldwide LLC and Nationwide Property & Casualty Insurance Company, property manager, Robert H. Wise Management, Inc., and lender, Republic Bank. On December 27, 2016, defendant Marrone filed objections to the subpoenas on the basis of untimeliness, broadness, confidential and privileged information and that the subpoenas were issued in bad faith. On January 27, 2017, plaintiff filed a motion to overrule Marrone's objections to plaintiff's subpoenas. On February 13, 2017, the court held a hearing on the plaintiff's motion to overrule the objections which prompted the appointment of the Honorable Judge Lehrer (retired) to act as special master for purposes of discovery and settlement. On February 28, 2017, after a meeting with the parties, Judge Lehrer recommended that three of the proposed subpoenas, the law firms and Claims Worldwide LLC, were improper and that the subpoenas to the property management company, insurer and bank were overly broad and improper and that perhaps taking a limited deposition of the property management company would be helpful to determine if relevant documents were in fact possessed by the subpoenaed entity. On March 2, 2017, plaintiff's counsel withdrew his motion to overrule Marrone's objections to the document subpoenas and decided to take the deposition of the third parties identified above. As such, Marrone filed a motion for protective order which the court granted.

In granting the protective order, there are no hard-and-fast rules as to how a motion for a protective order is to be determined. Whether to grant or deny the motion, and what kind or

kinds of protective orders to issue are matters that lie within the sound judicial discretion of the court, and the court's determination as to these matters will not be disturbed unless that discretion has been abused.<sup>9</sup> An abuse of discretion is not merely an error of judgment; it is judgment which is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will as shown by evidence of record.<sup>10</sup> While the Pennsylvania Rules of Civil Procedure provide a broad scope for a party seeking discovery, the focal point at all times is relevancy. Discovery may not be used to search for information which is not reasonably calculated to lead to the discovery of admissible evidence or which has no bearing on the subject matter involved in the underlying action.<sup>11</sup> In the case *sub judice*, after assessing the legitimacy, necessity, and burden on the third parties, the position of the parties and in speaking with the special master, the court granted Marrone's request for a protective order and adopted the recommendation made by the special master, i.e. that the property manager should be questioned as to whether it possessed any relevant documents which have not already been produced. Based on the foregoing, this court's order dated March 13, 2017 should be affirmed.

Lastly, plaintiff appeals in part this court's order dated September 5, 2017 which granted defendant Marrone's cross motion to strike paragraphs 4, 9, 47, 48, and 78 from plaintiff's objection to Mr. Phillips recommendation to stay discovery.<sup>12</sup> Plaintiff was ordered to refrain from accusations of misconduct, criminal and quasi-criminal conduct in public filings without

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<sup>9</sup> *Hutchison v. Luddy*, 606 A.2d 905, 908 (Pa. Super. 1992).

<sup>10</sup> *Fanning v. Davne*, 795 A.2d 388, 393 (Pa. Super. 2002).

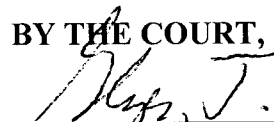
<sup>11</sup> See, *Pa. R.C.P. No. 4003.1*.

<sup>12</sup> Plaintiff's motion objecting to discovery master's recommendation to stay discovery dated August 9, 2017.

protection. “To be scandalous [or] impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action.”<sup>13</sup> Here, the accusations of misconduct were irrelevant to the case since they referenced amendments to the Condominium Declaration which were found not to be at issue in this case as barred by the statute of limitations. Moreover, the accusations were distracting to this court and were personal attacks against defendant Marrone and only served to increase the hostilities between the parties and further eroded the possibility of resolving the matter amicably.

For the foregoing reasons, this court’s orders dated February 13, 2017, March 1, 2017, March 13, 2017, May 1, 2017, July 21, 2017, September 5, 2017, January 16, 2018, January 24, 2018, August 3, 2018 and November 14, 2018 should be affirmed.

Date: 1-25-19

BY THE COURT,  
  
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GLAZER, J.

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<sup>13</sup> *Piunti v. Com., Dept. of Labor and Industry, Unemployment Compensation Bd. of Review*, 900 A.2d 1017, 1019–20 (Pa.Cmwlth. 2006) citing *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 115 (Pa.Cmwlth.1998).

## Exhibit “A”

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

RONALD P. COOLEY, individually and	:	April Term 2016	<b>DOCKETED</b>
Derivatively on behalf of the LOFTS AT 1234	:		
CONDOMINIUM ASSOCIATION,	:	No. 3513	NOV 14 2018
Plaintiff,	:		
v.	:	Commerce Program	<b>R. POSTELL COMMERCE PROGRAM</b>
LOFTS AT 1234 CONDOMINIUM	:		
ASSOCIATION, ET. AL.,	:	Control Nos. 18082273/18082410/	
Defendants.	:	18082335	

**ORDER**

**AND NOW**, this 14<sup>th</sup> day of November, 2018, upon consideration of Defendant Thomas Marrone's Motion for Summary Judgment, Defendant Echo Volla's Motion for Summary Judgment and Plaintiff Ronald P. Cooley's Motion for Summary Judgment, the respective responses in opposition and the attached Opinion, it hereby is **ORDERED** as follows:

1. Defendant Thomas Marrone's Motion for Summary Judgment (cn 18082410) is **Granted**.
2. Defendant Echo Volla's Motion for Summary Judgment (cn 18082335) is **Granted**.
3. Plaintiff Ronald P. Cooley's Motion for Summary Judgment (cn 18082273) is **Denied**.

Judgment is entered in favor of defendants Thomas Marrone and Echo Volla and against Plaintiff Ronald Cooley on the remaining claim of defamation.

**BY THE COURT,**

  
**GLAZER, J.**

Cooley Vs Lofts At 1234-WSDMG





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

RONALD P. COOLEY, individually and	:	April Term 2016
Derivatively on behalf of the LOFTS AT 1234	:	
CONDOMINIUM ASSOCIATION,	:	No. 3513
Plaintiff,	:	
v.	:	Commerce Program
LOFTS AT 1234 CONDOMINIUM	:	
ASSOCIATION, ET. AL.,	:	Control Nos. 18082273/18082410/
Defendants.	:	18082335

**OPINION**

Presently pending before the court are defendant Thomas Marrone's motion for summary judgment, defendant Echo Volla's motion for summary judgment and plaintiff Ronald P. Cooley's motion for summary judgment to the remaining claim of defamation in the complaint. This action has a long, tortured and rancorous history which has been the subject of numerous motions, orders and opinions filed in this court. As such, in the interest of judicial economy, the factual background and procedural history of this matter set forth in the court's orders and opinions dated January 16, 2018 and June 6, 2018 are adopted and incorporated hereto by reference.

Defendants Thomas Marrone ("Marrone") and Echo Volla ("Volla") are two former members of the Executive Board at the Lofts at 1234 Condominium Association. Plaintiff Ronald P. Cooley ("Cooley") served on the Executive Board with Marrone and Volla and is now a current Executive Board member. Cooley's claim for defamation arises from Marrone and Volla's writings and Marrone's oral statements to unit owners Clifford Stevens and Versuschka

Stevens during their tenure on the Executive Board of the Condominium Association. Cooley alleges that Marrone and Volla defamed him in the following writings<sup>1</sup>:

1) Statements in the May 30, 2015 Loft 1234 Meeting Minutes<sup>2</sup> which state in part:

Bicycle Lane on Noble Street. The President [Marrone] reported that Mr. Cooley did not carry out the assignment he accepted, which was to create a petition and obtain signatures, and confer with the Bicycle Coalition for the purpose of establishing a bike lane on Noble Street between Broad and 1th (sic) Streets. ...

John Howell shall be asked to fill the vacancy on the Board created by Mr. Cooley's removal as a Board member, and to serve for the remainder of the Mr. Cooley's Term, which expires in September of 2017 in accordance with the ByLaws. If Mr. Howell agrees, the Board will be appoint [sic] him at a separate meeting.<sup>3</sup>

2) Statements in the Special Assessment FAQs that Cooley failed to attend Board meetings and failed to take appropriate Board action that would have prevented the alleged need for the Special Assessment and placed blame on the prior Boards of which Cooley was a member for the condition of the Condominium. Examples of the statements are as follows:

- a. The Previous Board is responsible; and now the present Board is responsible.
- b. The Board was required to make sure that the condominium Association had sufficient reserves, but did not do so. Had the previous Boards made appropriate assessments over the past 10 years, the present assessment would almost certainly not have been necessary, or at least would have been much smaller.
- c. The Board gave Board member Ron Cooley proper notice of the meeting under the Bylaws, but he did not attend the meeting or vote on the matter. Nor did Mr.

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<sup>1</sup> The defamatory statements attributed to Volla are the May 30, 2015 email/Meeting Minutes and the Special Assessment FAQ's and the July 31, 2015 email. Defendant Volla's motion for summary judgment ¶ 8; Plaintiff's response in opposition ¶ 8.

<sup>2</sup>Cooley also identifies a May 30, 2015 email as defamatory. See Exhibit "3" to Volla's motion for summary judgment. The court does not find this email capable of defamatory meaning. The email was authored by Marrone in his capacity as the president of the Lofts at 1234 Condominium Association and carbon copied to Volla and John Howell. The email states in pertinent part as follows: "Echo and I are pleased to announce that John Howell (unit 105) has agreed to become a member of the Executive Board. John replaces Ron Cooley. His term will expire in the summer/fall of 2017, along with ours." The May 30, 2015 Meeting Minutes were not attached to the email and there is no evidence that the email was published to anyone other than Volla and John Howell.

<sup>3</sup> Loft 1234 Meeting Minutes 5.30.2015 Regular meeting pp. 1 and 7. Defendant Volla's motion for summary judgment Exhibit "I"- Exhibit "N". It is unclear if these minutes were published.

Cooley participate in the two previous Board Meetings, also despite proper notice under the Bylaws. Since rejoining the Board, Mr. Cooley has not attended a single meeting.

d. The Association does not have the necessary financial reserves because the Board that existed before January 28, 2015 never proposed or took any Board action to build and maintain an adequate reserve, or address the many open and obvious repair and maintenance items that persist to this day.

e. The previous Boards did not make legally required repairs and maintenance to obviously deteriorated common areas, did not levy necessary assessments, and did not build up and maintain a sufficient reserve.<sup>4</sup>

3) The September 27, 2016 email sent by Marrone in his capacity as President of the Lofts at 1234 Condominium Association to Cooley, Volla, John Howell, Steven Volla, Maria Teresa Terry Marmugi stating:

Ron, membership on the Board is an important, serious obligation that requires a considerable self-sacrifice of time and attention, It is not a sideline for you or anyone else to dabble in whenever there is a free moment here or there, and whenever one's schedule permits.

I have personally spent hundreds of hours on Association matters, at the expense of important personal, family and professional matters. Indeed, this meeting and the subject matter has interrupted all three of those for me already, and will continue to do so for some time to come. I am doing it for the Association.

Echo has done likewise. Steve and John are not even on the Board, and yet they have each also spent scores, if not hundreds, of hours of their time on Association matters. And now Terry Marmugi is doing the same.

If you are unable or unwilling to make the time that is necessary to meaningfully participate, then you are not well serving the Association Membership as a Board member.

If your schedule does not permit you to actively and meaningfully participate as a Member of the Board, then I suggest you reconsider what, exactly, you are doing on the Board in the first place.

Of course we all prefer that you make the time to do what is necessary to fulfill your duties under the Bylaws as a Board member: appear for meetings well prepared, and meaningfully participate in those meetings.

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<sup>4</sup> Volla's motion for summary judgment Exhibit "I" at Exhibit "L".

The meeting will go on as scheduled, with or without you.<sup>5</sup>

4) The October 1, 2016 email from Marrone in his capacity as President of Lofts at 1234 Condominium Association to Volla, Steven Volla, John Howell, Maria Teresa Terry Marmugi and Cooley with a bcc to the Association members. The subject of the email is "Confidential Litigation Report to Association Members- work product- attorney client privilege." This email updates the Association members on litigation matters including the instant litigation. In this email, Marrone wrote the following:

"On Friday, Ron Cooley filed the attached complaint against Association, me, and Echo Volla...we will need to levy another assessment on the Association members for the cost of the litigation."<sup>6</sup>

5) The July 31, 2015 email by Marrone to Robert Wise, the Condominium Association's project manager, carbon copied to Echo Volla, and John Howell, and forwarded to John Benson, the Association's lawyer in which Marrone wrote,

"Attached are Check Details the Board received from Alterra for the period January 1, 2013-February 4, 2015. The Board has no other check details or similar documents. Mr. Cooley was a member of the Board for most of this time and we assumed that he had direct personal knowledge of the Association's expenditures. Apparently he was not an active Board member. You may permit Mr. Cooley to visit your offices, during normal business hours and in the course of your regular business, to inspect these Check Details. Mr. Cooley may not copy, photograph, abstract or make a summary of the documents. He may only inspect them....

"The Board does not know what Mr. Cooley is referring to regarding "legal opinion," and the Board does not agree with his lay interpretation of the Board's legal duties. Legal opinions are not required when an amendment is adopted on the basis of a vote of the Association, as with the Second and Third Amendments, which were approved by unit owner votes. Those Amendments were not corrective amendments and did not require a legal opinion to be valid. Please inform Mr. Cooley that the Board will not engage in any more unnecessary, costly debate with Mr. Cooley regarding the Board's obligations."...

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<sup>5</sup> Volla's motion for summary judgment Exhibit "1"- Exhibit "O".

<sup>6</sup> Volla's motion for summary judgment Exhibit "8".

Please advise Mr. Cooley that his attempt to obtain materials he is not entitled to, and his attempt to engage in a legal debate, is costing the Association money in the form of legal fees. This is a great disservice to the members of the Association...”<sup>7</sup>

6) Oral statements by Marrone to Mr. and Mrs. Stevens.

Cooley also alleges that Marrone also defamed him orally to Mr. and Mrs. Stevens, unit owners at the Lofts at 1234 Condominium. Mr. and Mrs. Stevens testified that when the situation first arose regarding the condominium and the assessment, their opinion of Cooley was that he was “nuts”, annoying and had no regard for unit members time based on the length of emails.<sup>8</sup> Mr. Stevens also testified that Marrone characterized Cooley as “someone who was after him and a nut” and that Marrone’s statements about Cooley along with Cooley’s emails did influence how the Stevens voted on matters such as the assessment discussed in the FAQ. The Stevens’ opinion was formed as a result of Cooleys’ emails and conversations with Marrone.<sup>9</sup>

### **The Executive Board**

The Lofts at 1234 Condominium Bylaws permit a three member executive board to convene and hold annual meetings to be held on the third Tuesday of September. On September 24, 2013, Cooley and Volla were elected to a three year term on the Executive Board. At the time, Teri Gerbec was the other member of the Board and the president. On January 28, 2015, Gerbec resigned as the president and member of the executive board. On the same date after a special meeting of the executive board was held, Cooley and Volla appointed Marrone to fill Gerbec’s vacancy as the third member and president. On May 30, 2015, Cooley was removed as

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<sup>7</sup> Volla motion for summary judgment Exhibit “11”.

<sup>8</sup> Marrone’s motion for summary judgment Exhibit “J” deposition of V. Stevens p. 14-23.

<sup>9</sup> Volla’s motion for summary judgment Exhibit “7” deposition of C. Stevens p. 29.

a member of the Board. On May 16, 2016, approximately one year later, Cooley was once again recognized as a member of the Executive Board.

On October 7, 2016, Cooley and four other unit owners submitted a petition to Marrone requesting a special meeting of the unit owners to discuss the complaint filed by Cooley against Marrone and Volla and the allegations contained therein. These petitioners demanded that the following items be added to the meeting agenda for the meeting already scheduled by Marrone: a) forming a temporary Executive Board made up of three disinterested unit owners to replace Cooley, Volla and Marrone until a new Executive Board made up of three disinterested unit owners to replace Cooley, Volla and Marrone is selected, b) hiring an independent investigator to conduct an investigation into the allegations raised in the complaint filed by Cooley, c) removing Marrone as President of the Association until conclusion of the independent investigation, and d) filing an action against Marrone, Volla and the Association or joining and ratifying the lawsuit filed by Cooley. The special meeting was held on November 17, 2016 and the unit owners were provided with two ballots. One ballot posed as questions the concerns raised by Cooley, Dana and the three other unit owners, set forth above. The second ballot posed two questions: a) should the Executive Board of the Association begin an immediate, independent investigation of the allegations against Marrone and Volla outlined in the October 7 letter and b) should the Board commence suit against Marrone and Volla on behalf of the Association for self-dealing conduct, breaches of fiduciary duty, and violations of the Pennsylvania Uniform Condominium Act. After a vote, the ballot questions were rejected by the unit members.

Marrone, Volla and Cooley's term on the board ended in September 2017. On September 19, 2017, Cooley ran for reelection and was reelected to the Executive Board. Marrone and Volla

did not seek reelection. At the time of Cooley's re-election, only one unit of the condominium was sold after the defamatory statements were allegedly made.

Cooley is a self-employed legal consultant and photographer since 2008. Cooley alleges that he suffered economic loss based on a special assessment which should have been allocated solely to Marrone and Volla. Cooley has not alleged any income loss as a result of the alleged defamatory statements. Cooley alleges that the statements served to lower Cooley's esteem and reputation among the Association members and vendors who work with/for the Association. Cooley further contends that the statements have caused others not associate with him and to discount his authority as a Board member as well as his arguments in relation to the Board and Association activities.

## DISCUSSION

In an action for defamation, a plaintiff has the burden of proving: (1) the defamatory character of the communication, (2) its publication by the defendant, (3) its application to the plaintiff, (4) the understanding by the recipient of its defamatory meaning, (5) the understanding by the recipient of it as intended to be applied to the plaintiff, (6) special harm resulting to the plaintiff from its publication, and (7) abuse of a conditionally privileged occasion.<sup>10</sup>

"Defamation is a communication which tends to harm an individual's reputation so as to lower him or her in the estimation of the community or deter third persons from associating or dealing with him or her."<sup>11</sup> Only statements of fact, not expressions of opinion, can support an action in defamation.<sup>12</sup> Further, whether a particular statement or writing constitutes fact or opinion is a

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<sup>10</sup> See, 42 Pa. C. S. A. § 8343 (a).

<sup>11</sup> *Moore v. Cobb-Nettleton*, 889 A.2d 1262, 1267 (Pa.Super. 2005) citing *Elia v. Erie Insurance Exchange*, 430 Pa.Super. 384, 634 A.2d 657, 660 (1993).

<sup>12</sup> *Id.*

question of law for the court to determine in the first instance. Additionally, it is within the trial court's province to determine whether the challenged statements are capable of defamatory meaning. A statement in the form of an opinion is actionable only if it may reasonably be understood to imply the existence of *undisclosed* defamatory facts justifying the opinion. A simple expression of opinion based on disclosed facts is not itself sufficient for defamation.<sup>13</sup>

In the case *sub judice*, Cooley's claim for defamation fails since he failed to produce any evidence that he suffered actual harm because of the publications. "Actual harm is injury to reputation, impairment of standing in the community, personal humiliation and mental anguish compensable for defamation."<sup>14</sup> As such, Cooley must demonstrate that the writings and oral statements attributed to Marrone and Volla set forth above tended to harm his reputation and lowered him in the estimation of the community. It is not enough that Cooley is embarrassed or annoyed. Cooley must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society.<sup>15</sup> This has not occurred.

Here, the evidence presented by Cooley shows that his reputation within the Condominium Association community was not harmed since he currently holds a position on the Executive Board of the Condominium Association.<sup>16</sup> The deposition testimony of Mr. Clifford Robert Stevens and his wife Verurschka Stevens, which Cooley heavily relies upon to show that

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<sup>13</sup> *Braig v. Field Communications*, 310 Pa.Super. 569, 456 A.2d 1366 (1983).

<sup>14</sup> *Joseph v. Scranton Times, LP*, 959 A.2d 322, 344 n. 23 (Pa. Super. 2008); *Pilchesky v. Gatelli*, 12 A.3d 430, 444 (Pa. Super. 2011).

<sup>15</sup> *Id.*

<sup>16</sup> Cooley dismisses the significance of this fact arguing that Marrone stopped the voting after each candidate received one vote. While the circumstances surrounding Cooley's "re-election" to the board are important, the fact that Cooley is on the Executive Board presently is significant to satisfying the requisite element of actual harm.



his reputation was harmed, does not support Cooley's conclusion.<sup>17</sup> Stevens did testify that once the situation with the condominium association began and Cooley began sending emails, they thought that Cooley had a problem and was "nuts and annoying".<sup>18</sup> Mr. Stevens also testified that Marrone characterized Cooley as "someone who was after him and a nut" and that Marrone's statements about Cooley along with Cooley's emails did influence how they voted on matters such as the assessment discussed in the FAQ. Additionally, notwithstanding their characterization of Cooley, the Stevens did not believe that those characterizations inhibited his performance as a board member.<sup>19</sup> Stevens testified that Mr. Cooley is "someone that I trust in terms of his ability to stick to facts and research" and that Cooley is a "good guy, trying to do the best thing that he can."<sup>20</sup> Mrs. Stevens testified that Cooley is "someone trustworthy... decent, honest, good human being."<sup>21</sup> Simply stating that Marrone's statements and the FAQ's damaged Cooley's reputation without any evidence that it actually did, is insufficient to constitute evidence of reputational damage.<sup>22</sup> Since there is no evidence to demonstrate that Cooley

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<sup>17</sup> Cooley relies solely upon the testimony of Clifford and Versuschka Stevens to support his defamation claim. The Stevens testified that they never saw the 5/30/2015 meeting minutes, resolution or 7/31/15 email. Volla motion for summary judgment Exhibit "7" deposition of C. Stevens p.p. 47-49, 63-66.

<sup>18</sup> Marrone's motion for summary judgment Exhibit "J" deposition of V. Stevens p. 14-23.

<sup>19</sup> Volla motion for summary judgment Exhibit "7" p. 15-16, 18, 20, 36; Marrone motion for summary judgment Exhibit "J" p. 16, 19-20.

<sup>20</sup> Volla motion for summary judgment Exhibit "7" p. 14.

<sup>21</sup> Marrone motion for summary judgment Exhibit "J" p. 9.

<sup>22</sup> See *Walker v. Grand Cent. Sanitation, Inc.*, 634 A.2d 237, 240 (Pa. Super. Ct. 1993) ("Any defamation action begins with the court's legal determination of whether the spoken words are capable of impugning the reputation of the person who alleges the defamation.").

suffered the kind of harm that “grievously fractured his standing in the community”, Cooley’s defamation claim fails as a matter of law.

Furthermore, notwithstanding the lack of actual harm to Cooley, the statements attributed to Marrone and Volla are not capable of defamatory meaning. Any defamation action begins with the court’s legal determination of whether the spoken words are capable of impugning the reputation of the person who alleges the defamation.<sup>23</sup> A publication is defamatory if it is intended to harass the reputation of another so as to lower him or her in the estimation of the community or if it tends to deter third persons from associating or dealing with him or her.<sup>24</sup> When considering defamatory meaning, the court must determine what effect the statement is fairly calculated to produce and the impression it would naturally engender in the minds of average persons among whom it is intended to circulate.<sup>25</sup> A statement which ascribes to another conduct, character, or a condition which would adversely affect her fitness for the proper conduct of her lawful business, trade or profession is defamatory.<sup>26</sup> It is well established, however, that a statement which is a mere expression of opinion is not.<sup>27</sup>

Here, the statements identified by Cooley in the May 30, 2015 Meeting Minutes, the Special Assessment of FAQs, the September 27, 2016 email, the October 1, 2016 email and the July 31, 2015 email are statements of opinion based on disclosed facts set forth within the context of the

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<sup>23</sup> *Id.* 634 A.2d 237, 240, 430 Pa.Super. 236, 243 (Pa.Super.,1993); *Sobel v. Wingard*, 366 Pa.Super. 482, 531 A.2d 520 (1987).

<sup>24</sup> *Id.* at 485, 531 A.2d at 522; *Corabi v. Curtis Publishing Co.*, 441 Pa. 432, 273 A.2d 899 (1971).

<sup>25</sup> *Walker v. Grand Cent. Sanitation, Inc.*, 634 A.2d 237, 240, 430 Pa.Super. 236, 243 (Pa.Super.,1993).

<sup>26</sup> *Geyer v. Steinbronn*, 351 Pa.Super. 536, 506 A.2d 901 (1986).

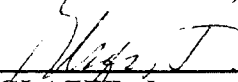
<sup>27</sup> *Baker v. Lafayette College*, 350 Pa.Super. 68, 504 A.2d 247 (1986).

emails and FAQs referenced above. A mere statement of opinion based on disclosed facts is not enough to establish a defamation action. The principle that a statement of opinion cannot support a claim for defamation has been firmly established in Pennsylvania.<sup>28</sup> At best, the statements may be annoying or embarrassing but they are not actionable as defamatory.<sup>29</sup>

### CONCLUSION

Based on the foregoing, defendants' respective motions for summary judgment are granted and plaintiff's motion for summary judgment is denied. Judgment is entered in favor of defendants Marrone and Volla and against Cooley on the claim for defamation.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

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<sup>28</sup> For example, in *Neish v. Beaver Newspapers, Inc.* 398 Pa.Super. 588, 581 A.2d 619, 622–24 (1990), the Court found that an editorial criticizing the performance of the solicitor of Beaver County and suggesting he be replaced was a statement of opinion. The Court further noted that while the statements “might be viewed as annoying and embarrassing, [they were] not tantamount to defamation.” *Id.*

<sup>29</sup> The court further notes that none of the statements concern Cooley's business or trade or profession. There is no evidence that said comments were made to Cooley's business associates in his profession of legal consultant and photographer. His position with the Condominium Association is a volunteer position.

## Exhibit “B”

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

RONALD P. COOLEY, individually and  
Derivatively on behalf of LOFTS AT 1234  
CONDOMINIUM ASSOCIATION,  
Plaintiff,

v.

LOFTS AT 1234 CONDOMINIUM  
ASSOCIATION, THOMAS MARRONE, and  
ECHO VOLLA,  
Defendants.

: April Term 2016  
:  
: No. 3513  
:  
: Commerce Program  
:  
: Control Number 16120084  
:  
:

**DOCKETED**

**MAR - 1 2017**

**R. POSTELL  
COMMERCE PROGRAM**

**ORDER**

**AND NOW**, this 1<sup>st</sup> day of March 2017, upon consideration of Defendants Lofts at 1243 Condominium Association, Thomas Marrone and Echo Volla's Preliminary Objections to Plaintiff's Amended Complaint, all responses in opposition and the attached Memoranda, it hereby is **ORDERED** that the Preliminary Objections are **Sustained in part** as follows:

1. All claims challenging the validity of the Second Amendment to the Declaration instituted by Plaintiff Roger P. Cooley individually and derivatively on behalf of Lofts at 1234 Condominium Association are barred by the statute of limitations and are dismissed from the amended complaint.
2. All claims challenging the validity of the Third Amendment to the Declaration instituted by Plaintiff Roger P. Cooley derivatively on behalf of the Lofts at 1234 Condominium Association are barred by the statute of limitations and are dismissed from the amended complaint.
3. Paragraphs 7 and 8 of the amended complaint are stricken as scandalous and impertinent.

Cooley Vs Lofts At 1234-ORDOP



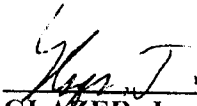
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4. The claims asserted by Plaintiff Robert P. Cooley, individually, in Count I

(Intentional Violations of Act) are dismissed for lack of standing.

All other Preliminary Objections are **Overruled**. Defendants shall file an answer to the amended complaint within twenty (20) days from the date of this Order.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

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

RONALD P. COOLEY, individually and	:	April Term 2016
Derivatively on behalf of LOFTS AT 1234	:	
CONDOMINIUM ASSOCIATION,	:	No. 3513
Plaintiff,	:	
v.	:	Commerce Program
LOFTS AT 1234 CONDOMINIUM	:	
ASSOCIATION, THOMAS MARRONE, and	:	Control Number 16120084
ECHO VOLLA,	:	
Defendants.	:	
	:	

**OPINION**

Presently before the court are defendants Lofts at 1243 Condominium Association, Thomas Marrone and Echo Volla's Preliminary Objections.<sup>1</sup> For the reasons set forth below, the Preliminary Objections are sustained in part and overruled in part.

Plaintiff Ronald P. Cooley ("Cooley") brings this action individually and derivatively on behalf of Lofts at 1243 Condominium Association ("Association") against defendants 1234 Condominium Association and the Executive Board Members of the Association Thomas Marrone and Echo Volla. The Lofts at 1234 Condominium is a condominium building situated at 1234 Hamilton Street, Philadelphia, Pa. 19123. The Condominium has sixteen residential units and seventeen parking spaces in the garage. Defendant Echo Volla ("Volla") resides in unit 302, Cooley resides in Unit 301 and utilizes parking space P12 and Thomas Marrone ("Marrone") resides in combined units 304 and 305 and utilizes parking spaces P13 and P14. The Bylaws of the Association were adopted in 2005 and the Revised Bylaws were adopted on May 30, 2015. Under both the Bylaws and the Revised Bylaws, there is a three member

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<sup>1</sup> Also pending at this time are individual defendant Thomas Marrone's preliminary objections to the amended complaint (cn 16113494) and plaintiff's preliminary objections to individual defendant Thomas Marrone's preliminary objections (cn 16122172) which will be addressed in a separate order issued by the court.

Executive Board that hold mandatory duties and fiduciary duties. The members of the Executive Board serve three year terms.

The Condominium was created by the recording of the Declaration of Condominium dated November 15, 2005 at the Philadelphia Department of Records on November 15, 2005. The Declaration was amended by way of a First Amendment recorded on October 30, 2006, Second Amendment recorded on April 15, 2015 and Third Amendment recorded on May 15, 2015.<sup>2</sup>

On September 24, 2013, during an Association meeting, the unit owners voted and elected Volla and Cooley to the Executive Board and Terri Gerbec remained as the third member. On July 7, 2014, during an Association meeting, the unit owners voted to keep Gerbec as a member of the Board. A special meeting was held on January 28, 2015, at which time Gerbec resigned as President of the Board and Marrone was elected to replace her. During a meeting of the Executive Board on May 30, 2015, Volla moved to remove Cooley from the Board and Marrone seconded the motion. On May 16, 2016, Cooley was reinstated as a member of the Board when the person who replaced Cooley resigned.

On April 29, 2016, Cooley, in his individual capacity, instituted this action against the Association, Marrone and Volla by writ of summons. On September 30, 2016, after a rule was issued to file a complaint, Cooley filed his complaint against defendants alleging improprieties in the administration of the Association and the conduct of the Executive Board. The claims alleged against the defendants were breaches of fiduciary duty, self-dealing and defamation. The complaint also added the Association as a party and asserted derivative claims on behalf of the

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<sup>2</sup> Plaintiff contests the validity of the Second and Third Amendments.



Association.<sup>3</sup> Defendants filed preliminary objections to the complaint and on November 9, 2016, Cooley filed an amended complaint asserting claims against defendants for intentional violations of the Pennsylvania Uniform Condominium Act, breach of fiduciary duty and defamation. The complaint also seeks declaratory and equitable relief. Defendants have now filed preliminary objections to the amended complaint.

## DISCUSSION

**I. All claims challenging the validity of the Second Amendment and Third Amendment to the Declaration are barred by the statute of limitations and are dismissed from the amended complaint.**

Defendants argue that the claims challenging the Second and Third Amendments to the Declaration should be dismissed as legally insufficient pursuant to Pa. R. Civ. P. 1028 (a)(4) because the amended complaint on its face demonstrates that they are barred by the statute of limitations. The defense of statute of limitations is an affirmative defense to be raised as new matter in a responsive pleading, not by means of preliminary objections in nature of demurrer.<sup>4</sup> The defense, however, may be considered in preliminary objections in nature of demurrer if a party fails to file preliminary objections to preliminary objections challenging this procedural irregularity. The failure to file preliminary objections to preliminary objections waives the right to object to the form of the pleading.<sup>5</sup> Here, plaintiff did not file preliminary objections to defendants' preliminary objections on the ground that defendants improperly raised the

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<sup>3</sup> As noted by defendants, the docket in this action fails to reflect the filing of a stipulation wherein defendants consented to adding the Association as a party or an order from the court granting plaintiff leave to amend to add the Association as a party.

<sup>4</sup> See Pa.R.C.P. 1030.

<sup>5</sup> *Duquesne Slag Products Co. v. Lench*, 490 Pa. 102, 415 A.2d 53 (1980); *Stilp v. Commonwealth*, 910 A.2d 775 (Pa.Cmwlth.2006).

affirmative defense of statute of limitations.<sup>6</sup> Hence, plaintiffs waived the right to object to the statute of limitations defense.<sup>7</sup>

Turning our attention to the merits of the preliminary objection, which questions whether the statute of limitations bars the challenge to the Second and Third amendments to the Declaration, the pertinent provisions provide that “[n]o action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one year after the amendment is recorded.”<sup>8</sup> The second amendment was recorded on April 15, 2015. Hence, any challenge to the validity of the second amendment should have been brought on or before April 15, 2016. Here, Cooley in his individual capacity, filed his writ of summons on April 29, 2016, fourteen (14) days after the one year anniversary of the Second Amendment’s recording. As such, any claims challenging the validity of the Second Amendment are barred by the statute of limitations and the claims are dismissed.<sup>9</sup>

With respect to the Third Amendment, the amendment was recorded on May 15, 2015. While the writ of summons was filed on April 29, 2016, the only plaintiff who preserved its right to bring the claim challenging the validity of the amendment is Cooley in his individual capacity, only. However, Cooley individually, does not have standing to assert a challenge to the validity of the Third Amendment since the claim is a derivative claim and belongs to the Association. Cooley did not timely assert a derivative claim on behalf of the Association to challenge the

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<sup>6</sup> However, plaintiff did file preliminary objections to preliminary objections (cn 16122172) to the preliminary objections of Thomas Marrone, individually.

<sup>7</sup> *Duquesne Slag Products; Stilp. Richmond v. McHale*, 35 A.3d 779, 782–83 (Pa. Super. 2012); *DeMary Latrobe Printing and Pub. Co.*, 762 A.2d 758, 762 (Pa. Super. 2000).

<sup>8</sup> Exhibit 1 to Defendants’ Preliminary Objections to Plaintiff’s Amended Complaint, Exs. A, Declaration & D Revised Declaration, § 7.2.

<sup>9</sup> The court need not address the question of whether Cooley has standing to challenge the validity of the Second Amendment since the statute of limitations ran before the writ of summons was filed.

Third Amendment, however, since the Association was not added as a plaintiff until September 30, 2016, more than three months after the statute of limitations expired. Hence, the claim challenging the validity of the Third Amendment is untimely.<sup>10</sup> Based on the foregoing, defendants' preliminary objection is sustained and any claim challenging the validity of the Second and Third Amendments is time barred and dismissed.<sup>11</sup>

**II. Paragraphs 7 and 8 of the Amended Complaint are dismissed as Scandalous and Impertinent.**

Under Pennsylvania Rule of Civil Procedure 1028(a)(2), a party may object to a pleading's inclusion of "scandalous and impertinent matter." "Scandalous and impertinent matter" is defined as "allegations ... immaterial and inappropriate to the proof of the cause of action."<sup>12</sup>

Paragraphs 7 and 8 of the amended complaint allege the following:

7. Marrone has a law firm called MoreMarrone LLC. Marrone claims that "I can't stand it when big guys pick on little guys...I grew up in a family of immigrants. I grew up with the 'little guys'... They were my grandparents, my mom and dad, my aunts and uncles and cousins...so I take that kind of thing very personally,"<https://www.bestlawyers.com/lawyers/thomas-moremarrone/149539/>.

8. As set forth below, despite his claim that he "can't stand it when big guys pick on little guys," Marrone did exactly that: He picked on a little guy, Cooley, resulting in this action.<sup>13</sup>

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<sup>10</sup> Pa.R.C.P. 1033 allows parties to correct the name of a party at any time either with the consent of the adverse party or by leave of court. See, *Tork-Hiis v. Com.*, 558 Pa. 170, 175, 735 A.2d 1256, 1258 (1999). However, an amendment to a pleading that adds a new and distinct party once the statute of limitations has expired is not permitted. *Id.*

<sup>11</sup> As for adding the Association as a party after the filing of the writ of summons and without leave of court and consent of the parties, pursuant to Pa. R. Civ. P. 126, the court will disregard the procedural defect since the substantial rights of the parties do not appear to be affected.

<sup>12</sup> *Common Cause/Pa. v. Commonwealth*, 710 A.2d 108, 115 (Pa. Commw. Ct. 1998) (citing *Department of Env'tl. Resources v. Peggs Run Coal Co.*, 55 Pa. Commw. 312, 423 A.2d 765 (1980)).

<sup>13</sup> Amended Complaint.

These allegations in paragraphs 7 and 8 are impertinent and immaterial to the causes of action alleged. Consequently, defendants' preliminary objection in this regard is sustained and paragraphs 7 and 8 are stricken from the amended complaint.

**III. The claims asserted by plaintiff Robert P. Cooley, individually, in Count I (Intentional Violations of Act) are dismissed for lack of standing.**

Count I of the amended complaint purports to state a claim against defendants Marrone and Volla for intentional violations of the Condominium Act. The claim is asserted by Ronald P. Cooley individually and derivatively on behalf of the Association. Ronald P. Cooley in his individual capacity does not have standing to assert said claim and the preliminary objection is sustained.

In count I of the amended complaint, Cooley, individually and derivatively on behalf of the Association, allege that Marrone and Volla intentionally, knowingly and willfully violated the Act, breached their fiduciary duty to the Association, acted in bad faith, and engaged in self-dealing.<sup>14</sup> Title 68 Pa. C. S. A. § 3303 provides in pertinent part as follows:

“...In the performance of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee if the board upon which they may serve, in good faith in a manner they reasonably believe to be in the best interests of the association and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.”

The fiduciary duty is owed to the Association and not to the unit owner individually. As such, Cooley lacks standing to bring the claims alleged in count I individually. Based on the foregoing, the claims asserted by Cooley individually in count I are dismissed.<sup>15</sup>

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<sup>14</sup> Amended Complaint ¶¶323-342.

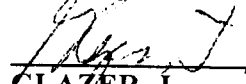
<sup>15</sup> Defendants argue that Marrone and Volla may not be sued individually and rely upon 68 Pa. C. S. § 3311(a)(2)(i). However, the claims alleged against Marrone and Volla are for breach of their fiduciary duties to the Association, a duty which is statutorily provided for in 68 Pa. C. S. A. § 3303. While section 3303 does not address the question of whether Marrone and Volla's are subject to individual liability, the pertinent Declarations and Bylaws do provide for individual liability in certain circumstances. See, Exhibit “A” to the Amended Complaint, Declaration 14.3, Exhibit

## CONCLUSION

For the foregoing reasons, upon consideration of Defendants Lofts at 1243 Condominium Association, Thomas Marrone and Echo Volla's Preliminary Objections to Plaintiff's Amended Complaint, the Preliminary Objections are sustained in part and all claims challenging the validity of the Second and Third Amendments to the Declaration are barred by the statute of limitations and are dismissed from the amended complaint; Paragraphs 7 and 8 of the Amended Complaint are stricken as scandalous and impertinent and the claims asserted by plaintiff Robert P. Cooley, individually, in Count I (Intentional Violations of Act) are dismissed for lack of standing. All other Preliminary Objections are overruled.<sup>16</sup>

Defendants shall file an answer to the amended complaint within twenty (20) days from the date of this Order.

BY THE COURT,

  
GLAZER, J.

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"B" to the Amended Complaint, ByLaws 7.3, Exhibit "D" to the Amended Complaint, Revised Declaration 14.3 and Exhibit "J" to the Amended Complaint, Revised ByLaws 7.3.

<sup>16</sup>The additional preliminary objections raised by defendants including improper prolixity, striking attorney fees and punitive damages and legal demurrers are overruled. As to the preliminary objection concerning the legal status of the Association, Unincorporated Association or Non Profit Corporation, at this stage in the litigation, questions of fact exist as to whether the Association is an unincorporated association or a nonprofit corporation. Additionally as to the question of Cooley's standing and pre-suit demand to bring a derivative claim pursuant to the Non Profit Corporation Law, 15 Pa. C. S. A. § 5726, if the Association is indeed a nonprofit corporation, Cooley has standing to bring the claim and his failure to make pre-suit demand is excused. See, *Cuker v. Mikalauskas*, 692 A.2d 1042, fn.5 (Pa. 1997), 7.01 American Law Institute, Principles of Corporate Governance, 2016 Comments to 15 Pa. C. S. A. §§ 5781, 5782 and *Hill v. Ofalt*, 85 A.3d 540, 556 (Pa. Super. 2014).

## Exhibit “C”

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

JASON DANA, individually and derivatively  
On behalf of LOFTS AT 1234 CONDOMINIUM  
ASSOCIATION,

Plaintiff,

v.

LOFTS AT 1234 CONDOMINIUM  
ASSOCIATION, THOMAS MARRONE, and  
ECHO VOLLA,

Defendants.

February Term 2017

No. 6522 (L)

Commerce Program

DOCKETED

JUL 24 2017

R. POSTELL  
COMMERCE PROGRAM

RONALD P. COOLEY, individually and  
Derivatively on behalf of LOFTS AT 1234  
CONDOMINIUM ASSOCIATION,

Plaintiff,

v.

LOFTS AT 1234 CONDOMINIUM  
ASSOCIATION, THOMAS MARRONE and  
ECHO VOLLA,

Defendants.

April Term 2016

No. 3513

Commerce Program

Control Nos. 17041096/17041197  
16113494

ORDER

AND NOW, this 21<sup>st</sup> day of July, 2017, upon consideration of Defendants Lofts at  
1234 Condominium Association, Thomas Marrone and Echo Vollo's Preliminary Objections to  
Plaintiff's Second Amended Complaint (cn 17041096) and Defendant Thomas Marrone's  
Preliminary Objections to Plaintiff's Second Amended Complaint (cn 17041197) and Plaintiff's  
response in opposition, it hereby is **ORDERED** as follows:

Cooley Vs Lofts At 1234-ORDER



16040351300181

1. The Second Amended Complaint is **stricken**.<sup>1</sup>
2. The Preliminary Objections to the Second Amended Complaint filed by the respective defendants with control numbers (cn 17041096) and (cn 17041197) are **Moot**.
3. Defendant Thomas Marrone's Preliminary Objections to the Amended Complaint (control number 16113494)<sup>2</sup> are **Sustained in part and Overruled in part** as follows:
  - a. Paragraphs 7 and 8 of the amended complaint are **stricken** as scandalous and impertinent.

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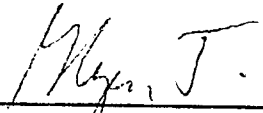
<sup>1</sup> Plaintiff filed the second amended complaint without leave of court or agreement of the parties in violation of Pa. R. Civ. P. 1033. This court on March 1, 2017 sustained in part and overruled in part defendants Lofts at 1234 Condominium Association, Thomas Marrone and Echo Vollo's preliminary objections to plaintiff's amended complaint and ordered these defendants to file an answer within twenty (20) days from the date of this order. On the same date, this court overruled plaintiff's preliminary objections to defendant Thomas Marrone's preliminary objections to plaintiff's amended complaint and ordered plaintiff to file a response within twenty (20) days. In disregard of this court's order and without leave of court or opposing counsels' agreement, plaintiff filed a second amended complaint adding three new causes of action. This filing is improper and is stricken. Pa. R. Civ. P. 1028 (d), the authority upon which plaintiff relies for this improper filing, does not give him leave to file the second amended complaint. Pa. R. Civ. P. 1028 (d) only allows an objecting party to plead over. In this case, plaintiff is not the objecting party and therefore may not plead over. Having once already exercised discretion and applied Pa. R. Civ. P. 126 to excuse plaintiff's disregard for Pa. R. Civ. P. 1033, i.e. adding the Association as a party after the filing of the writ of summons and without leave of court and consent of the parties, this court will not exercise its discretion and permit the second amended complaint to stand. Moreover, even if this court were to exercise its discretion per Pa. R. Civ. P. 126 and excuse plaintiff's improper filing, the three causes of action, fraud, conspiracy and trespass, appear to be barred by the gist of the action doctrine. In the highly unlikely event that plaintiff should consider any amendments to the complaint, the rules of civil procedure must be adhered to with precision.

<sup>2</sup> Plaintiff was given an opportunity to file a response to Defendant Marrone's preliminary objections. See this court's order dated March 1, 2017, overruling plaintiff's preliminary objections to defendant Marrone's preliminary objections. Instead of filing a response, plaintiff filed a second amended complaint without leave of court or consent of the parties. Plaintiff's failure to file a response does not preclude this court from ruling on the preliminary objections since the preliminary objections raise issues under 1028 (a) (2), (3) and (4) which may be determined from the facts of record and further evidence is not required. *See Pa. R. Civ. P. 1028 (c)(2) Note.*



- b. The claims asserted by Robert P. Cooley, individually, in Count I (Intentional Violations of the Act) are dismissed for lack of standing.
- c. All other preliminary objections to the Amended Complaint are **Overruled**.<sup>3</sup> Defendant Marrone shall file an answer to the Amended Complaint within twenty (20) days from the date of this order.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

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<sup>3</sup> Defendants argue that Marrone may not be sued individually based on immunity found in the Condominium Act, specifically, 68 Pa. C. S. § 3311 (a)(2)(1). However, Marrone may be subject to individual liability per the Declarations and Bylaws which do provide for individual liability in certain circumstances. *See, Exhibit "A" to the Amended Complaint, Declaration 14.3, Exhibit "B" to the Amended Complaint, Bylaws 7.3, Exhibit "D" to the Amended Complaint, Revised Declaration 14.3 and Exhibit "J" to the Amended Complaint, Revised ByLaws 7.3.* As to the preliminary objection regarding the legal status of the Association and plaintiff's standing to bring a claim on behalf of the Association, at this stage of the litigation, questions of fact exist as to whether the Association is an unincorporated association or a nonprofit corporation. *See Opinion dated March 1, 2017 pg. 7 fn 16.*

## Exhibit “D”

**TRIAL DIVISON-CIVIL**

DOCKETED

JAN 16 2018

R. POSTELL  
COMMERCE PROGRAM

April Term 2016

No. 3513

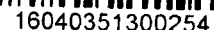
## Commerce Program

Control Nos. 17083897/17093140  
17103512/17102483/17101271

## ORDER

AND NOW, this 16<sup>th</sup> day of January, 2018 upon consideration of the pending motions in the above matters, the respective responses in opposition, oral argument, the attached Opinion and all matters of record, it hereby is **ORDERED** as follows:

1. Plaintiff Ronald P. Cooley's Motion for Partial Summary Judgment as to count IV (declaratory judgment)(cn 17083897) is **Denied**.
2. Defendant Association's Cross Motion for Summary Judgment to Plaintiff Ronald P. Cooley's Motion for Partial Summary Judgment (cn 17093140) and Defendant Marrone and Volla's joinder in said Motion is **Granted** and count IV (declaratory judgment) and all derivative claims are dismissed.
3. Plaintiff Ronald P. Cooley's Cross Motion to Strike portions of the Association's Cross Motion for Summary Judgment (cn 17103512) is **Denied**.



4. Defendants Thomas Marrone and Echo Volla's Motion for Summary Judgment to counts II (breach of fiduciary duty) and IV (declaratory judgment) (cn 171012483)) is **Granted**.
5. Defendants Thomas Marrone and Echo Volla's Petitions for a Rule to Show Cause why Plaintiffs' Derivative Claim should not be dismissed for Lack of Standing (cn 17101271 is **Moot**.<sup>1</sup>
6. Within five (5) days of the docketing of this order and opinion, the parties shall confer and agree on three (3) mutually agreeable dates and advise Court Officer Jerome Kelleher at 215-686-9540 so that the court may schedule a settlement conference on the remaining claim of defamation on a date convenient to the parties and the court.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

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<sup>1</sup> See ¶¶ 2 and 4 of this order.

JASON DANA, individually and derivatively : February Term 2017  
On behalf of LOFTS AT 1234 CONDOMINIUM :  
ASSOCIATION, :  
Plaintiff, : No. 6522 (L)  
v. :  
LOFTS AT 1234 CONDOMINIUM : Commerce Program  
ASSOCIATION, ET. AL. :  
Defendants. :

RONALD P. COOLEY, individually and	:	April Term 2016
Derivatively on behalf of LOFTS AT 1234	:	
CONDOMINIUM ASSOCIATION,	:	No. 3513
Plaintiff,	:	
v.	:	Commerce Program
LOFTS AT 1234 CONDOMINIUM	:	
ASSOCIATION, ET. AL.,	:	
Defendants.	:	Control Nos. 17083897/17093140
	:	17103512/17102483/17101271

In this consolidated action, plaintiffs, Ronald P. Cooley (“Cooley”) and Jason Dana (“Dana”), unit owners at Lofts at 1234 Condominium, bring actions against Lofts at 1234 Condominium Association (“Association”) and Thomas M. Marrone (“Marrone”) and Echo Volla (“Volla”), past executive board members and unit owners. Plaintiffs bring the actions individually and derivatively on behalf of the Association. These actions have prompted the filing of many rounds of preliminary objections, numerous amended complaints, discovery disputes and motion practice. Presently, the court will address five motions currently pending with this *omnibus* opinion.

On April 29, 2016, Cooley, a unit owner and Association member, individually initiated this action by writ of summon against the Association, Marrone and Volla. On September 30,

2016, Cooley, individually and derivatively on behalf of the Association, filed a complaint asserting claims for intentional violations of the Pennsylvania Condominium Act, breach of fiduciary duty, defamation and declaratory judgment against defendants. Cooley alleges that he brings the action individually and derivatively on behalf of the Association pursuant to the Nonprofit Corporation law, 57 Pa. C. S. A. § 5101 *et. seq.* Alternatively, Cooley alleges that if the Association is found to be an unincorporated association, Cooley brings the action individually and as trustee *ad litem* of the Association.

Defendants Association, Volla and Marrone in his official capacity filed preliminary objections to the complaint. On November 9, 2016, Cooley filed an amended complaint. Defendants filed preliminary objections to the amended complaint. On March 1, 2017, the court issued an order and opinion sustaining in part defendants' preliminary objections. Specifically, this court found that "All claims challenging the validity of the Second and Third Amendments to the Declaration are barred by the statute of limitations and are dismissed from the amended complaint." On March 20, 2017, defendants Association, Marrone and Volla filed their answer to the amended complaint.

On March 21, 2017, without leave of court or consent of the parties, Cooley filed a second amended complaint. Defendants filed preliminary objections to the second amended complaint. On July 21, 2017, this court struck the second amended complaint and reinstated the amended complaint. On August 14, 2017, Defendant Marrone, individually, filed his answer. On August 29, 2017, Cooley filed his response to defendants' new matter. The pleadings in the Cooley matter are closed.

## **The Condominium**

The Association is the condominium association for the condominium building commonly referred to as the “Lofts” and located at 1234 Hamilton Street, Philadelphia, Pa. 19123. The Lofts is a three story building consisting of seventeen units and parking spaces. Cooley is the owner of unit 301 and parking space P12 and is a current member of the Executive Board for the Association. Defendants are Thomas Marrone and Echo Volla. Marrone is the owner of unit 303 and 305, a combined unit, and parking spaces P13 and P14. Volla resides in unit 302. Cooley, Marrone and Volla reside on the third floor of the Lofts. Marrone, Cooley and Volla served on the Executive Board for the Association at all times relevant to the complaints. Marrone and Volla no longer serve on the Executive Board. Cooley was reelected to the Board in September, 2017.

## **Governing Documents**

The Lofts was created by the execution and recording of the Declaration of Condominium (“Declaration”) on November 15, 2005 with the Philadelphia Department of Records. In 2005, Bylaws were adopted for the Association. The Bylaws provide that the Association is an unincorporated association that consists of all unit owners acting as a group.<sup>2</sup> On October 9, 2006, the Declaration was amended by way of the First Amendment which subdivided dwelling and garage development into seventeen dwelling units and parking spaces.<sup>3</sup> The Plots and Plans attached to the First Amendment, drawing A1-1, showed a walkway designated as part of the common element between P12 (Cooley’s space) and P13 (Marrone’s

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<sup>2</sup> Section 2.1 Bylaws.

<sup>3</sup>The Amendment also designated the elevator as a limited common element and restated schedule of unit identifying numbers and there percentage interest.

space) and that parking units P10-P17 did not extend in length to the eastern side of existing columns and were designated common elements. On February 6, 2007, a revised and restated Declaration of Condominium was recorded reflecting the First Amendment. Attached to the First Amendment is, drawing A1-1, a drawing depicting the parking for Lofts and the areas of P12 and P13. The drawing attached to the First Amendment depicts the parking space P12 as 9 feet and 4 inches wide. Additionally, drawing A1-1 depicted the future development of the roof unit 105 as a limited common element.

On December 22, 2006, a Revised and Restated Declaration of Condominium was executed and filed on February 6, 2007. The revision shows the location and dimension of dwelling units, garage units, common elements and limited common elements.

On September 12, 2012, Articles of Incorporation were filed by Jeffrey Pustizzi, Esquire for Lofts at 1234 Condominium Association with the Pennsylvania Department of State registering this entity as a domestic Non Profit Corporation. The articles of incorporation provided that the corporation shall have no members. There was no vote to convert the Association from an unincorporated association to a nonprofit corporation with no members.<sup>4</sup> On August 4, 2017, the nonprofit corporation was dissolved by Pustizzi.

On April 10, 2015, a Second Amendment to the Declaration was signed and filed on April 15, 2017. This amendment grants Cooley, Marrone, and Volla the right to build a roof deck. The Amendment specifically states that it was previously approved by the unanimous vote of all the unit owners at a meeting of the unit owners where a quorum was present. It was signed by Marrone. The Second Amendment refers to the Association as a Pennsylvania Non Profit Corporation.

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<sup>4</sup> 15 Pa. C. S. § 5331.



On May 5, 2015, the Third Amendment was executed and filed on May 15, 2015. This amendment extended the length of parking units P10-P17 to the eastern side of the existing columns. It also converted a walkway that was part of the common elements separating parking space P12 (Cooley) and P13 (Marrone) to become the property of P13 (Marrone). Similar to the Second Amendment, the Third Amendment also contained the following language, “The Third Amendment was previously approved by unanimous vote of all the unit owners at a meeting of the unit owners at which a quorum was present.” The Third Amendment also referred to the Association as a nonprofit corporation and was signed by Marrone.<sup>5</sup>

On May 30, 2015, Revised and Restated bylaws were filed.

#### **Executive Board**

According to the Bylaws, the Association is composed of all of the Loft’s unit owners. The Bylaws permit a three member executive board to convene and hold annual meetings to be held on the third Tuesday of September. On September 24, 2013, Cooley and Volla were elected to a three year term on the Executive Board. At the time Teri Gerbec was the President and her term was scheduled to expire in 2014. In July, 2014, at an annual meeting, Gerbec’s term was extended to 2017. Present at the meeting were five unit owners including Leo Addimando, a unit owner, representative of the property manager and member of Hamilton GP LLC which was the general partner of 1234 Hamilton LP, the declarant. On January 28, 2015, Gerbec resigned as the president of the executive board and a member of the executive board. On the same date a special meeting of the executive board was held and Cooley and Volla appointed Marrone to fill Gerbec’s vacancy and position as president for the remainder of her term.

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<sup>5</sup> Any and all claims related to the Second and Third Amendment are not before the court since they were dismissed by this court as barred by the statute of limitations.

### **Alleged Wrongful Acts of Marrone and Volla**

Cooley alleges that Marrone and Volla perpetrated wrongful acts against the Association and Cooley which included failing to abide by the bylaws when it lengthened the minimum term of leases, adopting the Second and Third Amendments for their own purposes, illegal taking of common elements for their own purposes, retaliation and illegal removal of Cooley from the Executive Board, failure to produce requested documents for inspection, improper borrowing on behalf of the Association, improper use of funds, providing false information in the FAQ, failure to hold elections, making defamatory statements about Cooley, and submitting a fraudulent insurance claim.

### **Removal of Cooley from the Executive Board**

On May 27, 2015, Cooley received notice for a regular meeting of the Executive Board for May 30, 2015. At the scheduled meeting Cooley was removed as a member of the Board. On the same date, John Howell, unit owner and member of the Association, was appointed to the Executive Board by Marrone and Volla with his term to expire in the summer/fall of 2017. On May 16, 2016, approximately one year later, Cooley was once again recognized as a member of the Executive Board.

### **Demand on the Executive Board**

On October 7, 2016, Cooley, Dana and three other unit owners submitted a petition to Marrone requesting a special meeting of the unit owners to discuss the complaint filed Cooley against Marrone and Volla and the allegations contained therein. These petitioners demanded that the following items be added to the meeting agenda already scheduled meeting by Marrone:

- a) Forming a temporary Executive Board made up of three disinterested unit owners to replace Cooley, Volla and Marrone until a new Executive Board is selected, b) hiring an independent

investigator to conduct an investigation into the allegations raised in the complaint filed by Cooley, c) removing Marrone as President of the Association until conclusion of the independent investigation, and d) filing an action against Marrone, Volla and the Association or joining in and ratifying the lawsuit filed by Cooley. The special meeting was held on November 17, 2016 and the unit owners were provided with two ballots. One ballot posed as questions the concerns raised by Cooley, Dana and the three other unit owners, set forth above. The second ballot posed two questions: a) should the Executive Board of the Association conduct an immediate, independent investigation of the allegations against Marrone and Volla outlined in the October 7 letter? and b) should the Board commence suit against Marrone and Volla on behalf of the Association for self-dealing conduct, breaches of fiduciary duty, and violations of the Pennsylvania Uniform Condominium Act? After a vote, the ballot questions were rejected by the unit members.

### **Reelection of Cooley**

Marrone, Volla and Cooley's term on the Executive Board ended in September 2017. On September 19, 2017, Cooley ran for reelection and was reelected to the Executive Board. Marrone and Volla did not seek reelection.

## **DISCUSSION**

### **I. Cooley's Derivative Claims are dismissed for lack standing.<sup>6</sup>**

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<sup>6</sup> The Association raised the issue of standing in its partial motion for summary judgment which defendants Marrone and Volla joined. Additionally, defendants Marrone and Volla filed a separate petition for a rule to show cause why this court should not dismiss the derivative claims for lack of standing. Initially, the court denied the petition. However, the court later vacated its order and scheduled a rule hearing for December 14, 2017. In response to this petition, plaintiffs argue that the Pa. R. Civ. P. and Philadelphia Local Rules do not recognize nor authorize the filing of defendants' petition as one of the petitions permitted by the rules. While plaintiffs are correct that the petition filed by defendants is not specifically designated as a petition in the rules, the court may nonetheless address the question of standing since it is raised in the motions for summary judgment currently pending before the court.

The Association's legal status has been the subject of much contention and scrutiny since the filing of preliminary objections. Initially, the Association, Marrone and Volla raised the issue in preliminary objections in the form of lack of capacity to sue. At the time, the court overruled the objection and explained as follows:

“As to the preliminary objection concerning the legal status of the Association, Unincorporated or Non Profit Corporation, at this stage in the litigation, questions of fact exist as to whether the Association is an unincorporated association or a nonprofit corporation. Additionally, as to the question of Cooley's standing and pre-suit demand to bring a derivative claim pursuant to the Non Profit Corporation Law, 15 Pa. C. S. A. § 5726, if the Association is indeed a nonprofit corporation, Cooley has standing to bring the claim and his failure to make pre-suit demand is excused. *See, Cucker v. Mikalauskas*, 692 A.2d 1042, fn. 5 (Pa. 1997), 7.01 *American Law Institute, Principles of Corporate Governance*, 2016, Comments to 15 Pa. C. S. A. §§ 5781, 5782 and *Hill v. Ofalt*, 85 A. 3d 540, 556 (Pa. Super. 2014).<sup>7</sup>

The question of Cooley's standing is now ripe for consideration. The Association's Bylaws adopted on November 15, 2005 and revised and restated on May 30, 2015, provide in relevant part as follows:

2.1. Composition. The Association is hereby organized on the date of the recording of the Declaration as an unincorporated association. The Association shall consist of all of the Unit Owners acting as a group in accordance with the Act, the Declaration and these By-Laws....

The foregoing section shows that on the date of the recording of the Declaration, November 2005, the Association was an unincorporated association. On September 12, 2012, Articles of Incorporation were filed by Jeffrey Pustizzi, Esquire with the Pennsylvania Department of State registering this entity as a domestic Nonprofit Corporation. However, absent from the record is any evidence that the members of the Association, all the unit owners,

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<sup>7</sup> Order and Opinion dated March 1, 2017 p. 7 fn. 16.

voted to convert the legal status of the Association from unincorporated association to a nonprofit corporation as required by the Nonprofit Corporation Act.<sup>8</sup> The Act provides that in order to incorporate an unincorporated association as a non-profit corporation, the articles of incorporation “shall contain ...a statement that the incorporators constitute a majority of the committee authorized to incorporate the association by the requisite vote required by the organic law of the association for the amendment of the organic law.”<sup>9</sup> At the time the articles of incorporation were filed, the declarant had already ceded control of the Condominium to the Association and therefore a vote by the unit owners was required.<sup>10</sup> At best, the articles of incorporation created a separate entity with the same name of the Association with the intent to convert the unincorporated association to a nonprofit corporation in the future. The articles of incorporation solely created a shell entity. This conclusion is further supported by the fact that the Bylaws were revised and restated in May 2015 without any revisions to § 2.1.<sup>11</sup> Based on the foregoing, this court concludes the Association is an unincorporated association, claims under the Nonprofit Corporation Act are not proper and therefore Cooley lacks standing to bring a derivative claim pursuant to the Act on behalf of the Association.

Cooley also lacks standing to bring a derivative claim on behalf of the Association as a trustee *ad litem*. Pa. R. Civ. P. 2152 requires that an action prosecuted by an unincorporated

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<sup>8</sup> The Articles of Incorporation show a strike through in the section requesting if a vote occurred. See section 6.

<sup>9</sup> 15 Pa. C. S. § 5331.

<sup>10</sup> The Declarant ceded control of the Condominium to the Association in 2011. The articles of incorporation were filed in September 2012. The articles also indicated that the nonprofit corporation would have no members.

<sup>11</sup> While the Second and Third Amendments in their preamble statements do refer to the Association as a nonprofit corporation, these references are insufficient to overcome absence of a vote by the unit owners to convert the entity from an unincorporated association to a nonprofit corporation.

association be prosecuted in the name of a member or members thereof as trustees *ad litem* for such association. An action so prosecuted shall be entitled “X association by A and B, Trustees ad Litem” against the party defendant.<sup>12</sup> While it is sufficient for Cooley to allege in the complaints filed that he is bringing the action on behalf of the Association as a trustee *ad litem* to overcome preliminary objections, at this stage in the litigation, relying solely upon pleadings is not enough.<sup>13</sup> Here, it is clear from the record that Cooley did not have the authority to bring the action as trustee *ad litem* on behalf of the Association. The Association members overwhelmingly rejected the proposals to replace the current board, to hire an independent investigator to investigate allegations in Cooley’s complaint, to remove Marrone from his role as President of the Association and to file or ratify Cooley’s lawsuit against Marrone, Volla and the Association. Based on the foregoing, the court finds that Cooley does not have standing to bring this action derivatively on behalf of the Association and the Associations’ cross motion for summary judgment is granted and counts I (intentional violations of the Act), II (breach of fiduciary duty) and IV (declaratory judgement) are dismissed.<sup>14</sup>

## **II. Cooley’s individual claim in Count IV for declaratory relief is dismissed.**

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<sup>12</sup> *Newtown Heights Civic Ass’n v. Zoning Hearing Bd. of Newtown Tp.*, 454 A.2d 1199, 1201, 71 Pa.Cmwlth. 438, 442 (Pa.Cmwlth.,1983)

<sup>13</sup> *See, Highway Truck Drivers and Helpers, Local 107 v. Cohen*, 172 A.2d 824, 827, 405 Pa. 55, 60 (Pa. 1961)( if the form of the action complies with the requirements of the rule, the question of lack of authority is an issue to be resolved at trial).

<sup>14</sup> Plaintiff Cooley filed a motion to strike portions of the Association’s Cross Motion for Summary Judgment, specifically paragraphs 250-256, 267-282 and Exhibits 12-15 as scandalous and impertinent. This motion is denied. “To be scandalous and impertinent, the allegation must be immaterial and inappropriate to the proof of the cause of action.” *Green v. Klein*, 16 Pa. D. & C. 5th 144, 152 (Pa. Com. PL 2010). “[T]he right of a court to strike impertinent matter should be sparingly exercised and only when a party can affirmatively show prejudice.” *Dept of Environmental Resources v. Hartford Acc. and Indem. Co.*, 396 A.2d 885, 888, 40 Pa.Cmwlth. 133 (Pa.Cmwlth.1979). “‘Prejudice’ is defined as any substantial diminution of a party’s ability to properly present its case at trial.” *Keffer v. Bob Nolan’s Auto Service, Inc.*, 59 A.3d 621, 655 (Pa.Super.2012). Cooley has not showed how the above paragraphs and attached exhibits prejudice him. Without a showing of prejudice, the paragraphs and exhibits will not be stricken but is treated as “mere surplusage” and ignored. *See, Commonwealth, Dept. of Envtl, Resources v. Hartford Accident & Indem. Co.*, at 396 A.2d 885, 888 (1979) (citations omitted).

Cooley filed his request for declaratory relief in count IV of the complaint individually and derivatively. Since Cooley lacks standing to bring the derivative claim, the only aspect of the declaratory relief request that remains to be disposed of is whether Cooley, individually, is entitled to summary judgment on the declaratory relief claim. Cooley's motion is denied and defendants cross motions are granted.

The Declaratory Judgment Act empowers courts "to declare rights, status, and other legal relations whether or not further relief is or could be claimed," and these declarations "have the force and effect of a final judgment or decree."<sup>15</sup> To bring a declaratory judgment action, an actual controversy must exist as declaratory judgment is not appropriate to determine rights in anticipation of events which may never occur. It is an appropriate remedy only where a case presents antagonistic claims indicating imminent and inevitable litigation.<sup>16</sup> Here, the relief requested by Cooley is either moot or an appropriate remedy at law exists precluding the entry of declaratory relief.

Cooley requests that the court declare that the Second and Third amendments are no longer viable and are void. Cooley's request is not possible since by order of this court on March 1, 2017 all claims challenging the validity of the Second and Third Amendments to the Declaration were dismissed as barred by the statute of limitations. As such, at the present time, no actual controversy exists regarding these amendments. Additionally, the relief requesting the removal of Marrone and Volla from the Executive Board is also moot. Marrone and Volla's term on the Board expired on September 19, 2017, they did not seek reelection and are not

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<sup>15</sup> 42 Pa.C.S.A. § 7532.

<sup>16</sup> *Bromwell v. Michigan Mut. Ins. Co.*, 716 A.2d 667, 670 (Pa.Super.1998).

currently sitting members of the Executive Board. Declaratory judgment requires an actual controversy. Here, an actual controversy does not exist regarding either the Second and Third Amendments or the removal of Marrone and Volla.

As for the remaining requests, production of documents and removal of defamatory statements from the board minutes, resolutions and declarations, are not matters appropriate for declaratory relief since an adequate remedy at law exists to acquire the relief requested. For instance, Cooley, individually, has a claim for defamation in which he may seek the removal of defamatory statements if indeed the alleged statements are defamatory. Moreover, the Bylaws and Declarations contain specific guidelines to implement in order to amend the minutes of meetings which contain allegedly defamatory statements. As for the production of documents, Cooley may file a motion to compel defendants to produce documents through the discovery process. Based on the foregoing, Cooley's individual claim for declaratory relief is dismissed, Cooley's partial motion for summary judgment to count IV (declaratory judgment) is denied and defendant Association's cross motion for summary judgment is granted.

### **CONCLUSION**

For the foregoing reasons, it is hereby **ORDERED** as follows:

1. Plaintiff Ronald P. Cooley's Motion for Partial Summary Judgment as to count IV (declaratory judgment)(cn 17083897) is **Denied**.
2. Defendant Association's Cross Motion for Summary Judgment to Plaintiff Ronald P. Cooley's Motion for Partial Summary Judgment (cn 17093140) and Defendant Marrone and Volla's joinder in said Motion is **Granted** and count IV (declaratory judgment) and all derivative claims are dismissed.



3. Plaintiff Ronald P. Cooley's Cross Motion to Strike portions of the Association's Cross Motion for Summary Judgment (cn 17103512) is **Denied**.
4. Defendants Thomas Marrone and Echo Volla's Motion for Summary Judgment to counts II (breach of fiduciary duty) and IV (declaratory judgment) (cn 171012483)) is **Granted**.
5. Defendants Thomas Marrone and Echo Volla's Petitions for a Rule to Show Cause why Plaintiffs' Derivative Claim should not be dismissed for Lack of Standing (cn 17101271) is **Moot**.<sup>17</sup>
6. Within five (5) days of the docketing of this order and opinion, the parties shall confer and agree on three (3) mutually agreeable dates and advise Court Officer Jerome Kelleher at 215-686-9540 so that the court may schedule a settlement conference on the remaining claim of defamation on a date convenient to the parties and the court.

**BY THE COURT,**

  
\_\_\_\_\_  
**GLAZER, J.**

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<sup>17</sup> See ¶¶ 2 and 4 of this order.

## Exhibit “E”

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

RECEIVED

JAN 24 2018

ROOM 521

JASON DANA, individually and derivatively : February Term 2017  
On behalf of LOFTS AT 1234 CONDOMINIUM :  
ASSOCIATION, : No. 6522 (L)  
Plaintiff, :  
v. : Commerce Program  
LOFTS AT 1234 CONDOMINIUM :  
ASSOCIATION, ET. AL. :  
Defendants. :

RONALD P. COOLEY, individually and : April Term 2016  
Derivatively on behalf of LOFTS AT 1234 :  
CONDOMINIUM ASSOCIATION, : No. 3513  
Plaintiff, :  
v. : Commerce Program  
LOFTS AT 1234 CONDOMINIUM :  
ASSOCIATION, ET. AL., :  
Defendants. : Control Number 17113045

DOCKETED

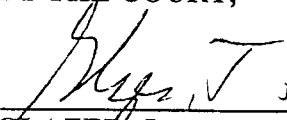
JAN 24 2018

R. POSTELL  
COMMERCE PROGRAM

ORDER

AND NOW, this 24<sup>th</sup> day of January 2018, upon consideration of Defendants Thomas Marrone and Echo Volla's emergency motion to strike Plaintiff's response to the motion of Kyle M. Heisner, Esquire to withdraw as counsel for Lofts at 1234 Condominium Association and Plaintiff's response in opposition, it hereby is **ORDERED** while the motion is moot<sup>1</sup>, the motion to strike is **Granted** and Plaintiff's response to the Motion to Withdraw is **Stricken** and removed from the record for violating this court's September 5, 2017 order.

BY THE COURT,

  
GLAZER, J.

<sup>1</sup> A substitution of counsel occurred which alleviated the need for the court to consider the motion to withdraw as counsel.



## Exhibit “F”

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

RONALD P. COOLEY, individually and	:	April Term 2016
Derivatively on behalf of LOFTS AT 1234	:	
CONDOMINIUM ASSOCIATION,	:	No. 3513
Plaintiff,	:	
v.	:	Commerce Program
LOFTS AT 1234 CONDOMINIUM	:	
ASSOCIATION, ET. AL.,	:	
Defendants.	:	Control Number 18071588

**ORDER**

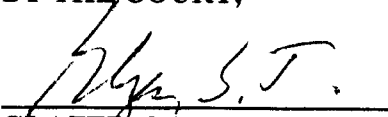
**AND NOW**, this 3<sup>rd</sup> day of August, 2018, upon consideration of Plaintiff Ronald P.

Cooley's Motion for Recusal and Defendants Response in Opposition, it hereby is **ORDERED** that the Motion for Recusal is **Denied**.<sup>1</sup>

**BY THE COURT,**

Cooley Vs Lofts At 1234-ORDER



  
GLAZER, S.J.

<sup>1</sup> The party who asserts that a trial judge must be disqualified must "produce evidence establishing bias, prejudice, or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially." *Lomas v. Kravitz*, 130 A.3d 107, 122 (Pa.Super. 2015) quoting *Arnold v. Arnold*, 847 A.2d 674, 680 (Pa.Super.2004). There is a presumption that judges of this Commonwealth are "honorable, fair and competent," and, when confronted with a recusal demand, are able to determine whether they can rule "in an impartial manner, free of personal bias or interest in the outcome" *Id.* quoting *Arnold*, 847 A.2d at 680.

Here, plaintiff Cooley questions this court's impartiality as a result of its refusal to seal third party Mieloch's motion to quash subpoena while striking plaintiff's filings which alleged "accusations of misconduct, criminal and quasi-criminal" against a party in various pleadings. Adverse rulings alone do not establish the requisite bias warranting recusal, especially where the rulings are legally proper. *See, Com. v. Abu-Jamal*, 553 Pa. 485, 508, 720 A.2d 79, 90 (Pa.1998); *Commonwealth v. Miller*, 541 Pa. 531, 664 A.2d 1310 (1995). While the court did strike paragraphs of plaintiff's pleadings containing the allegations of misconduct, a review of the numerous rulings made shows that the allegations were scandalous, impertinent and not necessary to prove plaintiff's claims (See, Exhibit "E" to Plaintiff's Motion to Recuse Hearing volume 1 dated March 26, 2018 pg. 16-17), while Mieloch's motion failed to show a compelling government interest to warrant sealing the motion. Since, this court is able to assess this case in an impartial manner, free of personal bias or interest in the outcome, the motion to recuse is denied.

DOCKETED

AUG - 8 2018

H. POSTELL  
COMMERCE PROGRAM