

**IN THE COURT OF COMMON PLEAS
COUNTY OF PHILADELPHIA
CIVIL TRIAL DIVISION**

AMBOX OPERATIONS CO., LLC,	:	October Term, 2021
	:	
<i>Plaintiff,</i>	:	No. 0923
	:	
v.	:	Commerce Program
	:	
WILLIAM POCKLINGTON, AS TRUSTEE: OF THE POCKLINGTON FAMILY LIVING TRUST, et al.	:	2785 EDA 2022
	:	
<i>Defendants.</i>	:	

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 CIVIL TRIAL DIVISION
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OPINION

Djerassi, J.

April 25, 2023

Plaintiff Ambox Operation Co., LLC (“Ambox”) appeals from an order filed on June 13, 2022 that granted demurrer by sustaining preliminary objections from Defendant William Pocklington’s (“Pocklington”). Ambox has improperly used protected averments in another case to base falsehood and tortious interference claims here.

I. STATEMENT OF FACTS

Ambox is a Pennsylvania limited liability company formed in 2018 to buy and operate American Box & Recycling Co., a distributor of personal protective equipment which experienced a bonanza during the pandemic. The company started with businessman Christian Randazzo (“Randazzo”) owning 95% of then-existing Class A units. Businessman Pocklington owned 10 out of 51 units of another type of corporate ownership, the precise structure of the arrangement not relevant to the dispute in this case. The 51 units were spread among a group of 10 investors.

OPFLD-Ambox Operations Co., Llc Vs Pocklington, As Trust



A business dispute began among the businessmen after Randazzo circulated a memorandum to Pocklington and the other investors soliciting investment in a new real estate company. 5 of the 10 investors who owned the 51 units chose to take up Randazzo's offer and made capital contributions to the new company. Shortly thereafter, Randazzo's company purchased a property triggering anger and allegations of fraud by the 5 others, including Pocklington. The result was a lawsuit at *Pocklington et al v Randazzo, et al*, CP Phila 210800925 ("First Case"), a case that is also before this court.

Using facts and language that Pocklington averred in the First Case, Ambox filed this retaliatory action against Pocklington.

II. PROCEDURAL

Ambox alleges in its Amended Complaint:

Count I: Injurious Falsehood/Commercial Disparagement

Count II: Tortious Interference with Contract

Count III: Tortious Interference with Prospective Economic Advantage

Count IV: Civil Conspiracy.

We sustained Pocklington's preliminary objection to Counts I, II, and IV but granted leave to Ambox to file a second amended complaint as to Count III and correct an observable flaw. in its Amended Complaint---namely its reliance on judicially privileged statements averred in the First Case. This court granted leave to add substantive pleadings but Ambox rejected the opportunity and filed an application for finality instead. This appeal follows and a Rule 1925 Statement was ordered and supplied.

Ambox's Statement presents two claims. First, Ambox asserts that judicial privilege does not apply because alleged false statements by Pocklington predate his complaint in the First

Case. Second, Ambox asserts this court used the wrong legal standard in our preliminary objection analysis. We disagree on the merits and, respectfully, request that our understanding of judicial privilege and demurrer be affirmed.

A. Because Ambox’s claims rely on averments Pocklington made in his Amended Complaint in the First Case, and these are judicially protected, Ambox has failed to state causes of action in this case.

The averments made in Ambox’s Amended Complaint are judicially protected. This means a factual basis for Ambox’s counts has not been stated legally because Ambox has not offered substantive additions.

The doctrine of judicial privilege provides “absolute immunity for communications which are issued in the regular course of judicial proceedings, and which are pertinent and material to the redress or relief sought.”¹ Statements made during judicial proceedings are privileged even if the statements are made falsely or maliciously without reasonable and probable cause.”² Our Supreme Court has explained that public policy gives rise to enforcement of judicial privilege so “all suiters, however bold and wicked, however virtuous and timid” may “secure access to the courts of justice to present whatever claims, true or false, real or fictitious, they seek to adjudicate.”³ Courts have expanded the scope of judicial privilege to apply to torts beyond just libel and slander, and therefore, it is appropriate to apply this doctrine to the falsehood and tortious interference claims asserted here.⁴

¹ *Bochetto v. Gibson*, 580 Pa. 245, 860 A.2d 67, 71 (2004); See *Post v. Mendel*, 510 Pa. 213, 507 A.2d 351, 355 (1986).

² *Richmond v. McHale*, 2012 Pa. Super. 1, 35 A.3d 779, 785 (2012) citing *Greenberg v. Aetna Ins. Co.*, 427 Pa. 511, 235 A.2d 576, 578 (1967).

³ *Bochetto*, 860 A.2d at 71 explaining *Greenberg*, 235 A.2d at 578).

⁴ *Freundlich & Littman, LLC v. Feierstein*, 2017 Pa. Super. 40, 157 A.3d 526, 531 (2017); See *Moses v. McWilliams*, 379 Pa. Super. 150, 549 A.2d 950, 957 (1988) (*en banc*) (“[w]hile it is true that immunity from civil liability in judicial proceedings have been applied most frequently in defamation actions, many courts, including those in Pennsylvania, have extended the immunity from civil liability to other alleged torts when they occur in connection with judicial proceedings.”)

Ambox's relies on privileged statements taken from the First Case to support its falsehood and related tort claims. See for example, Amended Complaint paragraphs 79, 80, 82, 89, 91, 93, 94. It is as if Ambox deliberately decided to defend itself in the First Case by launching a frontal assault against Pockington in this second case through Pockington's pleadings made in the First Case.

In its Rule 1925 Statement, Ambox tries to avoid demurrer by alleging defamatory statements that are claimed to predate the filing of the First Case's complaint. Ambox argues these new statements are not barred by judicial privilege. However, no specificity is offered, and dispositively, Ambox had rejected a chance to supply proper averments in a pleading. In our preliminary objection order, we granted Ambox twenty (20) days to provide specificity, and stated:

"These new averments shall be italicized in the Second Amended Complaint so this Court and Defendants may easily find these new averments upon review. Plaintiff is directed to identify actual conduct by Defendants that allegedly caused financial institutions to decline to consummate lending and other business relationships with Plaintiff. This alleged actual conduct may not be the mere filing of judicially protected statements in a pleading in another case." (*emphasis added*).

Ambox responded by filing an Application for Declaration of Finality rather than a Second Amended Complaint.

B. Without the judicially privileged averments, Ambox fails to state a cause of action and demurrer is the result.

Demurrer is the proper standard of review here because Ambox's Amended Complaint is factually insufficient without the judicially protected statements.

A party may file preliminary objections in the nature of a demurrer to challenge a pleading that is legally insufficient when the pleading fails to state a cause of action on which relief can be granted under any legal theory.⁵ Courts sustain demurrer when it is clear and free from doubt that the facts as pleaded are legally insufficient.⁶ Additionally, “courts must grant leave to amend the challenged pleading where there is some reasonable possibility that the amendment can be accomplished successfully.”⁷

Here, Ambox’s Amended Complaint, without judicially protected averments, states insufficient potential evidence to give its falsehood and tortious interference claims a chance to go forward. We offered Ambox an opportunity to fix the problem in a pleading---and the company decided not to.

III. CONCLUSION

For these reasons, this court respectfully requests that demurrer be affirmed.

BY THE COURT



RAMY I. DJERASSI, J.

⁵ Pa. R.C.P. 1028(a)(4).

⁶ See *Chester Upland Sch. Dist. v. Rossi*, 2022 Pa. Commw. LEXIS 53, 275 A.3d 1117, 1124 n.9 (Pa. Commw. Ct. 2022); *C.G. v. J.H.*, 2017 Pa. Super. 320, 172 A.3d 43, 54 (Pa. Super. 2017), *affirmed*, 193 A.3d 891 (Pa. 2018).

⁷ *Harley Davidson Motor Co. v. Hartman*, 296 Pa. Super. 37, 442 A.2d 284, 286 (Pa. Super. 1982).