THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

JOVON WOODWARD and JAMES JACKSON,	:	**TRIAL DIVISION- CIVIL**
Appellants	:	**AUGUST TERM, 2010**
	:	**No. 4924**
v.	:	
	:	**Superior Court No.**
VIROPHARMA INCORPORATED and THE HANKIN GROUP and THE HANKIN GROUP, INC. and BUDGET MAINTENANCE, INC. and JIMMY BOOT, INC. d/b/a BUDGET MAINTENANCE,	:	**3222 EDA 2011**
Appellees	:	

OPINION

PROCEDURAL HISTORY

Plaintiff appeals this Court's Orders dated June 10, 2011 and October 18, 2011, granting the Preliminary Objections submitted by Viropharma Incorporated, the Hankin Group, the Hankin Group, Inc., Budget Maintenance, Inc. and Jimmy Boot, Inc. d/b/a Budget Maintenance, thereby dismissing Plaintiffs' Complaint.

FACTUAL BACKGROUND

Plaintiffs commenced this action by Writ of Summons on September 3, 2010. Plaintiffs, Jovon Woodward and James Jackson were employed by Defendant, Budget Maintenance, Inc. (hereinafter "Budget") as custodial workers. (Plaintiffs' Amended Complaint, ¶¶ 7-8).

On September 8, 2009, Plaintiffs Woodward and Jackson performed custodial services for Budget customers, Viropharma Incorporated (hereinafter "Viropharma")

and/or the Hankin Defendants. (Plaintiffs' Amended Complaint, ¶ 32). On September 9, 2009, Defendants Viropharma and/or the Hankin Defendants reported the theft of a laptop computer to the Upper Uwchlan Police Department. (Plaintiffs' Amended Complaint, ¶ 36). Plaintiffs allege that Defendants Viropharma and the Hankin Defendants asserted to both the Upper Uwchlan Police Department and Budget that they suspected that the theft was committed by certain members of the cleaning crew and that they would give these "suspects" the opportunity to return the laptop. (Plaintiffs' Amended Complaint, ¶¶ 37, 40).

On September 9, 2009, Budget telephoned Plaintiffs to request that they come into work early. (Plaintiffs' Amended Complaint, ¶ 43). Upon arrival, Plaintiffs were separately interrogated by Upper Uwchlan Police and several unnamed representatives of Budget, Viropharma and/or the Hankin Defendants. (Plaintiffs' Amended Complaint, ¶ 44). During the interrogation, Plaintiff Jackson was told that he was captured on video surveillance leaving the premises with the stolen laptop, which he denied. (Plaintiffs' Amended Complaint, ¶ 45). Plaintiff Jackson stated that when he left the premises, he was carrying two free Snapple bottles from the cafeteria and his cell phone. *Id.* Plaintiff Woodward was told that she was captured on video surveillance leaving the premises with Plaintiff Jackson, and they suspected that she was acting as Jackson's accomplice. (Plaintiffs' Amended Complaint, ¶ 46). Plaintiff Woodward replied that she did not know anything about the theft of the laptop and that Plaintiff Jackson was carrying two free bottles of Snapple, not a laptop when he exited the premises. *Id.*

Plaintiffs allege that following the interrogation, they were escorted from the premises by Defendant Budget at the direction of Viropharma and the Hankin

Defendants. (Plaintiffs' Amended Complaint, ¶ 47). Later that day, Plaintiffs were told that they were banned from the premises by the Hankin Defendants for stealing the laptop computer. *Id.*

Sometime thereafter, Budget informed Plaintiffs that it had viewed the videotape and determined that Plaintiff Jackson was in fact carrying the Snapple bottles and not a laptop computer. (Plaintiffs' Amended Complaint, ¶ 50). Plaintiffs then allege that Budget apologized for falsely accusing them of stealing the laptop and promised them continued employment. (Plaintiffs' Amended Complaint, ¶ 51).

Plaintiffs contend that Budget informed Viropharma and the Hankin Defendants that the video surveillance exculpated the Plaintiffs, but they refused to watch the video. (Plaintiffs' Amended Complaint, ¶¶ 54-55). Plaintiffs then allege the development of a common scheme among Viropharma, the Hankin Defendants and Budget. Plaintiffs describe the common scheme as follows:

> Wielding its lucrative maintenance contract as leverage over the head of Defendant Budget, the remaining Defendants wrongfully and maliciously induced Defendant Budget to participate in an unlawful common scheme that would continue to maintain the false and baseless position that Plaintiffs were thieves and that Plaintiffs were thus forever barred from the above premises, and would wrongfully retaliate against Plaintiffs for daring to have protested their innocence and to have welcomed the support and advocacy of Defendant Budget. (Plaintiffs' Amended Complaint, ¶ 57).

In furtherance of this scheme, Budget allegedly accused Plaintiffs of stealing the Snapple bottles that Plaintiffs asserted were complimentary and on September 22, 2009, sent termination letters to Plaintiffs. (Plaintiffs' Amended Complaint, ¶¶ 59-60). In the termination letters sent to Plaintiffs, Budget cited work rule 31 and work rule 33 as the bases for Plaintiffs' termination. (Plaintiffs' Amended Complaint, ¶ 61). Work rule 31

states, “If a customer of Budget Maintenance, Inc. asks that a company employee be removed from a job site or building, that employee may be terminated, depending on the circumstances, at the discretion of Budget Maintenance, Inc.” (Plaintiffs’ Amended Complaint, ¶ 62). Work Rule 33 states that, “Any employee who removes customer property from a job site without permission will be terminated immediately.” (Plaintiffs’ Amended Complaint, ¶ 63).

As a result of the events culminating in Plaintiffs’ termination, Plaintiffs assert claims for defamation, invasion of privacy-false light, invasion of privacy – intrusion upon seclusion, breach of contract, promissory estoppel, intentional interference with contractual relations, wrongful discharge, concerted tortious conduct and civil conspiracy.

Plaintiffs commenced this action by Writ of Summons on September 3, 2010. (See Docket). Budget filed a Rule to File Complaint on October 7, 2010. *Id.* Plaintiffs were granted a continuance on November 22, 2010. *Id.* The Hankin Defendants filed a Rule to File a Complaint on November 29, 2010. *Id.* Plaintiffs filed their Complaint on December 17, 2010. *Id.*

Viropharma filed Preliminary Objections to Plaintiffs’ Complaint on February 2, 2011. *Id.* The Hankin Defendants filed their Preliminary Objections on February 7, 2011, and Budget filed Preliminary Objections the following day. *Id.*

Plaintiffs filed their Amended Complaint on February 23, 2011. *Id.* Budget filed Preliminary Objections to Plaintiffs’ Amended Complaint on March 14, 2011. *Id.* Viropharma and the Hankin Defendants each filed Preliminary Objections to Plaintiffs’ Amended Complaint on March 15, 2011. *Id.*

Plaintiffs filed a Second Amended Complaint on April 1, 2011. *Id.* Budget filed Preliminary Objections to Plaintiffs' Second Amended Complaint on April 13, 2011, and Plaintiffs filed an Answer on May 2, 2011. *Id.* The Hankin Defendants filed Preliminary Objections to Plaintiffs' Second Amended Complaint on April 19, 2011, Plaintiffs filed an Answer on May 6, 2011, and the Hankin Defendants filed a Reply in Support of Preliminary Objections on May 12, 2011. *Id.* Viropharma filed Preliminary Objections to Plaintiffs' Second Amended Complaint on April 20, 2011, Plaintiffs filed an Answer on May 9, 2011, and Viropharma filed a Reply in Support of Preliminary Objections on June 2, 2011. *Id.*

On June 10, 2011, this Court granted Budget's Preliminary Objections, dismissing Counts 1-10 of Plaintiffs' Complaint as legally insufficient. *Id.* On June 10, 2011, this Court also granted Viropharma and the Hankin Defendant's Preliminary Objections, dismissing Plaintiffs' Second Amended as to Viropharma and the Hankin Defendants. *Id.*

On July 8, 2011, Plaintiffs appealed this Court's Orders dismissing Viropharma and the Hankin Defendants. *Id.*[1] On August 3, 2011, Plaintiffs were ordered to file their Concise Statement of Errors Complained of on Appeal. *Id.* Plaintiffs did so on August 24, 2011. *Id.*

On June 28, 2011, Budget filed a Motion for Reconsideration of the Court's June 10, 2011 Order. *Id.* On October 18, 2011, this Court granted Budget's Motion for Reconsideration, sustaining Budget's Preliminary Objections to Plaintiffs' Second Amended Complaint, thereby dismissing Budget as a party to the action. *Id.*

On November 11, 2011, Plaintiffs appealed this Court's Orders of June 10, 2011 and October 18, 2011. *Id.* On November 21, 2011, Superior Court quashed Plaintiffs'

[1] 1918 EDA 2011 and 1919 EDA 2011

two earlier appeals filed on July 8, 2011, leaving only the appeal of November 20, 2011. *Id.*

On December 7, 2011, this Court ordered Plaintiffs to file their Concise Statement of Errors on Appeal, and Plaintiffs complied on December 19, 2011. *Id.* On appeal, Plaintiffs contend that this Court erred by dismissing Plaintiffs' claims against Viropharma, the Hankin Defendants and Budget for defamation, invasion of privacy – false light, invasion of privacy – intrusion upon seclusion, concerted tortious conduct, civil conspiracy, intentional interference with contractual relations and punitive damages.

LEGAL ANALYSIS

A Preliminary Objection in the nature of a demurrer tests the legal sufficiency of the Plaintiff's Complaint. *Smith v. Wagner*, 403 Pa. Super. 316, 320, 588 A.2d. 1308, 1310 (1990). The standard of review in granting Preliminary Objections is that "all material facts set forth in the Complaint, as well as all inferences reasonably deducible therefrom, are admitted as true." *Youndt v. First Nat'l Bank*, 2005 Pa. Super. 42, P2, 868 A.2d 539, 542 (2005). "A preliminary objection in the nature of a demurrer must be sustained where it is clear and free from doubt that the law will not permit recovery under the facts alleged." *Petsinger v. Dept. of Labor & Indus*., 988 A.2d 748, 753 (Pa.Commw. Ct. 2010) (citing *Africa v. Horn*, 701 A.2d 273 (Pa.Commw. Ct. 1997)).

The Supreme Court has described the heavy burden facing an appellant from a discretionary trial court determination: "[I]t is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power." *In re Estate of Mackarus*, 431 Pa. 585, 596, 246 A.2d 661, 666-

67 (1968). An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused. *Brown v. Delaware Valley Transplant Program*, 371 Pa. Super. 583, 586, *538 A.2d 889, 891 (1988).* If there is any basis for the trial court's decision, the decision must stand. *Id.*

Pennsylvania Rule of Civil Procedure 1028(a)(4) establishes the right of a party to file preliminary objections to any pleading on the grounds of legal insufficiency. On appeal, Plaintiffs contend that this Court erred by dismissing Plaintiffs' claims against Viropharma, the Hankin Defendants and Budget for defamation, invasion of privacy – false light, invasion of privacy – intrusion upon seclusion, concerted tortious conduct, civil conspiracy, intentional interference with contractual relations and punitive damages.

Under Pennsylvania's Uniform Single Publication Act, 42 Pa. C.S. §§ 8343(a), a plaintiff claiming defamation has the burden of proving:

1) the defamatory nature of the alleged communication(s);
2) the publication of the communication(s) by the defendant;
3) the application of the communication to the plaintiff;
4) the recipient's understanding of the communication's meaning;
5) the recipient's understanding that the communication is intended to be applied to plaintiff;
6) special harm resulting to the plaintiff; and,
7) abuse of a conditionally privileged occasion.

"A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Maier v. Maretti*, 448 Pa. Super. 276, 282 671 A.2d. 701, 704 (1995). *See also Rybas v. Wapner*, 311 Pa. Super. 50, 457 A.2d 108 (1983). In determining whether or not the communication at issue is capable of a defamatory

meaning, the court must consider such factors as, the likely effect of the communication on average recipients, taking into account their knowledge and expertise, and the nature of the audience. *Id.* at 282-83, 704. Additionally, the communication must be published - the defamatory statement must be communicated to a third person. *Sobel v. Wingard*, 366 Pa. 482, 486, 531 A.2d 520, 522 (1987).

The first defect in Plaintiff's claim for defamation is that Plaintiffs fail to allege the identity of the recipients of the communication. *Raneri v. DePolo*, 65 Pa. Commw. 183, 186, 441 A.2d 1373, 1375 (1982). "[P]ublication to an *identified* third person is an essential element of actionable defamation." *Raneri v. DePolo*, 65 Pa. Commw. 183, 186, 441 A.2d 1373, 1375 (1982)(emphasis in original). Because Plaintiffs have failed to allege with particularity the identity of the persons to whom the statements in question were made, Plaintiffs' claim for defamation must fail.

Furthermore, a privilege to publish a communication may defeat liability for defamation. *Agriss v. Roadway Express, Inc.*, 334 Pa. Superior Ct. 295, 483 A.2d 456 (1984). "An employer has an absolute privilege to publish defamatory matters in notices of employee terminations." *DeLuca v. Reader*, 227 Pa. Superior Ct. 392, 323 A.2d 309 (1974); *Agriss*, supra.

For example, in *Sobel*, Defendant was the principal of the high school for the Downingtown Area high school, and Plaintiff was a substitute teacher for the Downingtown Area School District. Defendant principal sent Plaintiff a letter, copying the school's personnel director and secondary education director, stating that Plaintiff's services as a teacher would no longer be needed because of problems with lesson plans,

taking of attendance and preparation of the day's activities reports. On the basis of these facts, Plaintiff sued for defamation.

The Court in *Sobel* concluded, "The instant publication is solely related to plaintiff's employment and his work performance. It is addressed only to him and to limited supervisory personnel. As such it is not capable of defamatory meaning." *Sobel v. Wingard*, 366 Pa. Super. 482, 487, 531 A.2d 520, 522 (1987).

In the instant matter, the communication alleged to be defamatory concerned Plaintiffs' work performance. Plaintiffs were employed by Budget, a contract maintenance company in the business of providing commercial cleaning and other custodial services. Budget had a contract for custodial services with the Hankin Defendants and Viropharma, and Plaintiffs were assigned by Budget to perform this contract.

On September 9, 2009, representatives of the Hankin Defendants and Viropharma communicated to Budget that they believed that Plaintiffs had stolen a laptop computer from the premises, which warranted Plaintiffs' immediate termination under employee Work Rule No. 33. All communications regarding the stolen laptop were between the Hankin Defendants, Viropharma, Budget and the Upper Uwchlan police. The communications between the Hankin Defendants, Viropharma and Budget related to the possibility of Plaintiffs' termination as provided for by Work Rule Nos. 31 and 33; therefore, the communications were privileged.

As the communications at issue concerned Plaintiffs' work performance and were made to limited supervisory personnel whom Plaintiffs fail to identify in their Complaint, the communications were privileged, and Defendants are not liable for defamation.

Plaintiffs' next assertion is that this Court erred in dismissing Plaintiffs' claims for invasion of privacy – false light and invasion of privacy – intrusion upon seclusion.

Invasion of privacy – false light is governed by Restatement (Second) of Torts § 652E, "Publicity Placing Person in False Light," which states,

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of [her] privacy, if
>
> (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
> (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Restatement (Second) of Torts § 652E.

Under subsection E, "publicity" means "that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." *Id.* at § 652E, *Comment a*. "Thus, it is not an invasion of the right of privacy…to communicate a fact concerning the plaintiff's private life to a single person or even to a small group of persons." *Id.* "The plaintiff must also establish the publicity given to her is such that a reasonable person would feel justified in feeling seriously aggrieved by it." *Id.* at § 652E, *Comment c*.

First, Plaintiffs do not identify the recipients of the communication, referring to the recipients only as an Upper Uwchlan police officer and several representatives of Budget, Viropharma and/or the Hankin Defendants. Second, there is no assertion by Plaintiffs that the communications went beyond the unnamed individuals present during the interrogation; therefore, the matter cannot be said to have been communicated to the public, and Plaintiffs claim for invasion of privacy – false light must fail.

Invasion of privacy – intrusion upon seclusion is governed by Restatement (Second) of Torts §652B, which states, "One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another in his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person." Restatement (Second) of Torts § 652B. "The Defendant is subject to liability under the rule stated in this section only when he has intruded into a private seclusion that the Plaintiff has thrown about his person or affairs." *Id.* at § 652B, *Comment c*.

Plaintiff cites *Geary v. United States Steel Corp.*, a case of alleged wrongful discharge, for a claim of intrusion upon seclusion by an employer. *Geary v. United States Steel Corp.*, 319 A.2d 174, 184 (Pa. 1974). The Court in *Geary* held,

> It may be granted that there are areas of an employee's life in which his employer has no legitimate interest. An intrusion into one of these areas by virtue of the employer's power of discharge might plausibly give rise to a cause of action, particularly where some recognized facet of public policy is threatened… We hold only that where the complaint itself discloses a plausible and legitimate reason for terminating an at-will employment relationship and no clear mandate of public policy is violated thereby, an employee at will has no right of action against his employer for wrongful discharge. *Geary v. United States Steel Corp.*, 319 A.2d 174, 184-5 (Pa. 1974).

In the instant matter, Defendants did not intrude into Plaintiffs' private seclusion. Plaintiffs were on the premises on behalf of their employer in a public area in which there was no expectation of privacy; therefore, any alleged intrusion would not be highly offensive to a reasonable person. Additionally, Budget had a legitimate reason for terminating Plaintiffs because the Hankin Defendants and Viropharma requested Plaintiffs' termination following the September 9, 2009 incident, and Work Rule 31 permitted Budget to terminate any employee upon the request of a customer that an

employee be removed from the job site. Therefore, Plaintiffs' reliance on *Geary* is misplaced.

Plaintiff also asserts a claim for Intentional Interference with Contractual Relations. Restatement (Second) of Torts § 766 states, "One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract."

However, Plaintiffs were employees at-will and as employees at-will, Plaintiffs did not have a contractual relationship with their employer, Budget.

> The appellate courts of Pennsylvania have provided a significant body of law analyzing various issues relating to termination of employment, and, in particular, issues related to the application of the at-will employment doctrine. From these cases, certain principles or rules of law have become well-settled. First and foremost is the principle that, absent a valid contract providing to the contrary or other recognized exception, "employees may be discharged at any time, for any reason, or for no reason at all." *Darlington v. General Electric*, 350 Pa. Super. 183, 188, 504 A.2d 306, 309 (1986) (citations omitted); *see also, Geary v. United States Steel Corp.*, 456 Pa. 171, 175, 319 A.2d 174, 176 (1974) ("[a]bsent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason."). Moreover, because the at-will doctrine is a presumption, the burden of proving that one is not employed at-will rests squarely upon the employee. *Greene v. Oliver Realty, Inc.*, 363 Pa.Super. 534, 526 A.2d 1192, *alloc. den'd.*, 517 Pa. 607, 536 A.2d 1331 (1987).
>
> The clearest manner in which a party can overcome the at-will doctrine is where the employer and the employee have entered into a contract which expresses a definite term of employment and forbids discharge in the absence of "just cause" or without first utilizing an internal dispute resolution mechanism. A clear and definite intention to overcome the presumption must be expressed in the contract. *Scott v. Extracorporeal, Inc.*, 376 Pa.Super. 90, 545 A.2d 334 (1988); *Veno v. Meredith*, 357 Pa.Super. 85, 515 A.2d 571 (1986).

Rutherfoord v. Presbyterian-University Hospital, 417 Pa. Super. 316, 322-23, 612 A.2d 500, 503 (1992).

In the instant matter, Plaintiffs have the burden of proving that they were not employed at-will, yet Plaintiffs have not asserted either the existence of an employment contract or that Budget's employee manual was offered to Plaintiffs as part of an offer of employment with Budget. Therefore, in the absence of an employment contract, Plaintiffs could be discharged for any reason or no reason at all, and any claim for Intentional Interference with Contractual Relations must necessarily fail because Plaintiffs were not employed pursuant to a contract with Budget.

Plaintiffs further allege a claim for civil conspiracy. **"**A civil conspiracy is a combination of two or more persons to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose." *Raneri v. DePolo*, 65 Pa. Commw. 183, 187, 440 A.2d 1373, 1376 (1982). The goal of a civil conspiracy must be set forth with "convenient certainty." *Id.* at n. 5.

Plaintiffs have failed to successfully plead any unlawful acts committed by Defendants; therefore, any claim for conspiracy to commit unlawful acts must likewise fail. Therefore, this Court did not err in dismissing Plaintiffs' claims for conspiracy.

Plaintiffs' claim for concerted tortious conduct is governed by Restatement (Second) of Torts § 876, which states,

> For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he
>
> (a) Does a tortious act in concert with the other or pursuant to a common design with him, or
> (b) Knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or

(c) Gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

Because Plaintiffs' underlying tort claims were dismissed, there can be no claim for concerted tortious conduct.

Lastly, Plaintiff asserts that this Court erred by dismissing Plaintiffs' claim for punitive damages.

A request for punitive damages does not constitute a cause of action in and of itself, but is incidental to another claim. *Nix v. Temple Univ. of the Commw. Sys. of Higher Educ.*, 408 Pa. Super. 369, 380, 596 A.2d 1132, 1138 (1991). "Since punitive damages are an element of damages arising out of the initial cause of action, if that cause of action is dismissed, the punitive damages which are incident to actual damages cannot stand." *Kirkbridge v. Lisbon Contractors, Inc.*, 521 Pa. 97, 101, 55 A.2d 800, 802 (1989).

The Superior Court has followed Restatement (Second) of Torts §908[2] regarding the award of punitive damages, which states,

> (2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

Defendant's conduct must have been intentional, reckless or malicious in order to warrant an award of punitive damages. *Feld v. Merriam*, 506 Pa. 383, 396, 485 A.2d 742, 748 (1984). In assessing whether or not the Defendant acted with reckless indifference, the Court will consider whether Defendant knew or should have known facts that created

[2] *Feld v. Merriam*, 506 Pa. 383, 395, 485 A.2d 742, 747 (1984)(applying Restatement (Second) of Torts §908(2) for a claim of punitive damages).

a high risk of physical harm to Plaintiff and whether Defendant acted in conscious disregard of that risk. *Field v. Philadelphia Elec. Co.*, 388 Pa. Super. 400, 425, 565 A.2d 1170, 1182 (1989). "If the defendant actually does not realize the high degree of risk involved, even though a reasonable man in his position would, the mental state required for the imposition of punitive damages under Pennsylvania law is not present." *Id.* Ordinary negligence will not form the basis of an award of punitive damages. *McDaniel v. Merck, Sharp & Dohme*, 367 Pa. Super. 600, 623, 533 A.2d 436, 447 (1987).

In the instant matter, Defendants' actions were not the product of an evil motive or reckless indifference to the rights of others and because Plaintiffs' substantive claims were dismissed, and a request for punitive damages must be incidental to another claim, Plaintiffs cannot recover punitive damages.

CONCLUSION

For the foregoing reasons, this Court respectfully requests that its decision to grant Defendants Viropharma Incorporated, the Hankin Group, the Hankin Group, Inc., Budget Maintenance, Inc. and Jimmy Boot, Inc. d/b/a Budget Maintenance's Motions for Summary Judgment be **AFFIRMED**.

BY THE COURT:

5-25-2012

DATE **ALLAN L. TERESHKO, J.**

cc:
All Counsel
Mark A. Sereni, Esq.,/Lisanne L. Mikula, Esq., for Appellants Woodward and Jackson
Mark L. Parisi, Esq., for Appellee Viropharma
Stephen Andrew Steinen, Esq., for Appellee The Hankin Group
Jacqueline K. Lisiewski, Esq.,/Colleen Mary O'Donnell, Esq., for Appellee Budget Maint.