

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

YOUNG LAW GROUP, P.C.,	:	December Term 2014	DOCKETED
f/d/b/a EGAN YOUNG ATTORNEYS AT LAW,	:		
et.al.,	:	No. 846	JUL 16 2015
	:		R. POSTELL
Plaintiffs,	:	Commerce Program	COMMERCE PROGRAM
v.	:		
MATTHEW B. WEISBERG, ESQUIRE	:		
Individually and d/b/a WEISBERG LAW, ET.AL.,	:	Control Numbers	
	:	15041109/15040267	
Defendants.	:		
	:		

ORDER

AND NOW, this *16th* day of July 2015, upon consideration of Defendants Erick Litts, Harold Litts, Joann Litts, B&E Dimensional Stone Works LLC and Litts & Sons Stone Company's Preliminary Objections to Plaintiffs' Amended Complaint (cn 15040267) and Defendants Matthew B. Weisberg, Esquire, Individually and d/b/a Weisberg Law, Weisberg Law, P.C., and David A. Berlin, Esquire's Preliminary Objections to Plaintiffs Amended Complaint (cn 15041109) and all responses in opposition, it hereby is **ORDERED** that the Preliminary Objections are **Sustained in part** as follows:

1. Count IV (abuse of process) and all derivative claims related to said claim are dismissed.
2. Count VI (negligent supervision) is dismissed.
3. Paragraphs 8 and 54 are stricken.

Young Law Group, P.C. F-ORDOP



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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,

A handwritten signature in black ink, appearing to read "Patricia A. McInerney, J.", written in a cursive style.

PATRICIA A. McINERNEY, J.

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	:	
Defendants.	:	15041109/15040267
	:	
	:	

OPINION

Presently before the court are the respective preliminary objections of defendants Matthew B. Weisberg, Esquire, individually and d/b/a Weisberg Law, P.C. d/b/a Weisberg Law and David A. Berlin, Esquire c/o Weisberg Law, P.C. (“Attorney Defendants”) and defendants Erick P. Litts, Harold & Joann Litts, B&E Dimensional Stone Works, LLC and Litts & Sons Stone Company, Inc. (“Litts Defendants”). This action for defamation and abuse of process arises from an underlying legal malpractice action.¹ Plaintiffs are attorneys Gerard Egan, Esquire, Eric Young, Esquire and the law firm Young Law Group, P.C. (“Plaintiffs”). Plaintiffs previously represented defendant B&E Dimensional Stone Works, LLC (“B&E”) in a trademark litigation matter filed in federal court. B&E is a family business alleged to be owned and operated by Erick Litts, Harold Litts and Joann Litts. During the trademark litigation, the Litts and plaintiffs had irreconcilable differences and plaintiffs petitioned to withdraw as counsel. The Litts retained successor counsel who settled the federal trademark action.

¹ The legal malpractice action is captioned *Litts et.al. v. Egan et. al.*, 1402-2057.

After the federal litigation terminated, the Litts retained attorney defendants to represent them in a legal malpractice case against plaintiffs. The legal malpractice action was commenced by writ of summons on February 20, 2014. In the legal malpractice action, the Litts allege that plaintiffs did not properly plead common law trademark infringement and failed to include protective language in pre withdrawal settlement agreements with some of the defendants which potentially exposed B&E to future competition from those defendants. The Litts and the attorney defendants also allege that plaintiffs forged Harold Litts' signature to multiple releases prior to their withdrawal from the federal court litigation as counsel.

After the complaint was filed, defendant attorney Weisberg communicated and faxed a copy of the legal malpractice complaint filed against plaintiffs to a reporter at Law360, a major publisher of legal news owned by LexisNexis and Reed Elsevier, a large multinational publishing company. The amended complaint alleges that on March 20, 2014, Law360 published an article on its website summarizing the case from the allegations in the complaint. Additionally, the article also quoted extra-judicial comments made by plaintiffs herein as well as attorney defendant Weisberg to the Law360 reporter. The extra-judicial comments are as follows:

...In an email to Law360, an attorney for the firm said that the allegations were untrue, and pointed out that the complaint lacked a formal verification signed by the plaintiffs.

Matthew Weisberg, an attorney with Weisberg Law PC representing the plaintiffs, said that the lack of formal verification was not a reflection on the accuracy of the allegations in the suit.

“The omission of a client verification is not an indication of some failing in veracity,” he said in an email. “To the extent defendants formally require a verification, one will be appended. Simply, this is a non-issue.”²

² Amended Complaint ¶66.

Plaintiffs' amended complaint alleges that attorney defendant Weisberg confirmed the validity of the allegations in the complaint including the allegation that attorney Egan forged B&E's owner's signature on multiple releases. The amended complaint further alleges that the Litts defendants authorized and ratified attorney defendant Weisberg's statements to Law 360. Plaintiffs allege that they have been significantly harmed by the Law360 article and have suffered pecuniary and reputational harm.

The amended complaint further alleges that defendants abused the process in the underlying legal malpractice case for improper purpose to harass and terrorize plaintiffs and to cause them to settle the legal malpractice case. Specifically, plaintiffs allege that defendants abused the process by using legal processes (including the forgery allegations, discovery responses, abusive discovery tactics, misrepresentations of facts, using false allegations as a negotiating tool, improperly seeking amendment, failing to timely review evidence, purposefully withholding discovery responses, repeatedly issuing unverified filings and discovery responses, issuing patently defective filings and discovery responses; repeating false allegations in multiple pleadings, discovery responses and filings after the case was initiated) in order to terrorize and harass and to pursue allegations of forgery after knowing that there was no basis to do so other than to improperly harm plaintiffs.

In December 2014, the instant action was commenced by plaintiffs against defendants alleging claims for defamation, false light, disparagement-injurious falsehood, abuse of process, vicarious liability/*respondeat superior*, negligent supervision, aiding and abetting tortuous conduct and conspiracy. Defendants filed preliminary objections. Plaintiffs filed an amended complaint to which the defendants filed the instant preliminary objections.

DISCUSSION

A. The claim for abuse of process is dismissed.

Pennsylvania common law defines a cause of action for abuse of process as follows:

The tort of ‘abuse of process’ is defined as the use of legal process against another primarily to accomplish a purpose for which it is not designed. To establish a claim for abuse of process it must be shown that the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm that has been caused to the plaintiff.³

The gravamen of abuse of process is the perversion of the particular legal process for a purpose to benefit the defendant, which is not an authorized goal of the procedure. In support of this claim, the plaintiff must allege some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process. No liability exists where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.⁴ The substance of the misconduct for which liability is imposed is not the wrongful procurement of the legal process or the wrongful initiation of the proceedings. Abuse of process is the misuse of process for any purpose other than that which it was designed to accomplish.⁵

The word process as used in the tort of abuse of process is interpreted broadly, and encompasses the entire range of procedures incident to the litigation process. The significance of the word “primarily” is that there is no action for abuse of process when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the defendant. The usual case of abuse of process is one of some form of

³ *Lerner v. Lerner*, 954 A.2d 1229 (Pa. Super. 2008).

⁴ *Id.*, citing *Shiner v. Moriarty*, 706 A.2d 1228, 1236 (Pa. Super 1998).

⁵ *Id.* citing *Rosen v. American Bank of Rolla*, 426 Pa. Super. 376, 627 A.2d 190, 192 (1993).

extortion, using the process to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it. ⁶

In the case *sub judice*, plaintiffs painstakingly allege all the processes used in the underlying legal malpractice action, a majority of which was undertaken by plaintiffs to vindicate themselves from the forgery allegations. Absent from the amended complaint, however, are any factual allegations that defendants abused any process. The only legal processes allegedly used by defendants was the filing of the legal malpractice complaint and the amended complaint, the filing of a motion to amend, the filing of a reply to new matter, the filing of praecipes to substitute verifications to pleadings and discovery, submission of discovery responses, a subpoena, and the cancelling of depositions. The mere filing of a complaint and the amending of the complaint is not the type of process to which abuse of process applies.⁷ As for the remaining processes there are no allegations that said processes were “primarily” used to accomplish an improper purpose. Although an incidental motive of spite or an ulterior purpose to benefit defendants is pled, an action for abuse of process does not exist when the process is used for the purpose for which it is intended. For instance, the entirely justified prosecution of another on a criminal charge, does not become abuse of process merely because the instigator dislikes the accused and enjoys doing him harm; nor does the instigation of justified bankruptcy proceedings become abuse of process merely because the instigator hopes to derive benefit from the closing down of the business of a competitor. ⁸ In order to state a cause of action for abuse of

⁶ *Rosen v. American Bank of Rolla*, 426 Pa. Super. 376, 627 A.2d 190, 192 (1993).

⁷ See, *Rosen v. Tesoro Petroleum Corp.*, 399 Pa. Super. 226, 582 A.2d 27 (1990)(A complaint fails to state a cause of action for abuse of process where the complaint charges the initiation of litigation for a wrongful purpose but does not charge any perversion of properly issued process or coercive use of process.).

⁸ Restatement (Second) of Torts § 682 (1977).

process, the amended pleading must allege use of the process for an immediate purpose other than that for which it was designed and intended. Here, the amended complaint fails to allege any perversion of properly issued process or coercive use of process primarily for an improper purpose. Even accepting as true all well-pleaded facts in the amended complaint, as well as all inferences reasonably deducible there from, plaintiffs have failed to plead facts sufficient to support an abuse of process against any of the defendants. Accordingly, the claim for abuse of process is dismissed. Additionally, all derivative claims alleged in the amended complaint associated with tort are also dismissed.

B. The claim for Negligent Supervision is dismissed against the Litts defendants.

In count VI of the amended complaint, plaintiffs purport to state a claim against the Litts defendants for negligent supervision. In paragraph 191, plaintiffs allege “The Litts Defendants repeatedly endorsed, validated and verified false allegations of forgery and negligently supervised the Attorney Defendants by insisting that they press these false allegations when all defendants knew them to be false.” To recover for negligent supervision under Pennsylvania law, a plaintiff must prove that his loss resulted from (1) a failure to exercise ordinary care to prevent an intentional harm by an employee acting outside the scope of his employment, (2) that is committed on the employer’s premises, (3) when the employer knows or has reason to know of the necessity and ability to control the employee. It is specifically predicated on two duties of an employer: the duty to reasonably monitor and control the activities of an employee, and the duty to abstain from hiring an employee and placing that employee in a situation where the employee will harm a third party.⁹

⁹ *Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 487-89 (3d Cir. 2013) citing *Dempsey v. Walso Bureau, Inc.*, 431 Pa. 562, 246 A.2d 418, 420 (1968); *Heller v. Patwil Homes, Inc.*, 713 A.2d 105, 107–08 (Pa.Super.Ct.1998).

A lawyer in private practice, retained to handle a particular matter, as the attorney defendants were in this case, acts on behalf of his or her clients in the capacity of an independent contractor, not an employee.¹⁰ Since the relationship between attorney and client is not of employer/employee the tort of negligent supervision may not be pled. Accordingly, the claim of negligent supervision is dismissed.¹¹

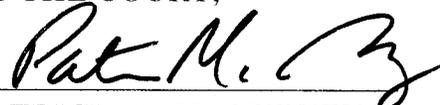
CONCLUSION

For the forgoing reasons, defendants' preliminary objections are sustained in part and overruled in part as follows:

1. Count IV (abuse of process) and all derivative claims related to said claim are dismissed.
2. Count VI (negligent supervision) is dismissed.
3. Paragraphs 8 and 54 are stricken.

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,



PATRICIA A. McINERNEY, J.

¹⁰ *McCarthy v. Recordex Serv., Inc.* 80 F.3d 842, 853 (3d Cir. 1996).

¹¹ The court also finds that paragraphs 8 and 54 of the amended complaint are stricken as impertinent pursuant to Pa. R. Civ. P. (a)(2). All other preliminary objections are overruled.