

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

PAUL A. CZECH, individually and d/b/a	:	October Term 2002
YB ENTERTAINMENT GROUP	:	No. 00148
	:	
Plaintiff,	:	
	:	
v.	:	Commerce Program
	:	
GEOFFREY GORDON, ELECTRIC FACTORY	:	
ENTERTAINMENT, INC., et al.	:	
	:	Control Nos. 060823, 061008
Defendants.	:	

ORDER and MEMORANDUM

AND NOW, this 21st day of October, 2003, upon consideration of the separate Preliminary Objections of Defendants Geoffrey Gordon, Electric Factory Concerts, Inc. and SFX Entertainment, Inc. d/b/a Clear Channel Entertainment (the “Electric Factory Defendants”) and Defendants Clear Channel Communications, Inc., Clear Channel Broadcasting, Inc., Clear Channel Radio, LLC and WIOQ (the “Q102 Defendants”), all responses thereto, all other matters of record, and in accordance with the Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** as follows:

1. Defendants’ Preliminary Objections to Counts V (invasion of privacy/false light), VII (injurious falsehood) and VIII (conspiracy) are **SUSTAINED** and such counts are **DISMISSED**;
2. The Q102 Defendants’ Preliminary Objections to Count III (interference with existing contractual relations) are **SUSTAINED** and Count III is **DISMISSED** as to Defendants Clear Channel Communications, Inc., Clear Channel Broadcasting, Inc., Clear Channel Radio, LLC and WIOQ; and
3. The remainder of Defendants’ Preliminary Objections are **OVERRULED**.

Defendants are directed to answer the remainder of Plaintiff’s Complaint within twenty

(20) days from the date of entry of this Order.

BY THE COURT:

GENE D. COHEN, J.

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MEMORANDUM OPINION

GENE D. COHEN, J.

Before the Court are the separate Preliminary Objections of Defendants Geoffrey Gordon, Electric Factory Concerts, Inc. and SFX Entertainment, Inc. d/b/a Clear Channel Entertainment¹ (the “Electric Factory Defendants”) and Defendants Clear Channel Communications, Inc., Clear Channel Broadcasting, Inc., Clear Channel Radio, LLC and WIOQ (the “Q102 Defendants”). For the reasons fully set forth below, said Preliminary Objections are **sustained in part and overruled in part.**

BACKGROUND

For present purposes, this court accepts as true the facts alleged in Plaintiff’s Second Amended Complaint (the “Complaint”).² Smith v. Wagner, 403 Pa. Super. 316, 588 A.2d 1308

¹ SFX Entertainment, Inc. d/b/a Clear Channel Entertainment has been sued herein as Clear Channel Entertainment, Inc.

² To determine if a pleading meets Pennsylvania’s specificity requirements, a court must ascertain whether the allegations are “sufficiently specific so as to enable [a] defendant to prepare [its] defense.” Smith, 403 Pa. Super. at 319, 588 A.2d at 1310; In re Barnes Foundation, 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (Pa. Super. 1995)(“a pleading should..... fully summariz[e] the material facts, and as a minimum, a pleader must set forth concisely the

(1991). Plaintiff, Paul A. Czech (“Czech”), is an attorney licensed to practice law in Pennsylvania and is also engaged in the business of managing local music artists, acting through his unincorporated business, YB Entertainment (“YB”). Plaintiff alleges that as part of YB’s artist management business, YB entered into contracts with local music artists and became responsible for promoting these artists, including two groups known as Prophets of the Ghetto and Spellbound.

Plaintiff states that in an effort to promote its represented artists, representatives of YB attempted to contact Defendant Geoffrey Gordon (“Gordon”), an employee of Electric Factory Concerts, who purportedly is responsible for booking and/or hiring performers for two Philadelphia concert venues, the Electric Factory and the Theatre of the Living Arts (“TLA. Negotiations ensued between Gordon and Lisa Colbath, an agent of YB, much of which took place via email. Sometime thereafter, a disagreement arose between the parties.

According to the Complaint, on September 3, 2002, Gordon allegedly called YB’s offices and reached Czech. Plaintiff avers that Gordon asked to be placed on the speakerphone and thereafter proceeded to refer to Czech as “a moron”, “an idiot”, “incompetent” and further stated that Czech “did not know how to conduct business.” Plaintiff further alleged that Gordon made these remarks in the presence of Drew Pomilio, an employee of Electric Factory Concerts/Clear Channel Entertainment and Gina La Rosa, an employee/owner of an entertainment production company known as Goody Goody. In addition, Plaintiff further alleges that on March 22 and March 23, 2003, WIOQ (also known as Q102) broadcast a commercial on the radio which referenced the offices of YB. Plaintiff claims that in the commercial, a woman purporting to be a representative of YB answered the telephone and in a “mocking tone” informed the caller, a

local music artist, that his materials were not wanted by YB. As a result of the foregoing, Czech claims that he suffered and continues to suffer harm to his personal, business and professional reputation. Czech further alleged that local artists and musicians, including Spellbound and Prophets of the Ghetto, terminated their respective contracts with YB and refused to work with Plaintiff or YB in the future..

Plaintiff then filed the instant lawsuit against Defendants, asserting claims against each of them as follows: 1) malicious defamation (Count I); 2) slander per se (Count II); 3) tortious interference with existing contracts (Count III); 4) tortious interference with prospective contracts (Count IV); 5) invasion of privacy/false light (Count V); 6) commercial disparagement (Count VI); 7) injurious falsehood (Count VII) and 8) conspiracy (Count VIII). Defendants have filed Preliminary Objections to each of the foregoing counts on the grounds that Plaintiff has failed to state claims upon which relief may be granted.³

DISCUSSION

I. PLAINTIFF HAS FAILED TO STATE A CLAIM FOR INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONS AGAINST THE Q102 DEFENDANTS

Count III purports to state a claim against all Defendants for interference with an existing contractual relationship, namely Plaintiff's contracts with Prophets of the Ghetto and Spellbound. An essential element of such a claim is "the existence of a contractual relationship between plaintiff and a third party." Strickland v. Univ. of Scranton, 700 A.2d 979, 9085 (Pa.

³ Defendants also filed Preliminary Objections alleging the improper joinder of certain defendants and failure to conform to rules of court with respect Plaintiff's filing of the Second Amended Complaint. While this court agrees that Plaintiff's actions were improper in both regards, this court has opted to overrule said Preliminary Objections because there has been no demonstration of any prejudice suffered by any of the Defendants here. However, it should be noted this court finds Plaintiff's explanation as why he handled the filing of the amended complaints in the manner he did to be unacceptable. The Prothonotary's Office is not in the business of giving legal advice, nor should it be. Plaintiff is hereby put on notice that any further disregard of the Rules will result in sanctions, including, *inter alia*, the dismissal of this action.

Super. 1997). In ¶¶ 154-155 of the Complaint, Plaintiff specifically states that the statements made by Gordon in September 2002 caused both Prophets of the Ghetto and Spellbound to terminate their respective contracts with Plaintiff. Compl. ¶¶ 154-155. However, the allegations relating to the Q102 Defendants in the same count make reference to a radio commercial which allegedly was broadcast in March 2003. Compl. ¶¶ 160, 170. Thus, at the time the commercial was broadcast, Plaintiff, by his own admission, no longer had a contract with

either Spellbound or Prophets of the Ghetto with which the Q102 Defendants could interfere. Accordingly, Count III is dismissed as to Defendants Clear Channel Communications, Inc., Clear

Channel Broadcasting, Inc., Clear Channel Radio, LLC and WIOQ.

II. PLAINTIFF HAS FAILED TO STATE A VALID CLAIM FOR INVASION OF PRIVACY/FALSE LIGHT (COUNT V)

Count V of the Complaint purports to state a claim for invasion of privacy/false light. The tort of invasion of privacy primarily protects a plaintiff's interest in keeping private matters from public view. To state a cause of action for invasion of privacy in Pennsylvania, a plaintiff must demonstrate an intentional intrusion on the seclusion of his private concerns which was substantial and highly offensive to a reasonable person. Pro Golf Mfg., Inc. v. Tribune Review Newspaper Co., 570 Pa. 242, 809 A.2d 243 (2002), McGuire v. Shubert, 722 A.2d 1087 (Pa. Super. 1998). Furthermore, plaintiff must aver sufficient facts to establish that the information disclosed would have caused mental suffering, shame or humiliation to a person of ordinary sensibilities. Id.

At bar, Plaintiff has failed to plead any facts to support his contention that Defendants, or

any of them, disclosed matters of “private concern” or that any of the alleged communications by Defendants “would have caused mental suffering, shame or humiliation to a person of ordinary sensibilities.” Id. To be highly offensive to a reasonable person, "a major misrepresentation of a person's character, history, activities or beliefs is made that could reasonably be expected to cause a reasonable man to take serious offense." Restatement (Second) of Torts § 652E, cmt c; Curran v. Children's Serv. Ctr. of Wyoming County, 396 Pa. Super. 29, 578 A.2d 8, 12 (1989). However, there have been no facts to plead by plaintiff to support such a conclusion here. The statements at issue in this case relate to Plaintiff’s business, not matters of “private concerns.” As a result, the facts alleged in support of Count V, if true, would tend to support a claim for commercial disparagement, rather than invasion of privacy. As such a claim has already been pled in Count IV, this court sees no necessity or basis for Plaintiff’s invasion of privacy claim. Accordingly, Count V hereby is dismissed.

III. PLAINTIFF CLAIMS FOR COMMERCIAL DISPARAGEMENT AND INJURIOUS FALSEHOOD ARE DUPLICATIVE

Counts VI and VII purport to state claims for commercial disparagement and injurious falsehood, respectively. As commercial disparagement is a type of injurious falsehood, these counts appear to allege the same thing. Phillips v. Selig, 2001 WL 1807951 (CCP Phila. 2001). To state a claim for commercial disparagement, a plaintiff must allege that: (1) the defendant published a disparaging statement concerning the business of the plaintiff; (2) the statement was false; (3) the defendant intended that the publication cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss; (4) the publication caused actual pecuniary loss; and (5) the publisher knew the statement was false or acted in reckless disregard of its truth or falsity. Id., *see also* Restatement (Second) of Torts §§ 623A, .

Upon review of the Complaint, this court finds that Plaintiff has alleged the elements of a commercial disparagement claim sufficient to withstand the instant Preliminary Objections. However, this court hereby strikes Plaintiff's injurious falsehood claim (Count VII) as duplicative of their commercial disparagement claim (Count VI). The facts alleged in Counts VI and VIII are essentially the same. As plaintiff can not recover for both causes of action, it is not necessary to include both in the instant lawsuit. Plaintiff's "everything but the kitchen sink" approach to pleading, while thorough, violates principles of judicial economy and would result in a considerable waste of resources for no apparent gain. As a result, this court will permit the commercial disparagement claim to go forward, as it is more appropriate cause of action given the facts alleged. Count VII (injurious falsehood) hereby is dismissed.

IV. PLAINTIFF HAS FAILED TO STATE A VALID CLAIM FOR CONSPIRACY (COUNT VIII)

Count VIII alleges civil conspiracy against all defendants. To state a claim for conspiracy, the plaintiff must allege: (1) a combination of two or more persons acting with a common purpose to do an unlawful act by unlawful means or for an unlawful purpose; (2) an overt act done in furtherance of the common purpose; and (3) actual legal damage. Baker v. Rangos, 229 Pa. Super. 333, 324 A.2d 498, 506 (1974). In the Complaint, Plaintiff has failed to allege facts to support such a claim against any of the Defendants and instead relies solely upon bald conclusions. Such allegations alone are insufficient to support a claim for conspiracy. Accordingly, Defendants' Preliminary Objection to Count VIII is sustained and Plaintiff's conspiracy claim dismissed.

V. THE REMAINDER OF DEFENDANTS' PRELIMINARY OBJECTIONS ARE OVERRULED

As previously indicated, to determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the allegations are "sufficiently specific so as to enable [a] defendant to prepare [its] defense." Smith, 403 Pa. Super. at 319, 588 A.2d at 1310. Applying this standard at bar, this court finds that the remainder of Plaintiff claims have been pled sufficiently to withstand the instant preliminary objections.

CONCLUSION

Based on the foregoing, this court finds as follows:

1. Defendants Preliminary Objections to Counts V (invasion of privacy/false light), and VII (injurious falsehood) and VIII (conspiracy) are **SUSTAINED** and such counts hereby are **DISMISSED**;
2. The Q102 Defendants Preliminary Objections to Count III (interference with existing contractual relations) are **SUSTAINED** and such counts hereby are **DISMISSED** Defendants Clear Channel Communications, Inc., Clear Channel Broadcasting, Inc., Clear Channel Radio, LLC and WIOQ;
3. The remainder of Defendants' Preliminary Objections are **OVERRULED**.

Defendants are directed to answer the remainder of Plaintiff's Complaint within twenty (20) days from the date of entry of this Order.

This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

GENE D. COHEN, J.
Dated: October 21, 2003