

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

CENTURY GENERAL CONSTRUCTION :	OCTOBER TERM, 2009
AND CONTRACTING, LLC, and LAM'S :	
REALTY CORPORATION, :	NO. 03255
:	
Plaintiffs, :	COMMERCE PROGRAM
:	
v. :	Control No. 10070374
:	
ALOIA CONSTRUCTION CO., INC., et al.:	
:	
Defendants. :	

ORDER

AND NOW, this 27th day of October, 2010, upon consideration of defendant Woolford Law, P.C.'s Motion for Judgment on the Pleadings, the response thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that the Motion is **GRANTED** and plaintiffs' claim against Woolford Law, P.C. is **DISMISSED**.

BY THE COURT:

ARNOLD L. NEW, J.

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Defendants.	:	

OPINION

Plaintiffs brought this action for malicious prosecution against its former litigation adversaries, Aloia Construction Co., Inc. and Thomas Aloia (collectively “Aloia”) and Aloia’s counsel. Plaintiffs claim wrongdoing by Aloia and its attorneys, Rene Quinlan, Esq., Cohen Seglias Pallas Greenhall & Furman, P.C, and Dean E. Weisgold, with respect to the initiation of four allegedly specious prior actions brought by Aloia against plaintiffs.

With respect to defendant Woolford Law, P.C. (“Woolford”), plaintiffs allege Woolford simply took over as Aloia’s counsel late in two of the four actions. Woolford filed a Motion for Judgment on the Pleadings claiming plaintiffs failed to make out a claim for malicious prosecution against Woolford.

In order to assert a claim for malicious prosecution, plaintiffs must allege facts showing the following:

defendant act[ed] in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and [t]he proceedings have terminated in favor of [plaintiffs].¹

¹ 42 Pa. C.S. § 8351.

When asserting a malicious prosecution claim against an attorney, plaintiffs must allege the attorney had an improper purpose in initiating or continuing the proceedings on behalf of his/her client.

An attorney who initiates a civil proceeding on behalf of his client, even if he has no probable cause and is convinced that his client's claim is unfounded, is still not liable if he acts primarily for the purpose of aiding his client in obtaining a proper adjudication of his claim. An attorney is not required or expected to prejudge his client's claim, and although he is fully aware that its chances of success are comparatively slight, it is his responsibility to present it to the court for adjudication if his client so insists after he has explained to the client the nature of the chances.

If, however, the attorney acts without probable cause or belief in the possibility that the claim will succeed, and for an improper purpose, as, for example, to put pressure upon the person proceeded against in order to compel payment of another claim of his own or solely to harass the person proceeded against by bringing a claim known to be invalid, he is subject to the same liability as any other person.²

Plaintiffs may not assert only conclusions of law to support their malicious prosecution claim, *e.g.*, they cannot simply mimic the statute and assert defendant was grossly negligent, lacked probable cause, or acted for an improper purpose. Plaintiffs must also plead material facts to support these conclusions of law.³

In this case, plaintiffs have failed sufficiently to allege improper purpose with respect to Woolford. All that plaintiffs allege is:

Aloia Construction's purpose was improper . . . because Aloia Construction, by and through Woolford Law, continued the lawsuits solely to exact revenge on and harass the plaintiffs and to extract money to which Aloia Construction was not

² Hart v. O'Malley, 647 A.2d 542, 550 (Pa. Super. 1994).

³ See Lerner v. Lerner, 954 A.2d 1229, 1239 (Pa. Super. 2008) ("Appellant failed to formulate the issues by fully summarizing the material facts in his complaint. Specifically, these paragraphs consist solely of conclusions of law. Nowhere in his complaint does Appellant fully satisfy the elements of either an abuse of process or a 'Dragonetti' cause of action. Appellant does not aver well-pled facts which would permit the conclusion that Appellee acted in a grossly negligent manner or without probable cause in filing her [claim].")

entitled, and not to secure proper discovery, joinder of parties, or adjudication of the claim in which the proceedings are based.⁴

This allegation does not contain any assertion Woolford possessed its own improper purpose in representing Aloia in the two underlying actions. Plaintiffs also have not asserted Woolford knew of Aloia's improper purpose and connived in it. Furthermore, plaintiffs have failed to assert any facts from which one could infer Woolford had an improper purpose in representing Aloia in the two actions.⁵ Therefore, plaintiffs' malicious prosecution claim against Woolford must be dismissed.⁶

BY THE COURT:

ARNOLD L. NEW, J.

⁴ Complaint, ¶ 124.

⁵ Buchleitner v. Perer, 794 A.2d 366, 377 (Pa. Super. 2002) (“improper purpose may be inferred from want of probable cause to maintain or continue the proceedings.”)

⁶ See Hart, 647 A.2d at 550 (court dismissed malicious prosecution claim on preliminary objection where plaintiffs did not allege the attorney “initiated the equity action to harass or maliciously injure them[;] initiated the civil proceedings to put pressure on them in order to gain their cooperation[; or] acted without belief of the possibility that the equity action could succeed. At worst, the complaint allege[d] that [the attorney] was negligent [which] was not sufficient to maintain a cause of action under 42 Pa. C.S. § 8351 against an attorney filing a lawsuit on behalf of his client.”)