

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

POLYDYNE, INC.	:	FEBRUARY TERM, 2001
	:	
Plaintiff,	:	NO. 3678
	:	
v.	:	COMMERCE PROGRAM
	:	
CITY OF PHILADELPHIA, PHILADELPHIA	:	Control No. 022215
WATER DEPARTMENT, WAYNE LARAWAY,	:	
And CYTEC INDUSTRIES, INC.,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 7<sup>th</sup> day of June, 2005, upon consideration of Polydyne Inc.'s Preliminary Objections to Wayne Laraway's Answer with Counterclaims, the response thereto, the briefs in support and opposition, and all other matters of record, and in accordance with the Opinion issued contemporaneously herewith, it is hereby

**ORDERED** that said Preliminary Objections are **SUSTAINED** in part, and Counts I, II, V, and VI of Laraway's Counterclaim are **DISMISSED**.

The remaining Preliminary Objections are **OVERRULED**.

**BY THE COURT,**

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**HOWLAND W. ABRAMSON, J.**

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	:	
Defendants.	:	

**OPINION**

Plaintiff Polydyne, Inc. (“Polydyne”) brought this action against the City of Philadelphia and the Philadelphia Water Department (collectively the “City”) based on the City’s award of a bid contract for wastewater treatment (the “Contract”) to Polydyne’s competitor, Cytec Industries, Inc. (“Cytec”). All of Polydyne’s claims against the City and Cytec have been dismissed or otherwise resolved.

Polydyne also asserts a claim against Wayne Laraway for tortious interference with contract based on the fact that he was hired by the City to assist it in awarding the Contract. Laraway has filed counterclaims against Polydyne for defamation, trade libel, and tortious interference with contract, which are based in large part upon a letter (the “Letter”) that Polydyne wrote to the City prior to the award of the contract to Cytec. Laraway also asserts claims against Polydyne for malicious prosecution and abuse of process based on Polydyne’s conduct of this action. Polydyne has filed Preliminary Objections to all of the counterclaims, which objections are presently before this court.

**I. Laraway's Claims for Defamation and Trade Libel Must Be Dismissed.**

The publication of a disparaging statement concerning the business of another is actionable where:

(1) the statement is false; (2) the publisher either intends the publication to cause pecuniary loss or reasonably should recognize that publication will result in pecuniary loss; (3) pecuniary loss does in fact result; and (4) the publisher either knows that the statement is false or acts in reckless disregard of its truth or falsity.

Pro Golf Mfg. v. Tribune Review Newspaper Co., 570 Pa. 242, 246, 809 A.2d 243, 246 (2002).

Similarly, in an action for defamation, the plaintiff must prove:

(1) the defamatory character of the communication; (2) publication by the defendant; (3) its application to the plaintiff; (4) understanding by the recipient of its defamatory meaning; (5) understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm to the plaintiff; (7) abuse of a conditionally privileged occasion.

Davis v. Resources for Human Dev., Inc., 770 A.2d 353, 357 (Pa. Super. 2001). “[I]t is the trial court’s function to determine, in the first instance, whether the communication complained of is capable of a defamatory meaning.” Wendler v. DePaul, 346 Pa. Super. 479, 482, 499 A.2d 1101, 1103 (1985).

The Letter of which Laraway complains contains several statements of fact, all of which are apparently true, and it also contains an interpretation of those facts which is not favorable to Laraway. Specifically, the Letter states that:

- 1) Laraway was formerly employed by Cytec, one of the entities bidding against Polydyne on the Contract.
- 2) Laraway previously received stock options, and will eventually receive a pension, from Cytec.
- 3) The product specifications, which Laraway helped draft, excluded a Polydyne product from consideration; Cytec does not make that type of product.

See Answer, Ex, A. Based on these facts, Polydyne argues in the Letter that Laraway has a conflict of interest and a bias in favor of Cytec, and Polydyne asks that the City “review the product specifications and the contractor hired for this project.” *Id.*

Laraway does not claim that the above statements of fact are false. Instead, he objects to the inferences drawn from those facts, which he claims caused the City and others not to do business with him because they impugned his honesty and professional character. However, Polydyne’s assertion that Laraway has a conflict of interest and a bias in favor of Cytec is merely a statement of opinion. An opinion “is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.” Restatement (Second) Torts § 566 (1977). Since the facts on which Polydyne’s opinion is based are set forth in the letter and are not themselves defamatory, Polydyne’s opinion based on those facts, while possibly erroneous, is not libelous nor disparaging. See Beckman v. Dunn, 276 Pa. Super. 527, 419 A.2d 583 (1980) (professor’s negative evaluation of student was not defamatory where he set forth objective facts upon which it was based.)

## **II. Laraway’s Claims for Intentional Interference With Existing and Prospective Contractual Relations Are Sufficiently Pled.**

The elements of a cause of action for intentional interference with contractual relations are:

- (1) the existence of a contractual or prospective contractual relation between the complainant and a third party;
- (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring;
- (3) the absence of privilege or justification on the part of the defendant; and
- (4) the occasioning of actual legal damage as a result of the defendant's conduct.

Al Hamilton Contracting Co. v. Cowder, 434 Pa. Super. 491, 497, 644 A.2d 188, 191 (1994);

Strickland v. Univ. of Scranton, 700 A.2d 979, 985 (Pa. Super. 1997). Laraway alleges that he

had actual or prospective contractual relations with the City, as well as Bethlehem and Wyoming Valley, Pennsylvania, that Polydyne informed all three entities that Laraway had a conflict of interest and a bias in favor of Cytec, and all three entities ceased doing business with him.<sup>1</sup>

In its Preliminary Objections, Polydyne argues that it cannot be liable for tortious interference because the facts set forth in the Letter are true. However, as discussed in the previous section concerning defamation, Polydyne also provided an apparently unsolicited opinion to the City and the other entities, which may or may not be actionable. *See* Restatement (Second) Torts § 772 (1979).

Polydyne further argues that Laraway's tortious interference claims are time barred because they were not brought within one year of the date on which the letter was written. However, Laraway claims that he did not discover the existence of the letter until this litigation was commenced. The application of the discovery rule is a factual issue that cannot be resolved at the Preliminary Objection stage. *See* Fine v. Checcio, 870 A.2d 850, 858, 2005 Pa. LEXIS 596, \*16-17 (Pa. 2005).

Likewise, the court cannot, at this juncture, rule as a matter of law that Polydyne's conduct was privileged, proper, or justified.

In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual relation of another is improper or not, consideration is given to the following factors:

- (a) the nature of the actor's conduct,
- (b) the actor's motive,
- (c) the interests of the other with which the actor's conduct interferes,
- (d) the interests sought to be advanced by the actor,
- (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,

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<sup>1</sup> In order to bring a claim for tortious interference with contractual relations, Laraway must specifically identify the entities with which he had existing or prospective contractual relationships. Therefore, his tortious interference claims are limited to the contracts or prospective contracts he had with the three entities he mentioned in his Counterclaim.

- (f) the proximity or remoteness of the actor's conduct to the interference and
- (g) the relations between the parties.

Restatement (Second) Torts § 767 (1979). *See also* Beckman v. Dunn, 276 Pa. Super. 527, 419 A.2d 583 (1980) (“Communications made on a proper occasion, from a proper motive, in a proper manner, and based upon reasonable cause are privileged.”) Such factual determinations must await a later stage in the proceedings.

### **III. Laraway’s Claims For Malicious Prosecution and Abuse of Process Must Be Dismissed.**

A person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings [if, *inter alia*,] . . . the proceedings have terminated in favor of the person against whom they were brought.

42 Pa. C.S. § 8351. Since Polydyne still has a claim for tortious interference outstanding against Laraway, these civil proceedings have not terminated in Laraway’s favor. Therefore, his malicious prosecution claim is not ripe.

Abuse of process is “the use of legal process as a tactical weapon to coerce a desired result that is not the legitimate object of the process.” McGee v. Feege, 517 Pa. 247, 259, 535 A.2d 1020, 1026 (1987).

It is not enough that the defendant had bad or malicious intentions or that the defendant acted from spite or with an ulterior motive. Rather there must be an act or threat not authorized by the process, or the process must be used for an illegitimate aim, such as extortion, blackmail, or to coerce or compel the plaintiff to take some collateral action.

Al Hamilton Contracting Co. v. Cowder, 434 Pa. Super. 491, 644 A.2d 188, 191 (1994).

Although Laraway makes many allegations regarding Polydyne’s malicious intent, he has not alleged any facts showing that Polydyne used any legal process in an attempt to force

others to do something unwarranted. Therefore, he has not made out a claim for abuse of process.

### **CONCLUSION**

For all the foregoing reasons, Polydyne's Preliminary Objections to Laraway's Counterclaim are sustained in part and overruled in part.

**BY THE COURT,**

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**HOWLAND W. ABRAMSON, J.**