

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

THE FLYNN COMPANY,	:	
	:	JANUARY TERM, 2002
Plaintiff,	:	
	:	No. 002923
v.	:	
	:	Commerce Program
615 CHESTNUT MASTER LEASE, L.P. et al.,	:	
	:	Control No. 111587
Defendant	:	

ORDER

AND NOW, this _25th_ day of March, 2003, upon consideration of the Motion for Summary Judgment of defendants, plaintiff's response, the briefs in support and opposition, and all other matters of record, it is hereby

ORDERED and DECREED that said Motion is **denied in part** and **granted in part** and it is further

ORDERED and DECREED that plaintiff's claim against defendants for damages arising out of non-party, Cytometrics, Inc.'s, negotiation and execution of a lease with non-party, Delaware River and Bay Authority, are hereby dismissed with prejudice.

BY THE COURT,

C. DARNELL JONES, II, J.

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MEMORANDUM OPINION

Before the court is the Motion for Summary Judgment of defendants, 615 Chestnut Master Lease, L.P., 7CWOL, Inc., WITWOL Lease SPE, Inc., Chestnut Equity Corp., and Jay William Barnett (“Landlord”) requesting dismissal of all of plaintiff’s, The Flynn Company’s (“Broker’s”) claims against Landlord. For the reasons set forth below, Landlord’s Motion is granted, in part, with respect to Broker’s claim for damages arising out of non-party Cytometrics, Inc.’s (“Tenant’s) negotiation and execution of a lease with another non-party to this action, Delaware River and Bay Authority.

STATEMENT OF FACTS

Broker brought this action against Landlord for a commission allegedly due as a result of a lease that Landlord entered into with Tenant for certain real property located at 615 Chestnut Street, Philadelphia, Pennsylvania (the “Pennsylvania Lease”). The Court assumes for purposes of ruling on this Motion only that when Landlord negotiated and entered into the Pennsylvania Lease with Tenant, Broker had a valid, unmodified, exclusive Representation Agreement with Tenant under which Tenant agreed that all leases into which it entered would be negotiated by

Broker and that Broker would obtain a commission (from any landlord) with respect to any such leases.

Landlord, when informed of the Representation Agreement, refused to pay the commission allegedly due to Broker on the Pennsylvania Lease. There is a dispute between the parties as to whether Tenant agreed to pay the commission instead of Landlord, but at any rate Tenant did not do so and eventually filed for bankruptcy. Therefore, Broker is unlikely to recover much, if any, damages from Tenant for its apparent breach of the Representation Agreement.

Not only did Tenant independently negotiate and enter into the Pennsylvania Lease with Landlord, Tenant also independently negotiated and entered into a lease with the Delaware River and Bay Authority for certain property in the State of Delaware (the "Delaware Lease"). Broker did not obtain a commission from either Tenant or the Delaware River and Bay Authority with respect to the Delaware Lease, although arguably it should have under the Representation Agreement.

Broker now claims that, because Landlord intentionally interfered with the Representation Agreement with respect to the Pennsylvania Lease, Landlord should be liable for the commission due to Broker on the Delaware Lease, in addition to the commission due to Broker on the Pennsylvania Lease. Broker further claims that it is entitled to punitive damages because Landlord's conduct in interfering with the Representation Agreement was not only intentional, but outrageous.

LEGAL ANALYSIS

In order successfully to advance a cause of action for intentional interference with contractual relations, Broker must demonstrate the following:

- (1) the existence of a contractual relationship;
- (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship;
- (3) the absence of a privilege or justification for such interference; and
- (4) damages resulting from the defendant's conduct.

Small v. Juniata College, 452 Pa. Super. 410, 682 A.2d 350, 354 (1996). Although Landlord argues that none of these requirements have been met by the evidence that Broker has proffered, the court finds that there are still genuine issues of material fact as to requirements 1 and 3. However, under requirements 2 (intent to cause harm) and 4(damages resulting), a portion of the Broker's damages claim is amenable to disposition by summary judgment.

With respect to the issue of damages, Broker argues that “[Landlord’s] actions not only caused [Tenant] to exclude [Broker] from the negotiations regarding the [Pennsylvania Lease], but also ruined [Broker’s] relationship with [Tenant] causing [Tenant] to exclude [Broker] from the negotiations related to the Delaware [Lease].” Plaintiff’s Response to Defendants’ Motion for Summary Judgment, p. 28. However, even if such facts can be proven, they give rise, at best, to a claim against Landlord for the commissions due under the Pennsylvania Lease. Such facts cannot give rise to a claim for the commissions due under the Delaware Lease.

The Delaware Lease and the Pennsylvania Lease constitute two separate breaches by Tenant of the Representation Agreement (to the extent that they constitute breaches at all.) There is no evidence that Landlord was a party to, was involved in the negotiations resulting in, or obtained a benefit from, the Delaware Lease, and there is no other evidence of record

establishing, or from which one can infer, that Landlord had the requisite intent to cause Tenant to breach the Representation Agreement with respect to the Delaware Lease.¹ See Small, 682 A.2d at 354 (requiring “intent on the part of [Landlord] to harm [Broker] by interfering with that contractual relationship” between Broker and Tenant); Restatement (Second) of Torts, Ch. 37, Introductory Note (1979) (“the tort of interference with existing . . . contractual relations . . . is intentional, in the sense that [Landlord] must either have desired to bring about the harm to [Broker] or have known that this result was substantially certain to be produced by his conduct.”); id. at § 766, Comment h (1979) (“The essential thing is the intent to cause the result. If [Landlord did] not have this intent, his conduct does not subject him to liability under this rule even if it had the unintended effect of deterring [Tenant] from dealing with [Broker].”)

In addition, the commission that Broker allegedly lost on the Delaware Lease is too remote and unrelated to Landlord’s alleged wrongful interference with the Representation Agreement for that interference to have been the proximate cause of such damages. See Restatement (Second) of Torts § 767(g) (1979) (“in determining whether [Landlord’s] conduct in intentionally interfering with a contract . . . is improper or not, consideration is given to [*inter alia*] . . . the proximity or remoteness of the [Landlord’s] conduct to the interference.”); id. at §

¹ The opposite may be said for the evidence proffered with respect to the Pennsylvania Lease. Since Landlord arguably benefitted from the Tenant’s breach of the Representation Agreement with respect to the Pennsylvania Lease by not paying a commission to Broker, it is possible, but by no means certain, that the finder of fact will infer that Landlord intended to cause the Tenant’s breach with respect to the Pennsylvania Lease.

Because Landlord’s conduct with respect to the Pennsylvania Lease was arguably intentional, the court cannot grant summary judgment on Broker’s claim for punitive damages, but instead the court must wait to determine, as the trier of fact at trial, if there is any proof that Landlord’s conduct was not only intentional, but also outrageous. See Restatement (Second) of Torts § 908 (2) (1979).

774A (1979) (“One who is liable to another for interference with contract . . . is liable for . . . consequential damages for which the interference is a legal cause.”); *id.* at § 9 (1965) (“legal cause” means “that the causal sequence, by which [Landlord’s] tortious conduct has resulted in an invasion of some legally protected interest of [Broker], is such that the law holds the [Landlord] responsible for such harm unless there is some defense to liability.”) In this case, Landlord’s refusal to pay a commission to Broker with respect to the Pennsylvania Lease cannot be viewed as the legal cause of Broker’s exclusion from the negotiations of the Delaware Lease because there were too many independent, intervening causal (f)actors, including Tenant, Delaware River and Bay Authority and Broker itself, between Landlord’s actions and the alleged harm suffered by Broker. Therefore, Broker’s claim against Landlord for damages, including commissions, arising out of the Delaware Lease must be dismissed with prejudice.

CONCLUSION

For all of the foregoing reasons, this court grants in part and denies in part defendants’ Motion for Summary Judgment, and dismisses with prejudice plaintiff’s claim against defendants for damages arising out of non-party, Cytometrics, Inc.’s, negotiation and execution of a lease with non-party, Delaware River and Bay Authority

BY THE COURT,

C. DARNELL JONES, II, J.

Dated: March 25, 2003