

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

GOLOMB & HONIK, P.C.,	:	November Term, 2000
Plaintiff	:	
	:	No. 425
v.	:	
	:	Commerce Case Program
TAREQ H. AJAJ, et al.,	:	
Defendants	:	Control No. 050544

OPINION

Defendants Tareq H. Ajaj (“Ajaj”) and Legend Tax and Financial Services, Inc. (“Legend”) have filed a Motion for Summary Judgment (“Motion”). For the reasons set forth in this Opinion, the Motion is denied.

BACKGROUND

In July 1997, Lamya F.Y. Habib and Abdel Elah M.A. Habib (“Habibs”) hired Steven P. Barsamian, Esquire (“Barsamian”) to assist them in their attempt to adjust their immigration status to permanent United States residents. Motion at ¶ 4; Complaint at ¶ 5. Barsamian completed the Habibs’ Application for Permanent Alien Employment Certification (“Application”), which included information obtained from Legend, Mrs. Habib’s employer. Motion at ¶ 12; Complaint at ¶ 11. While the date on which Barsamian sent the Application is in dispute, the Application was not received until January 15, 1998, one day after the deadline had passed. Motion at ¶ 4; Complaint at ¶ 7. Missing this deadline allegedly jeopardized the Habibs right to stay in the United States, as well as their ability to receive certain accompanying benefits. Motion Ex. B at ¶ 11.

The Habibs subsequently retained Plaintiff Golomb & Honik, P.C. (“G&H”) and filed suit against Barsamian for legal malpractice.¹ Motion at ¶ 11; Complaint at ¶ 7. In connection with discovery in the Malpractice Action, Barsamian’s counsel obtained a subpoena for Ajaj, Legend’s owner, and Legend’s tax and business records (“Subpoena”). Motion at ¶ 13; Complaint at ¶ 12. When Ajaj appeared for his deposition on September 26, 2000, he asserted his Fifth Amendment privilege against self-incrimination and refused to answer questions concerning Legend’s business income or tax returns. Motion at ¶ 14; Complaint at ¶ 15. According to G&H, Ajaj then embarked upon a “relentless campaign of pressuring and persuading Mr. and Mrs. Habib to drop their lawsuit for money damages against Barsamian in order to protect against the disclosure of Ajaj and Legend’s business and tax records, and business and tax practices.” Complaint at ¶ 16. This campaign allegedly culminated in death threats against the entire Habib family. *Id.* at ¶ 17.

On November 6, 2000, the day the Malpractice Action trial was to begin, the Habibs told the Honorable Matthew D. Carrafiello that they wished to withdraw their claims out of fear for their family’s safety. Motion at ¶ 16; Complaint at ¶ 20.² Although Judge Carrafiello attempted to address the Habibs’ safety concerns, the Habibs refused to change their minds. Motion at ¶ 16; Complaint at ¶ 21. G&H subsequently withdrew as the Habibs’ counsel, and the Malpractice Action was dismissed. Plaintiffs’ Response Ex. B at 33-35. One day later, G&H instituted the instant action against Ajaj and

¹ *Habib v. Barsamian*, C.P. Phila. January 2000, No. 314 (“Malpractice Action”).

² Specifically, the Habibs testified that Ajaj threatened, on more than one occasion, to shoot them and their children with a machine gun. Plaintiffs’ Response Ex. B at 7-8, 13-15.

Legend by filing the Complaint, which asserts that the Defendants tortiously interfered with G&H's contractual relationship with the Habibs.

DISCUSSION

There are disputed issues of material fact as to G&H's claims.³ As a result, the Court has denied the Motion.

Pennsylvania Rule of Civil Procedure 1035.2 allows a court to enter summary judgment "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action." A court must grant a motion for summary judgment when a non-moving party fails to "adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor." Ertel v. Patriot-News Co., 544 Pa. 93, 101-02, 674 A.2d 1038, 1042 (1996). Where, however, as in this case, there are material issues of fact, summary judgment may not be granted.

A successful claim for intentional interference with contractual relations must satisfy four elements:

(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

³ The Court also has concerns about the timing of the Motion, as it appears to come before any depositions have been taken in this matter. Plaintiff's Memorandum at 5 n.7. Cf. Baesel v. New Blvd. Baking Co., 410 Pa. Super. 591, 595, 600 A.2d 610, 612-13 (1991) ("the trial court, in granting summary judgment prior to the time when the plaintiff was furnished with any responses to [germane] discovery requests, could not be assured that there was no genuine issue of material fact"). To foreclose the possibility that the Defendants will refile a motion for summary judgment on identical grounds, however, the Court will address the substantive points raised in the Motion.

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.

Strickland v. University of Scranton, 700 A.2d 979, 985 (Pa. Super. Ct. 1997) (citation omitted). In the Motion, the Defendants contend that three of these elements are missing: a contractual relation, a purposeful action by the Defendants and actual legal damage.

I. Contractual Relations

According to the Defendants, G&H “voluntarily withdrew from their representation of the Habibs” and thus “no longer had a contractual relationship” with them. Defendants’ Memorandum at 10. This withdrawal, however, took place after the Defendants’ alleged interference, and, in fact, may be viewed as a consequence of the Defendants’ supposed misconduct. As a result, the Court cannot conclude that G&H will be unable to establish a contractual relation with the Habibs.

II. Purposeful Action by the Defendants

In challenging the assertion that they threatened and intimidated the Habibs, the Defendants have submitted several affidavits to show that the Habibs have remained in contact with Ajaj and are still friendly with him.⁴ Even if these affidavits support the Defendants’ claims, they have no bearing on the Motion. The issue at hand is not the current status of the Habibs’ relationship with the Defendants, but rather the Defendants’ past conduct toward the Habibs. While it may be “extremely incongruent that a person in fear for his life from another would take it upon himself to go to the office of his would-be assassin for the sole purpose of wishing him a Happy New Year,” as the Defendants assert,

⁴ These affidavits center on Mr. Habib’s visit to Legend’s office and his “cordial and friendly” meeting with Ajaj on January 2, 2001. Motion Ex. D.

Defendants' Memorandum at 13, G&H has submitted sufficient documentation to support their claim at this stage. As a result, the Court cannot conclude that the Defendants did not engage in purposeful interference as a matter of law.

III. Actual Legal Damage

The Defendants' assertion that G&H suffered no legal damage as a result of their conduct appears to be based on the Habibs' "voluntary" decision to terminate their relationship with G&H and the alleged flaws in the Habibs' claim that would have precluded G&H from earning a fee in the Malpractice Action. Neither of these grounds warrants granting the Motion.

To bolster its argument that the termination of the Malpractice Action was voluntary, the Defendants first set forth a number of out-of-context and irrelevant citations evidencing Pennsylvania's goal of settling lawsuits.⁵ They then go on to assert that "[t]he Habibs chose to end their case against Barsamian for reasons that may never be known to any of the parties to that or this case." Defendants' Memorandum at 14. These assertions clash with the Habibs' testimony given before Judge Carrafiello, which supports the conclusion that the Habibs terminated the Malpractice Action due to Ajaj's pressure and threats. See Plaintiffs' Response Ex. B at 29 (Mr. Habib's testimony that Ajaj's threats were the "main reason" that they terminated the Malpractice Action). Given the Habibs' statements, the Court cannot conclude that the dismissal of that action was voluntary.⁶

⁵ The Defendants quote portions of Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick, 526 Pa. 541, 587 A.2d 1346 (1991), which involved a malpractice claim by an attorney's former clients, and Goodman v. Kotzen, 436 Pa. Super. 71, 647 A.2d 247 (1994), which addressed the limited circumstances wherein opposing counsel may be liable to a client for malpractice.

⁶ Indeed, if the Habibs' statements before Judge Carrafiello are taken at face value, we may already know exactly why the Habibs terminated the Malpractice Suit.

The Defendants also maintain that the Habibs could not have recovered in the Malpractice Action because immigration law was amended on December 21, 2000 in a way that allows them to continue their quest for permanent resident status.⁷ The question and determination of damages, however, “is a factual question to be decided by the fact-finder.” Delahanty v. First Pennsylvania Bank, N.A., 318 Pa. Super. 90, 117, 464 A.2d 1243, 1257 (1983). In addition, neither party has briefed or addressed the issues raised by the Amendment or the Amendment’s effect on the Habibs and the Malpractice Action. Thus, given G&H’s allegation in the Complaint that it suffered damages⁸ and the Defendants’ failure to cite a single case in support of their position, the assertion that G&H suffered no actual legal damage must be rejected.

CONCLUSION

The Motion is without merit and has been denied accordingly.

BY THE COURT:

JOHN W. HERRON, J.

Date: June 19, 2001

⁷ On December 21, 2000, the deadline for filing certain petitions for classification in seeking an adjustment of immigration status effectively was extended from January 14, 1998 to April 30, 2001. 8 U.S.C.A. § 1255; H.R. Conf. Rep. No. 1033, 106th Cong., 2nd Sess. 2000, 2000 WL 1868642. This is referred to as the “Amendment.”

⁸ To the extent that the Defendants assert that the Complaint’s allegations are insufficiently specific, their failure to raise this issue in preliminary objections precludes them from asserting it now. Pa. R. Civ. P. 1032.

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ORDER

AND NOW, this 19th day of June, 2001, upon consideration of the Motion for Summary Judgment of Defendants Tareq H. Ajaj and Legend Tax and Financial Services, Inc., the response thereto of Plaintiff Golomb & Honik, P.C., the respective memoranda, all other matters of record, and in accord with the Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Motion is DENIED.

BY THE COURT:

JOHN W. HERRON, J.