

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOELI A. McCAMBRIDGE,)	
Plaintiff,)	
)	
v.)	CA. No.: 09C-02-030 FSS
)	E-FILED
SHIRLEY BISHOP and)	
ROMIE D. BISHOP,)	
Defendants.)	
)	

OPINION AND ORDER

There are two pending motions:

- 1) Defendants’ motion to dismiss Plaintiff’s Amended Complaint with prejudice;
- and
- 2) Defendants’ motion to amend their respective responses to assert counterclaims.

BACKGROUND

This case appears to be the latest round of an internecine, family feud.

The first action was filed on or about November 14, 2007, by Defendant Romie Bishop against Plaintiff Joeli A. McCambridge in the Superior Court in an action captioned: Romie D. Bishop v. Joeli A. McCambridge, et al., In the Superior Court of the State of Delaware, in and for New Castle County, C.A. No. 07C-11-107. Mr.

Bishop's claims against Ms. McCambridge included the torts of defamation, intentional infliction of emotional distress and other similar torts. In that action, by Order dated January 18, 2008, the Court ordered Mr. Bishop to amend his complaint within 30 days stating with particularity his averments against Ms. McCambridge. Mr. Bishop failed, for whatever reason, to file an amended complaint as required by the Court and his action was dismissed on March 18, 2008.

The second action was filed on or about January 10, 2008, by Defendant Shirley Bishop against Plaintiff Joeli A. McCambridge in the Chancery Court in an action captioned: Shirley A. Bishop v. Joeli A. McCambridge et al., In the Chancery Court of the State of Delaware, In and for New Castle County, Case No. 3459-VCS. Mrs. Bishop sought a temporary restraining order and other relief against Ms. McCambridge. In that action, by Order dated July 16, 2008, the Court dismissed Mrs. Bishop's complaint without prejudice and ordered her to file a new complaint in proper form within 30 days, or the dismissal would become with prejudice. Mrs. Bishop, for whatever reason, never filed a new complaint.

The latest round in this family feud is the subject action. This time around, the action was filed by Joeli A. McCambridge against Shirley Bishop and Romie D. Bishop. This action was filed in the Court of Common Pleas but was subsequently removed by the Defendants to the Superior Court. In this action, Plaintiff charges her sister and brother-in-law with harassment and similar torts. Defendants filed respective motions to amend their responses to assert counterclaims against Ms. McCambridge seeking to respond in kind.

Plaintiff McCambridge filed this action in the Court of Common Pleas on or

about August 12, 2008. This case was transferred to the Superior Court on or about February 3, 2009. After the case was transferred to the Superior Court, Defendants filed motions to dismiss Plaintiff's complaint, and Plaintiff filed a motion to dismiss Defendants' counterclaims. On March 20, 2009, the Court denied all motions without prejudice, but ordered Plaintiff to file an amended complaint, more consistent with the court's pleading requirements and better suited to efficient disposition. The Defendants thereafter filed responses to the Amended Complaint. The Defendants failed to include counterclaims in their responses and have each filed a motion to amend their respective responses to assert counterclaims.

All the parties are appearing *pro se* in this action, with the exception that Plaintiff McCambridge is represented by counsel only as to Defendants' counterclaims.

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

On April 7, 2009, Plaintiff McCambridge filed an Amended Complaint. The 29 page complaint is far from a model of clarity. However, the *pro se* Complaint does allege conduct, which if proven, could state at least one tort-related claim. In her Complaint, Plaintiff McCambridge alleges that the Defendants made false defamatory statements regarding her professional ability and practices, unlawfully interfered with her business relationships, threatened her, and unlawfully used the judicial process. Plaintiff has referenced Defendants' unsuccessful litigation efforts and alleged methods of intimidation as the basis for her claims against them.

Defendants filed the subject motion to dismiss, seeking to dismiss Plaintiff's Amended Complaint, on the grounds that she does not state a cause of action for harassment. Plaintiff's Complaint, however, is not limited to only a cause of action for

harassment. Plaintiff, in her response to Defendants' motion to dismiss, advises that her claims against Defendants include:

Harassment, theft, attempt to have falsely arrested, libeling, defamation of character, using the judicial system for an illegal purpose, intimidation and blackmail; causing grievous emotional distress while disrupting [her] life.¹

Plaintiff is permitted at this early stage of the proceeding to assert more than one theory of recovery against Defendants for their alleged harassment-related conduct.²

When deciding a motion to dismiss a complaint for failure to state a claim, made pursuant to Superior Court Civil Rule 12(b)(6), as the Court is confronted with by the subject motion to dismiss, the Court should not dismiss the complaint unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof. The test for sufficiency is a broad one. If the plaintiff may recover, the motion must be denied.³ A complaint attacked by a motion to dismiss for failure to state a claim will not be dismissed unless it is clearly without merit, which may be either as a matter of law or of fact.⁴ Vagueness or lack of detail in the pleaded claim are not sufficient grounds alone to dismiss a complaint for failure to state a claim.⁵

Applying this controlling standard to the subject motion to dismiss, a review of Plaintiff's Amended Complaint reveals that she has stated at least one potentially viable claim (if proven) and, therefore, Plaintiff's Amended Complaint should not be dismissed in its entirety.

Defendants challenge only one of Plaintiff's substantive claims; that is, the claim

¹ Plaintiff's Response to Defendants' Motion to Dismiss, Docket No. 38.

² See for example, Superior Ct. Civil Rule 15(a), that amendments to complaints are to be freely given.

³ *Spence v. Funk*, Del.Supr., 396 A.2d 967, 968 (1978); *Diamond State Telephone Co. v. University of Delaware*, Del.Supr., 269 A.2d 52, 58 (1970).

⁴ *Diamond State Telephone Co.*, 269 A.2d at 58.

⁵ *Id.*

of harassment, as the basis for their motion to dismiss. Defendants contend that there is no civil cause of action for a claim of harassment and that as a result of the dismissal of Plaintiff's harassment claim, Plaintiff's Amended Complaint should be dismissed in its entirety.

Defendants appear to be correct that there is no civil cause of action for a claim of harassment.⁶ As a result, Plaintiff's harassment claim fails to state a cause of action as a matter of law and is hereby dismissed. However, the dismissal of Plaintiff's harassment claim does not automatically result in the dismissal of Plaintiff's Amended Complaint in its entirety.

Plaintiff's other harassment-related claims include the tort of intentional infliction of emotion distress, which is a recognizable civil cause of action. Thus, if properly supported, plaintiff's harassment contentions, although not actionable as a claim for harassment would be actionable as a claim for intentional infliction of emotional distress.⁷

Defendants' motion to dismiss addressed only the substantive claim of harassment. Plaintiff has stated a cause of action, if properly supported, for the harassment-related tort of intentional infliction of emotional distress. Hence, Defendants' motion to dismiss Plaintiff's Amended Complaint in its entirety is denied.

The issue as to whether Plaintiff has stated any other viable causes of action, as a matter of fact or of law, is not before the Court on the present motion. The Court does

⁶ *Harris v. Hopkins*, Del.Super., C.A. No. 06C-08-031 (RFS), *8 (Order of December 8, 2006)(although a criminal statute outlaws harassment, that statute does not provide a basis for a civil cause of action since it is a general criminal statute which is purely penal in nature.); See also, *Brett v. Berkowitz*, 706 A.2d 509, 512-513 (Del. 1998).

⁷ *Brett v. Berkowitz*, 706 A.2d 509, 512-513 (Del. 1998).

recognize that there is an absolute privilege which protects attorneys and participants in litigation from actions in defamation.⁸ The privilege protects judges, parties, attorneys, witnesses and other persons connected with the litigation.⁹ The privilege is absolute, as long as the statement was made pertinent to and made in the course of the judicial proceeding. Even a showing of malice will not divest the statement of its immune status.¹⁰

Defendants also seek to dismiss Plaintiff's Amended Complaint on the basis that the Amended Complaint failed to set forth a demand for relief. Defendants are incorrect in this regard. Pages 28 and 29 of the Amended Complaint set forth Plaintiff's demand for relief. Again, the Court has not been asked, and is not, ruling on the merits or viability of any aspect of Plaintiff's requested relief.

DEFENDANTS' MOTION TO AMEND

Defendants Shirley Bishop and Romie Bishop have filed a motion to amend their respective responses to allege counterclaims against Plaintiff McCambridge.

Plaintiff McCambridge, who is represented by counsel only as to the counterclaims, has opposed only Romie Bishop's motion to amend his response to assert counterclaims. Since Defendant Shirley Bishop's motion to amend her response to assert counterclaims is unopposed, it is hereby granted.

In granting Defendant Shirley Bishop's motion to permit her to assert counterclaims, the Court is not opining nor ruling on the merits or viability of any of her

⁸ *Sinex v. Shirley and Romie Bishop*, 2005 WL 3007805, at *4 (Del.Super. 2005)(dismissing Shirley and Romie Bishop's defamation claims against an attorney involved in that litigation).

⁹ *Id.*

¹⁰ *Id.*

asserted counterclaims. At this point, Plaintiff has raised no objection to any particular counterclaim, and therefore, the Court will permit Defendant Shirley Bishop to amend her response to assert counterclaims.

Turning now to Defendant Romie Bishop's motion to amend his response to assert counterclaims, Plaintiff McCambridge (through counsel) has opposed his motion on the basis that his counterclaims are barred by the doctrine of *res judicata*.

Defendant Romie Bishop in his previously filed Superior Court action, Romie D. Bishop v. Joeli A. McCambridge, et al., C.A. No. 07C-11-107, asserted either the identical or very similar claims that he now seeks to assert as counterclaims against Plaintiff McCambridge. In the prior action, Mr. Bishop was provided with an opportunity to file an amended complaint, and to continue with that litigation, but decided, for whatever reason, to not file the amended complaint thereby allowing the case to be dismissed.

Although Mr. Bishop's counterclaims meet the criteria for the application of the doctrine of *res judicata*, that doctrine should not be applied if its application would cause an injustice to the precluded party.¹¹

This issue is a close call. Although Mr. Bishop's actual motivation for abandoning his prior action is not known to the Court, in the event that he realized that its further pursuit would be a waste of time and resources, and was not the appropriate vehicle for handling the ongoing family feud, it would be an injustice to now permit Ms. McCambridge to pursue her claims against him without allowing him to respond in kind. Consequently, the Court finds that the doctrine of *res judicata* does not bar Mr. Bishop's

¹¹ *City of Newark v. Unemployment Insurance Appeal Board*, 802 A.2d 318, 324 (Del.Super. 2002); *Ingram v. 1101 Stone Associates LLC*, Del.Super., C.A. No. 99C-09-006 (HDR), *17-18 (Opinion dated March 18, 2004).

counterclaims in this action.

In granting Defendant Romie Bishop's motion to amend his response to assert counterclaims, the Court is not opining or ruling on the merits or viability of any of his asserted counterclaims. At this point, Plaintiff has raised an objection to the filing of Defendant Romie Bishop's counterclaims, *in toto*, solely on the basis of the doctrine of *res judicata*. At this time there is no specific objection made to any particular counterclaim, and therefore the Court is hereby ruling only that Defendant Romie Bishop's counterclaims are not barred by the doctrine of *res judicata*.

For the foregoing reasons:

- 1) Defendants' Motion to Dismiss Plaintiff's Amended Complaint on the claim of harassment is granted, Defendants' Motion to Dismiss the Amended Complaint in its entirety is denied;
- 2) Defendant Shirley Bishop's Motion to Amend her response to assert counterclaims is granted as unopposed; and
- 3) Defendant Romie Bishop's Motion to Amend his response to assert counterclaims is granted as his motion is not barred by the doctrine of *res judicata*.

IT IS SO ORDERED.

Date: September 23, 2009

/s/ Commissioner Lynne M. Parker

oc: Prothonotary (civil)
cc: Joeli McCambridge, *pro se* (via US Mail)
Shirley Bishop, *pro se* (via US Mail)
Romie Bishop, *pro se* (via US Mail)
Louis J. Rizzo, Esquire (via Lexis E-file)