

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

SUZANNE H. PFEIFFER,)
GORDON PFEIFFER,)
Plaintiffs,)
)
v.)
)
STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY, as Subrogee of)
ALBERT L. WATSON, and)
ALBERT L. WATSON, and)
BRUCE L. MCCULLOUGH,)
Defendants.)

C.A. No.: CPU4-09-008380

Submitted: November 30, 2010
Preliminary Decision: November 30, 2010
Supplemental Written Decision: January 3, 2011

MEMORANDUM OPINION AND ORDER

**MOTION FOR SUMMARY JUDGMENT BY STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY, DEFENDANT – GRANTED**

**MOTION FOR SUMMARY JUDGMENT BY BRUCE MCCULLOUGH,
DEFENDANT – GRANTED**

MOTION TO DISMISS BY ALBERT L. WATSON, DEFENDANT - GRANTED

Elwyn Evans, Jr., Esquire, 1232 King Street, Suite 100, P.O. Box 1037, Wilmington, DE 19899, Attorney for Plaintiffs.

Sherry Ruggiero Fallon, Esquire, 750 Shipyard Drive, Suite 400, P.O. Box 2092, Wilmington, DE 19899, Attorney for Defendant State Farm Automobile Insurance Company.

Patrick McGrory, Esquire, Tighe & Cottrell, 704 North King Street, Suite 500, P.O. Box 1031, Wilmington, DE 19899, Attorney for Defendant Bruce L. McCullough.

Colin M. Shalk, Esquire, 405 North King Street, Suite 300, Renaissance Centre, P.O. Box 1276, Wilmington, DE 19899, Attorney for Defendant Albert L. Watson.

DAVIS, J.

PROCEDURAL BACKGROUND

This matter is before the Court on Defendants State Farm Automobile Insurance Company (“State Farm”), Bruce L. McCullough, Esquire, and Albert L. Watson’s individual motions for Summary Judgment.¹

Suzanne H. Pfeiffer and Gordon Pfeiffer (collectively, “Plaintiffs”) filed a complaint (the “Complaint”) in this Court on October 29, 2009. In their Complaint, Plaintiffs assert two causes of action -- one for malicious prosecution and the other for abuse of civil process -- and requested compensatory and punitive damages. State Farm, Mr. McCullough and Mr. Watson each filed a separate answer with the Court. All three Defendants’ denied the allegations of the Complaint and set forth affirmative defenses.

After the parties completed discovery in this case, all three Defendant’s filed individual motions for Summary Judgment. The Court heard oral argument relating to the Motions on November 30, 2010. At the conclusion of the hearing, the Court granted Judgment in favor of all three Defendants.

The Court advised counsel that it would prepare a written opinion to supplement its preliminary ruling on the record at the hearing. This is the Court’s Memorandum Opinion and Order following the hearing on the Motions. For the reasons stated on the record at the hearing and for the reasons discussed below, the Court grants Defendant State Farm’s Motion for Summary Judgment, Defendant Bruce McCullough’s Motion for Summary Judgment and Defendant Albert Watson’s Motion for Summary Judgment.

¹ Mr. Watson initially filed a motion to dismiss which was heard before Chief Judge Alex J. Smalls on February 19, 2010 and denied by this Court. Mr. Watson has now submitted a Motion to Dismiss accompanied by evidentiary documentation which this Court construes under CCP Civil Rule 12(b) as a motion for summary judgment under CCP Civil Rule 56.

FACTS NOT IN DISPUTE

On March 20, 2002, Mr. Watson and Susan Peiffer (similar name to the Plaintiff in this action, Suzanne Pfeiffer, but as will be discussed below Susan Peiffer is a separate individual from the Plaintiff) were involved in a motor vehicle accident in the parking lot of Saint Mark's high school. Mr. Watson obtained Susan Peiffer's information, which he subsequently submitted to his insurance carrier, State Farm. State Farm paid Mr. Watson for damages from the collision.

According to State Farm, Susan Peiffer contacted State Farm on April 9, 2002 regarding the accident with Mr. Watson. Susan Peiffer gave State Farm her statement and information. Susan Peiffer also advised State Farm that she did not have insurance.

On July 12, 2003, State Farm instituted a civil action (the "subrogation action") against a "Suzanne Pfeiffer" residing at 2903 Old Kirkwood Road, Bear, Delaware. Mr. McCullough was listed as State Farm's attorney relating to the subrogation action. "Suzanne Pfeiffer" was served at her address in Bear on August 13, 2004. Although Susan Peiffer is a younger woman, the processor server listed that service was made on a women in her fifties. As later determined, State Farm sued Susan Peiffer but incorrectly used the name "Suzanne Pfeiffer." On July 12, 2003, Susan Peiffer did reside at 2903 Old Kirkwood Road. In the subrogation action, State Farm effectuated service of process on the intended defendant at the correct address; however, the intended defendant's name was spelled incorrectly.

On March 31, 2006, a default judgment was entered against "Suzanne Pfeiffer" in the subrogation action.

Mr. McCullough, attempting to collect on the default judgment, retained an investigator to ascertain the driver's license number of the "Suzanne Pfeiffer" living in Bear. Because there is only one Suzanne Pfeiffer (that being the plaintiff here -- Suzanne Pfeiffer) with a driver license in the State of Delaware, the investigator gave Mr. McCullough the driver's license number of Suzanne Pfeiffer. The investigator apparently missed the distinction that the address of Defendant Susan Peiffer was in Bear, Delaware while Suzanne Pfeiffer's address is in Wilmington, Delaware. On September 9, 2006, Mr. McCullough provided a certified copy of the default judgment to the Delaware Department of Motor Vehicle in Dover, Delaware. Mr. McCullough incorrectly used Suzanne Pfeiffer's license number but gave the Bear address of Susan Peiffer. On November 8, 2006, the Delaware Department of Motor Vehicles issued a driver's license suspension for Suzanne Pfeiffer at the Wilmington address.

Mr. McCullough and State Farm took no further actions to collect on the default judgment in the subrogation action. State Farm did not attempt to attach or garnish any bank accounts. Moreover, State Farm did not attempt to record the default judgment against any real property, including any property owned by Suzanne Pfeiffer in Wilmington.

On or around May 15, 2009, Suzanne Pfeiffer discovered that her driver's license was suspended. Within three days, Suzanne Pfeiffer contacted Mr. McCullough's office, to inform Mr. McCullough that a mistake had been made. An employee of Mr. McCullough's office told Suzanne Pfeiffer that she could clear her suspension by making payments on the default judgment. On June 12, 2009, Suzanne Pfeiffer discovered that it

was Susan Peiffer residing in Bear, Delaware who was liable as a result of Default Judgment in the subrogation action.

Suzanne Pfeiffer retained counsel in an attempt to clear her driver license from suspension. On June 15, 2009, counsel for Suzanne Pfeiffer contacted Mr. McCullough and demanded that the suspension of her driver's license be lifted. Mr. McCullough refused to facilitate lifting Suzanne Pfeiffer's license suspension at that time.

On June 25, 2009, Plaintiffs filed a Motion to Vacate Default Judgment in the subrogation action. State Farm and Mr. McCullough opposed Suzanne Pfeiffer's Motion to Vacate Default Judgment in the subrogation action. Some time after expressing opposition to the Motion to Vacate Default Judgment, Mr. McCullough contacted Mr. Watson and discovered that State Farm had mistakenly sued a "Suzanne Pfeiffer" instead of Susan Peiffer. State Farm then dropped its opposition to Plaintiff's Motion to Vacate Default Judgment in the subrogation action. Shortly thereafter, at the request of the parties then participating in the subrogation action, this Court entered an Order Vacating Default Judgment.

LEGAL STANDARD

A motion for summary judgment will be granted when there is no genuine issue as to any material fact so that the moving party is entitled to judgment as a matter of law.² When considering a motion for summary judgment, a court is required to examine the present record, all pleadings, affidavits and discovery.³ The moving party bears the burden of showing that there are no issues of material fact present, and the record must be

² *Grotto Pizza, Inc. v. Endecon*, No. CIV.A. 96C-01-031, 1997 WL 366904, at *1 (Del. Super. Ct. Mar. 26, 1997) (citing *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979)).

³ *Moore v. Anesthesia Services*, 2008 WL 484452, at *4 (Del. Super. Ct., Feb. 15, 2008) (citing *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322 (Del. Super. Ct. 1973)).

read in the light most favorable to the nonmoving party.⁴ To overcome the moving party's motion, the opposing party must allege specific facts demonstrating a genuine issue of material fact.⁵ The motion for summary judgment will be denied if the Court finds any genuine issue of material fact.⁶

APPLICABLE LAW AND CONCLUSION

Plaintiffs' first cause of action is for the tort of malicious prosecution. A claim for malicious prosecution requires that five requisites must coexist in order to render such an action viable: 1) the institution of civil proceedings; 2) without probable cause; 3) with malice; 4) termination of the proceedings in the aggrieved party's favor; and 5) damages which were inflicted upon the aggrieved party by seizure of property or other special injury.⁷ A claim for malicious prosecution is viewed with disfavor by the Delaware Courts, and therefore, evaluated with careful scrutiny.⁸

More recently in *Beckett v. Trice*⁹, the Court stated the elements of an action for malicious prosecution as: 1) there must have been a prior institution or continuation of a proceeding against the plaintiff; 2) such former proceedings against the plaintiff must have been initiated or pursued by the defendant in the action for malicious prosecution; 3) the former proceedings must have terminated in favor of the defendant therein, the plaintiff in the action for malicious prosecution; 4) there must have been malice in instituting the former proceedings; 5) there must have been want of probable cause for the institution of the former proceedings; and 6) there must have been injury or damage

⁴ *Endecon, supra* at *1 (citing *Alabi v. DHL Airways, Inc.*, 583 A.2d 1358 (Del. Super. Ct. 1990).

⁵ *Endecon, supra* at *1 (citing *E.K. Geysler Co. v. Blue Rock Shopping Center, Inc.*, 229 A.2d 499 (Del. Super. Ct. 1967).

⁶ *Moore, supra* at *4 (citing *Hoechst Celanese Corp. v. Certain Underwriters of Lloyd's of London*, 673 A.2d 164, 170 (Del.1996).

⁷ *Id.*

⁸ *Nix v. Sawyer*, 466 A.2d 407, 411 (Del. Super. Ct. 1983) (citations omitted).

⁹ *Beckett v. Trice*, 1994 WL 710874 (Del. Super. Ct., Nov. 4, 1994).

to the plaintiff from the former proceedings.¹⁰ Further, the Plaintiff in the malicious prosecution action bears the burden of proving malice.¹¹

As the Court explained in *Stidham v. Diamond State Brewery*¹², “for an act to have been done in such a way as to form the basis of a suit for malicious prosecution, that act must have been done with a wrongful or improper motive or with a wanton disregard for the rights of that person against whom the act is directed.”¹³ Further, the probable cause determination within the context of the tort of malicious prosecution is viewed at the “time of the inception of the original proceedings.”¹⁴ Malice in a malicious prosecution claim is only considered when there is lack of probable cause, but it is not even considered when there was probable cause.¹⁵

Plaintiffs’ second cause of action alleges abuse of process in filing the subrogation action against Pfeiffer. In *Nix v. Sawyer*¹⁶, the Court articulated that “the parameters of this tort were considered in *Unit, Inc. v. Kentucky Fried Chicken Corporation*¹⁷:

In regard to the claim for abuse of process, Prosser states that the essential elements of the tort are: 1) an ulterior purpose; and 2) a willful act in the use of the process not proper in the regular conduct of the proceedings...some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required. Merely carrying out the process to its authorized conclusion, even though with bad intentions, does not result in liability. Some form of coercion to obtain a collateral advantage, not properly involved in the proceeding

¹⁰ *Beckett, supra* at *3 (citing *Megenhardt v. Nolan*, 583 A.2d 660 (Del. 1990).

¹¹ *Id.* (citing *Stidham v. Diamond State Brewery*, 21 A.2d 283, 285 (Del. Super. Ct. 1941).

¹² *Stidham, supra* at 285.

¹³ *Beckett, supra* at *3.

¹⁴ *Quartarone v. Kohl’s Dept. Stores, Inc.*, 983 A.2d 949, 958 (Del. Super. Ct. 2009).

¹⁵ *Id.* at 960.

¹⁶ *Nix, supra* at 412.

¹⁷ *Id.* (citing *Unit, Inc. v. Kentucky Fried Chicken Corporation*, 304 A.2d 320 (Del. Super. Ct. 1973)).

itself, must be shown, such as the surrender of property or the payment of money, by the use of the process as a threat or club.¹⁸

In other words, the plaintiff must allege: 1) a willful and improper act in the process; 2) any form of coercion; and 3) a collateral advantage to defendants arising from said coercion.¹⁹

Further, in *Toll Brothers, Inc. v. General Accident Ins. Co.*²⁰, the Court stated:

The gist of an action for abuse of process is the improper use of process after it has been issued, that is, a perversion of it. An abuse is where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it...On the other hand, legal process, civil or criminal, may be maliciously used so as to give rise to a cause of action where no object is contemplated...other than its proper effect and execution.

Malicious use of civil process has to do with the wrongful initiation of such process, while abuse of civil process is concerned with a perversion of a process after it is issued.²¹

The facts, viewed in a light most favorable to Plaintiffs, do not support claims for abuse of process or malicious prosecution against the Defendants. Neither State Farm nor Mr. McCullough acted with the required malice, improper motive or wanton disregard for the rights of Plaintiffs. Additionally, Mr. Watson does not seem to have done anything but provide correct information regarding the facts of the related subrogation action giving rise to the instant case. Mr. Watson correctly identified Susan Peiffer as the responsible party in the subrogation action. Suzanne Pfeiffer's license was apparently suspended as a result of two mistakes: (i) State Farm incorrectly spelling the intended Defendant's name in the subrogation action as Suzanne Pfeiffer, not Susan

¹⁸ *Nix, supra* at 412 (citing Prosser, *Law of Torts*, § 121 (4th Ed 1971); *Stevens v. Independent Newspapers, Inc.*, 1988 WL 25377 (Del. Super. Ct. March 10, 1988).

¹⁹ *Nix, supra* at 412.

²⁰ *Toll Brothers, Inc. and TB Proprietary Corp. v. General Accident Ins. Co.*, 1999 WL 744426 (Del. Super. Ct. Aug. 4, 1999).

²¹ *Id.* at *5.

Peiffer; and (ii) the investigator used by Mr. McCullough retrieving the incorrect individual's driver's license number. Once the incorrect driver's license number was provided to Mr. McCullough, a license suspension was sought for the wrong individual. Reviewing the record in light most favorable to the Plaintiff's, this Court finds no evidence indicating State Farm, Mr. Watson or Mr. McCullough targeted Suzanne Pfeiffer by commencing the subrogation action arising from the automobile accident that occurred on March 20, 2002. Further, there is no evidence that any person other than Susan Peiffer was the target of the subrogation action. While the name was spelled incorrectly, the complaint in the subrogation action was served upon the intended Defendant and the address was listed as the intended Defendant's current address. The Default Judgment in the subrogation action, leading to Suzanne Pfeiffer's license suspension, was vacated at the time State Farm and Mr. McCullough learned of the mistake. This Court finds no wanton and willful disregard or malicious action in the conduct of the Defendants.

Neither State Farm nor Mr. McCullough used Suzanne Pfeiffer's address during the initial litigation to garnish or attach any property of Suzanne Pfeiffer. Mr. McCullough and State Farm took no action other than to have Suzanne Pfeiffer's driver's license suspended. Indeed, if Suzanne Pfeiffer was the target of the litigation as Plaintiffs allege, it appears that State Farm and/or Mr. McCullough would have sought more than simply a suspension of her driver's license. There is further no factual basis or evidence that Defendants' instituted proceedings solely to target Plaintiffs. The bare allegations contained in the Complaint are insufficient to proceed to trial on claims for abuse of process or malicious prosecution. While State Farm and Mr. McCullough could have

avoided the mistake leading to Suzanne Pfeiffer's license suspension, the facts here do not support a conclusion that the Defendants possessed the requisite intent to support a cause of action for malicious prosecution or abuse of process. Plaintiffs' possible remedies, for a mistake of the kind in this case, are better pursued through CCP Civil Rule 11 sanctions in the subrogation action rather than a suit for malicious prosecution or abuse of process. However, Plaintiffs' claims do not meet the elements for the causes of action asserted in the Complaint, specifically due to the absence of malice, improper motive, intent or wanton disregard of the rights of Plaintiffs.

For the above stated reasons, the Court must grant judgment in favor of the Defendant's in this action. Analyzing the requirements for a successful cause of action for malicious prosecution or abuse of process, this Court finds that the facts, considered in a light most favorable to Plaintiffs, cannot support a successful claim. For the reasons stated on the record at the hearing on November 30, 2010, and for the reasons stated in this Memorandum Opinion and Order, Defendant's Motions for Summary Judgment are GRANTED.

IT IS SO ORDERED.

Eric M. Davis
Judge