

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**ROBERT J. SHRADER; and
MONARCH ENVIRONMENTAL, INC.,**

Plaintiffs,

v.

**SIANA & VAUGHAN, LLP;
SIANA, BELLWOAR &
MCANDREW, LLP;
VAUGHAN, DUFFY & CONNOR, LLP;
STEPHEN SIANA, ESQUIRE;
JOSEPH E. VAUGHAN, ESQUIRE;
ANDREW J. BELLWOAR, ESQUIRE,**

Defendants,

v.

**ALL AMERICAN
ENVIRONMENTAL SERVICES, INC.;;
JOSEPH MCAFEE; and
KEVIN CONAWAY,**

Third Party Defendants.:

**CIVIL ACTION
NO. 03-3510**

DUBOIS, J.

APRIL 25, 2005

MEMORANDUM

I. INTRODUCTION

Plaintiffs, Robert J. Shrader and Monarch Environmental, Inc. (“Monarch”), filed an action on June 5, 2003 in this Court against several law firms and attorneys who initiated and pursued a lawsuit against them in the Chester County Court of Common Pleas. Plaintiffs’ Complaint asserts claims of wrongful use of civil proceedings, 42 Pa. C.S.A. §8351 et seq., intentional infliction of emotional distress, and defamation, 42 Pa. C.S.A. §8341 et seq.

Presently before the Court is defendants' joint Summary Judgment Motion and defendant Vaughan's individual Motion for Summary Judgment.¹ For the reasons set forth below, the Court grants defendants' Motions.

II. FACTS

Plaintiff Shrader is the president and sole shareholder of co-plaintiff Monarch, a company which provides environmental remediation services. (Compl. at ¶¶ 1-2). Defendants are Siana & Vaughan, LLP ("Siana & Vaughan"), Siana, Bellwoar & McAndrew, LLP, Vaughan, Duffy & Connors, LLP, Stephen Siana, Esq., Joseph E. Vaughan, Esq., and Andrew J. Bellwoar, Esq., the law firms and attorneys who allegedly initiated and pursued the underlying action against plaintiffs in the Court of Common Pleas of Chester County ("Chester County action" or "underlying action"). Third party defendants Kevin Conaway and Joseph McAfee are shareholders and managers of third party defendant All American Environmental Services, Inc. ("All American").² (Vaughan et al. Third Party Compl. at ¶¶ 1-3).

Monarch was a client of All American prior to June 1999. (Compl. at ¶¶ 10-11). In the summer and fall of 1998, Shrader, on behalf of Monarch, and Conaway and McAfee, on behalf of All American, discussed a merger which would have created a new entity called EMTAE, Inc. (Id. at ¶¶ 12-13). According to Conaway and McAfee, the parties entered into an agreement to

¹ The Court notes that Vaughan's name is included in both his individual motion and defendants' joint motion. Unlike the joint motion, Vaughan's individual motion addresses plaintiffs' defamation claim in which he and Siana and Vaughan are the only defendants.

² On February 27, 2004, Defendants Vaughan and Vaughan, Duffy & Connor, LLP filed a Third Party Complaint against All American, Conaway and McAfee. On March 1, 2004, Defendants Bellwoar, Siana, Siana & Vaughan, LLP, and Bellwoar & McAndrew, LLP also filed a Third Party Complaint against All American, Conaway and McAfee. On May 15 and May 19, 2005, the Court entered a default against each of these third party defendants, respectively.

form EMTAE. (Def. Vaughan Mot., Ex. C) (Conaway Dep. at 71-73). In or about February 1999, All American moved into Monarch's facility. (Id. at ¶ 14). Shortly thereafter, a dispute arose concerning overdue payments for services Monarch performed for All American and other matters related to the companies' business dealings. (Id. at ¶¶ 14-18). On June 22, 1999, Shrader and Monarch's attorney, Patrick Henigan, sent a letter to Conaway, McAfee and All American demanding payment and threatening to file a criminal complaint. (Def. Vaughan Mot., Ex. B) (Shrader Dep. at 80).

Soon thereafter, defendant Siana & Vaughan began representing All American and its "shareholders and managers," Conaway and McAfee, in connection with the dispute between Monarch and All American. (Compl. at ¶¶ 19-20). On June 24, 1999, at an initial meeting with Joseph E. Vaughan, Esq. and Steven Siana, Esq.,³ Conaway and McAfee detailed Monarch's demand for payment and their belief that Shrader and Monarch owed them funds associated with the formation of EMTAE. (Conaway Dep. 71-74). Plaintiffs aver that, at this meeting, Vaughan called Shrader a "scumbag" who had stolen money from Vaughan years ago in previous business dealings, and "tried to paint the picture to [Conaway] that [Shrader] was the type of person that . . . was going to do the same thing to [Conaway]." (Shrader Dep. at 121-123). Conaway, in his deposition, confirmed that Vaughan made these remarks. (Def. Vaughan Mot., Ex. C) (Conaway Dep. 79-81, 134-135). On the basis of this initial meeting, Siana & Vaughan advised Conaway and McAfee to file an action against Shrader and Monarch and then prepared a complaint. (Id. at 73-81, 135-36).

³ Conaway, in his deposition, states that Siana was present for part of the meeting, but could not recall if he was present during Vaughan's statements about Shrader at issue. (Conaway Dep. at 69-70, 79, 134-35).

On August 4, 1999, Siana & Vaughan filed a twelve-count complaint on behalf of Conaway, McAfee, and All American in the Chester County Court of Common Pleas against Shrader, Monarch, and additional parties, alleging, *inter alia*, fraudulent misrepresentation, breach of contract, unjust enrichment, and several derivative claims based on Shrader's alleged fiduciary responsibilities to the parties' joint corporation, EMTAE, Inc. (Compl. at ¶ 23 & Ex. A). Defendant Andrew J. Bellwoar, Esq., signed the complaint. (Defs. Mot. at ¶ 30). Monarch also filed counterclaims in the Chester County Action for breach of contract, unjust enrichment, fraud, and violations of RICO. On January 3, 2002, the Court of Common Pleas dismissed the derivative claims—seven of the twelve counts of the complaint—on the ground that EMTAE was never incorporated. (Def. Vaughan Mot., Ex. E) (Order dated Jan. 3, 2002).

“At some point in 2001,” Vaughan left Siana & Vaughan and formed defendant Vaughan, Duffy, & Connors LLP, which continued to represent Conaway, McAfee, and All American in the Chester County action. (Compl. at ¶ 31).⁴ Defendant Siana, Bellwoar & McAndrew, LLP, is successor in interest to Siana & Vaughan.

The Chester County action was called to trial on October 23, 2002. On October 25, 2002, after two days of trial, the parties reported that they had reached a settlement. Pursuant to the settlement agreement, Shrader and Monarch received \$27,500 and the parties agreed to discontinue their claims and counterclaims against one another. (Defs. Mot., Ex. G, at 8)

⁴ Plaintiffs allege in the Complaint that “Vaughan left [Siana & Vaughan] and formed SVD,” which “continued to prosecute the action against Shrader and [Monarch].” (Compl. ¶¶ 31-32). Plaintiffs' reference to “SVD” appears to be a typographical error because this acronym does not correspond to the name of any of the defendants and state court documents identify Vaughan, Duffy, and Connors LLP as successor counsel for defendants in the Chester County action.

(October 25, 2002 Tr.). To that end, the parties filed a Praecipe to Settle, Discontinue and End their claims and counterclaims on November 6, 2002. (Defs. Mot. Ex. H).

Plaintiffs filed the present action on June 5, 2003. The Complaint contains three counts: (1) a claim by both Shrader and Monarch for wrongful use of civil proceedings in violation of the Dragonetti Act, 42 Pa. C.S.A. §8351 et seq.; (2) a claim by Shrader for intentional infliction of emotional distress; and (3) a claim by Shrader for defamation against Vaughan and Siana & Vaughan for the disparaging statements Vaughan allegedly made in the presence of Conaway and McAfee, pursuant to 42 Pa. C.S.A. §8343 et seq. Jurisdiction is based on diversity of citizenship pursuant to 28 U.S.C. §1332.

In their Motions and related submissions, defendants argue as follows: (1) there is no genuine issue of material fact as to whether defendants wrongfully used civil proceedings because the Chester County action did not terminate in plaintiffs' favor, and because defendants had probable cause to pursue the action; (2) there is no genuine issue of material fact regarding Shrader's claim for intentional infliction of emotion distress because defendants' conduct was not extreme and outrageous, and because Shrader failed to demonstrate physical injury; and (3) as argued by defendant Vaughan in his individual Motion, his remarks to Conaway and McAfee did not satisfy the required elements of a defamation claim and were protected by judicial privilege.

III. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is appropriate where, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the

moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986). Courts hold that, “a material fact is ‘genuine,’ . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id. at 248. A “material” factual dispute is one which might affect the outcome of the case under governing law. Id. Moreover, “a party resisting a [Rule 56(c)] motion cannot expect to rely merely upon bare assertions, conclusory allegations or suspicions.” Gans v. Mundy, 762 F.2d 338, 341 (3d Cir. 1985) (internal citations omitted).

IV. DISCUSSION

A. Wrongful Use of Civil Proceedings

Count I of plaintiffs’ Complaint alleges a claim for wrongful use of civil proceedings, pursuant to 42 Pa. C.S.A. §8351(a). 42 Pa. C.S.A. §8351(a) provides that: “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]:

- (1) He acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and
- (2) The proceedings have terminated in favor of the person against whom they are brought.”

With regard to the second element, courts in Pennsylvania have held that proceedings are not terminated in favor of the party against whom they were brought when the parties agree to settle the action pursuant to an agreement representing a compromise. See Electronic Laboratory

Supply Co. v. Cullen, 712 A.2d 304, 310-11 (Pa. Sup. Ct. 1998). See also Kornafel v. U.S. Postal Service, 2000 WL 116072, at *4 (E.D. Pa. 2000) (“A settlement does not constitute a favorable termination for the purposes of this statute.”). In Cullen, the court considered an underlying action in which a complaint and counterclaims had been filed. Cullen, 712 A.2d at 305. The complaint was dismissed as to some defendants, leaving only those defendants’ counterclaims and plaintiff’s claims against other defendants. Id. Plaintiff and all defendants in the underlying action settled the suit pursuant to an agreement under which those defendants against whom all claims were previously dismissed received a substantial cash settlement. Id. Under those circumstances, the court in Cullen held that the action was not terminated in favor of those defendants because the settlement represented a compromise between the parties for which they both negotiated. Id. at 311.

Likewise, the parties in this case terminated the Chester County action pursuant to a settlement agreement after two days of trial.⁵ When the parties announced their settlement in open court, both Conaway and Shrader stated that they understood and agreed to the terms of the settlement. (Def. Mot., Ex. G) (Chester Count Action, Oct. 25, 2002, Tr. 6:10-7:11). Shrader and Conaway also agreed that, in addition to settling the claims between All American and Monarch, they were “dismissing the mutual adversary personally from any liability.” (Id.) (Tr. 8:18-20). With respect to the settlement, in his deposition in this case, Shrader admitted that he authorized his attorney to negotiate the settlement and that the agreement represented a compromise. (Def. Vaughan Mot., Ex. B) (Shrader Dep. at 155-56).

⁵ Plaintiffs rely on Bannar v. Miller, 701 A.2d 242 (Pa. Super. 1997), for the proposition that “[a] last-second dismissal in the face of imminent defeat” results in termination in favor of the opposing party. Id. at 247. The Court concludes that Bannar is distinguishable because in that case plaintiffs in the underlying action voluntarily dismissed their claims, and did not reach a settlement agreement—as occurred in this case and the applicable authority.

As in Cullen, the fact that the settlement agreement required All American to pay Monarch a cash sum does not mean that the proceedings terminated in favor of Shrader and Monarch. Cullen, 712 A.2d at 311.⁶ To the contrary, the settlement represented a compromise.

For all of the foregoing reasons, the Court concludes that the Chester County action did not terminate in plaintiffs' favor. Therefore the Court grants defendants' Motions for Summary Judgment on the claim for wrongful use of civil proceedings asserted in Count I of the Complaint.

B. Intentional Infliction of Emotional Distress

In Count II of the Complaint, Shrader alleges a claim for intentional infliction of emotional distress on the ground that “[d]efendants’ actions in initiating and continuing the Chester County action were wanton, malicious and with complete disregard of [his] rights,” which resulted in “emotional injury as well as economic losses.” (Compl. ¶¶ 40-41). Plaintiffs do not advance any argument in support of this Count in either of their Memoranda in Opposition, and in fact they submitted a proposed form of order providing for dismissal of County II.⁷ Nevertheless, given the ambiguity of plaintiffs’ intent to dismiss Count II, the Court briefly addresses the merits of this claim.

⁶ The Court also concludes that the Chester County action did not terminate in plaintiffs’ favor as a result the dismissal of seven of the twelve counts in the complaint. Dismissal of some claims is insufficient to establish that the *proceedings* terminated in favor of the opposing party. See Cullen, 712 A.2d at 305. In fact, the court in Cullen ruled that the proceedings did not terminate in favor of defendants in the underlying action against whom *all* claims were dismissed, leaving only defendants’ counterclaims, before the parties settled the action. Cullen, 712 A.2d at 305. Cf. Laventhol & Horwath v. First Pennsylvania Bank, 18 Phila. Co. Rptr. 580, 583 & 586 (holding that “the fact that one element of a pleading may have been alleged without sufficient probable cause,” was insufficient to establish that the entire complaint was filed without probable cause).

⁷ Plaintiffs’ proposed Orders state, “it is hereby ORDERED and DECREED that [the Motions are Summary Judgment] are GRANTED as to Plaintiff Robert Shrader’s Claim for Intentional Infliction of Emotional Distress and is DENIED in all other respects.” (Doc. No. 43 & 44).

Although the Pennsylvania Supreme Court has “never expressly recognized a cause of action for intentional infliction of emotional distress,” it has cited the Restatement of Torts “as setting forth the minimum elements necessary to sustain such a cause of action.” Taylor v. Albert Einstein Med. Ctr., 562 Pa. 176, 181 (2000). The Restatement of Torts (2d) § 46 provides that “[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.” The Restatement defines “extreme and outrageous conduct” as follows:

It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by ‘malice,’ or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Id., comment d.

The parties point to no authority in Pennsylvania or this Circuit ruling that the wrongful prosecution of a civil action, if proven, constitutes “extreme and outrageous conduct.” See Edwards v. Wyatt, 2001 WL 1382503, at *5 (E.D. Pa. 2001) (noting that “[opposing party’s] litigation tactics are not so extreme and outrageous as to go beyond all possible bounds of decency”). Based on a review of the relevant cases, the Court concludes that the allegation that defendants “maliciously and wantonly” initiated and continued the Chester County action, considered alone, does not “go beyond all possible bounds of decency.” REST (2d) §46, comment d. Compare with Hoffman v. Memorial Osteopathic Hosp., 342 Pa. Super. 375, 382 (1985) (holding that evidence was sufficient to support finding of intentional infliction of emotional distress against doctor who left patient laying on floor after falling, unable to move and crying, for two hours). Moreover, the Court notes that Shrader, beyond the averments in the

Complaint, fails to point to any evidence in the record to support his argument that defendants' conduct was extreme and outrageous.

Additionally, even assuming that defendants' conduct was extreme and outrageous, Pennsylvania courts require a plaintiff to establish physical injury in connection with a defendant's conduct in order to state a claim for intentional infliction of emotional distress. Hart v. O'Malley, 436 Pa. Super. 151, 174 (1994). See also Edwards v. Wyatt, 2001 WL 1382503, at *5 (E.D. Pa. 2001) (dismissing counterclaims for intentional infliction of emotional distress where party only alleged suffering "financial harm and emotional stress"). Moreover, in order to establish a genuine issue of material fact that plaintiff sustained a physical injury, he must proffer expert medical evidence. Kazatsky v. King David Memorial Park, Inc., 515 Pa. 183, 197 (1987).

In the Complaint, plaintiff only asserts he suffered "emotional injury as well as economic losses." (Compl. ¶ 41). The Court notes that, in answer to defendants' interrogatories, Shrader stated he suffered "sleeplessness, anxiety, weight loss and gain, elevated blood pressure [and] severe mental stress and worry" as a result of the underlying lawsuit; and plaintiff, in his deposition, stated he visited a doctor to treat these symptoms. (Defs. Mot., Ex. I & J., No. 2-12); (Def. Vaughan Mot., Ex. B., 129-132). However, beyond the averments in the Complaint, and the above discovery, plaintiff does not offer any medical evidence of physical injury.⁸ That evidence is insufficient to create a genuine issue of material fact as to the intentional infliction of emotional distress claim. See Tuman v. Genesis Assocs., 935 F. Supp. 1375, 1393 (E.D. Pa. 1996) (holding that plaintiffs failed to prove "physical injuries stemming from their emotional distress. . . [when they] failed to submit any records from [a] physician with their opposition

⁸ The Court also notes that plaintiffs, in their "Answer to Defendants' Statement of Facts" (¶ 44), admit defendants' averment that "Shrader has not produced any medical report to substantiate any physical injuries." (Defs. Mot. ¶ 44).

papers, and Plaintiffs' counsel acknowledged at oral argument that there was no expert medical confirmation in the record”).

For the foregoing reasons, the Court concludes that there is no genuine issue of material fact as to whether defendants' conduct was extreme and outrageous, or whether plaintiff suffered physical injury as a result of such conduct. Thus the Court grants defendants' Motions for Summary Judgment as to the claim for intentional infliction of emotional distress set forth in Count II of the Complaint.

C. Defamation Claim against Defendants Vaughan and Siana & Vaughan

In Count III, Shrader alleges a defamation claim against defendants Vaughan and Siana & Vaughan. This claim is based on the allegation that, during Vaughan's initial June 24, 1999 meeting with his clients, Conaway and McAfee, Vaughan told Conaway and McAfee that Shrader was “scumbag” and that Shrader had stolen money from Vaughan and would do the same to Conaway and Shrader. Thereafter, based on Vaughan's recommendation, Conaway, McAfee and All American filed the Chester County action against Shrader and Monarch.

Pennsylvania courts have held that “[a]ll communications pertinent to any stage of a judicial proceeding are accorded an absolute privilege which cannot be destroyed by abuse,” and therefore cannot be the basis of a defamation action. See Binder v. Triangle Publications, Inc., 442 Pa. 319, 323 (1971). “The privilege is also extended to parties to afford freedom of access to the courts, to witnesses to encourage their complete and unintimidated testimony in court, and to counsel to enable him to best represent his client's interests.” Id. at 324. “Moreover, the privilege extends not only to communications made in open court, but also encompasses pleadings and even less formal communications such as preliminary conferences and correspondence between counsel in furtherance of the client's interest.” Pawlowski v. Smorto, 403 Pa. Super. 71, 81

(1991). The court in Pawlowski held that judicial privilege applied to statements made to law enforcement officials for the purpose of initiating criminal proceedings. Id. at 83. In so holding, the court stated that “statements made by a party who consults with his or her attorney preliminary to instituting a civil action. . . are deemed to be absolutely privileged.” Id. at 83-84.

Moreover, at least one court in Pennsylvania and one court in this Circuit have stated that “an absolute privilege has been held applicable to defamatory material contained in. . . counsel's statements to a client.” Smith v. Griffiths, 327 Pa. Super. 418, 424 (1984) (citing Jones v. RCA Music Service, 530 F. Supp. 767, 768 (E.D. Pa. 1982) (Giles, J.) (holding that “because [the attorney’s] statement was in connection with advice that [his client] could sue plaintiff. . . it is absolutely privileged as preliminary to a proposed judicial proceeding.”)). See also Restatement (2d) Torts §586 (“An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding.”); id., comment a. (“The privilege stated in this Section is based upon a public policy of securing to attorneys as officers of the court the utmost freedom in their efforts to secure justice for their clients. Therefore the privilege is absolute.”).

Vaughan made the remarks alleged in the Complaint during his first meeting with Conaway and McAfee to discuss their business disputes with Monarch and Shrader, including Conaway and McAfee’s belief that Shrader owed them money associated with their joint corporation. On the basis of this preliminary meeting, Vaughan recommended the institution of suit and Siana & Vaughan prepared and filed the complaint in the Chester County action. The Court concludes that Vaughan’s statements to Conaway and McAfee were made in connection

with Siana & Vaughan's representation of the two of them and All American in the Chester County action. Thus, these statements are protected by judicial privilege and cannot be the basis of a claim for defamation. Accordingly, the Court grants defendants' Motions for Summary Judgment on the defamation claim asserted in Count III.

V. CONCLUSION

For the reasons above, the Court grants defendants' Motions for Summary Judgment and enters judgment in favor of all defendants against plaintiffs.

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**ROBERT J. SHRADER; and
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**SIANA & VAUGHAN, LLP;
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**ALL AMERICAN
ENVIRONMENTAL SERVICES, INC.;;
JOSEPH MCAFEE; and
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Third Party Defendants.:

**CIVIL ACTION
NO. 03-3510**

ORDER

AND NOW, this 25th day of April, 2005, in consideration of Defendants, Siana, Bellwoar & McAndrew, LLP, Siana & Vaughan, LLP, Vaughan, Duffy & Connors, LLP, Stephen V. Siana, Esquire, Joseph E. Vaughan, Esq., and Andrew J. Bellwoar, Esquire's Summary Judgment Motion (Doc. No. 40, filed September 15, 2004); Joseph E. Vaughan, Esquire's Motion for Summary Judgment (Doc. No. 41, filed September 15, 2004); Plaintiffs' Memorandum of Law in Opposition to and Answer to Defendants' Joint Motion for Summary Judgment (Doc. No. 43, filed October 1, 2004); Plaintiffs' Memorandum of Law in Opposition to and Answer to Defendant Joseph Vaughan's Motion for Summary Judgment (Doc. No. 44, filed October 1,

2004); Defendants, Siana, Bellwoar & McAndrew, LLP, Siana & Vaughan, LLP, Stephen V. Siana, Esquire, and Andrew J. Bellwoar, Esquire's Rebuttal Brief to Plaintiffs' Memorandum of Law in Opposition to and Answer to Defendants' Joint Motion for Summary Judgment (Doc. No. 46, filed October 14, 2005); and Defendants' Joseph E. Vaughan and Vaughan Duffy & Connors LLP, Reply in Support of their Motion for Summary Judgment (Doc. No. 47, filed October 14, 2005), and the related submissions of the parties,

IT IS ORDERED that Defendants, Siana, Bellwoar & McAndrew, LLP, Siana & Vaughan, LLP, Vaughan, Duffy & Connors, LLP, Stephen V. Siana, Esquire, Joseph E. Vaughan, Esq., and Andrew J. Bellwoar, Esquire's Summary Judgment Motion and Joseph E. Vaughan, Esquire's Motion for Summary Judgment are **GRANTED**, and judgment is **ENTERED** in **FAVOR** of defendants, Siana & Vaughan, LLP, Siana, Bellwoar & McAndrew, LLP, Vaughan, Duffy & Connors, LLP, Stephen Siana, Esq., Joseph E. Vaughan, Esq., and Andrew J. Bellwoar, Esq., and against plaintiffs, Robert J. Shrader and Monarch Environmental, Inc.

BY THE COURT:

JAN E. DUBOIS, J.