

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

DANIEL CHAID : CIVIL ACTION
 :
 v. :
 :
 JOHN E. du PONT : NO. 96-599

MEMORANDUM AND ORDER

Fullam, Sr. J. December , 1997

Plaintiff Chaid was employed by the defendant as a wrestling coach. He brought this action for breach of contract. The action was stayed, by mutual consent, pending the defendant du Pont's trial on homicide charges, arising from the shooting of another wrestler on defendant's estate. Du Pont was convicted, and is serving a 12-year sentence.

Shortly after the completion of the criminal trial, du Pont filed a separate action against the plaintiff, charging him with arson (Civil Action No. 97-6275). The two cases have now been consolidated, and are proceeding under the original docket number, 96-CV-599. This has resulted in some procedural confusion, because of pleadings filed before the two cases were consolidated. While the two actions were proceeding under separate docket numbers, Chaid filed an "answer" to du Pont's "complaint" in 97-CV-6275. The answer included a "counterclaim" for "malicious abuse of process." Du Pont has filed a motion to dismiss the "counterclaim."

In an attempt to simplify matters, an order will be entered to the effect that Mr. du Pont's "complaint" in Civil Action 97-6275 will be considered, and will hereafter be treated and designated, as a counterclaim to Mr. Chaid's complaint in Civil Action 96-599. Mr. Chaid's recently-filed "counterclaim" will be treated as a reply.

The pending motion to dismiss asserts that the allegations of Mr. Chaid's reply fail to assert a cognizable claim. I agree that, on the facts stated, Mr. Chaid cannot establish "abuse of process," since he merely alleges the filing of a lawsuit for an improper motive. See, Shaffer v. Stewart, 326 Pa. Super. 135, 473 A.2d 1017 (1984). And defendant is also correct in noting that, before plaintiff would be entitled to recover on a theory of malicious use of process, he would have to have been successful in defending against Mr. du Pont's arson claims. But I see no particularly compelling reason to require yet another lawsuit, in the event Mr. Chaid prevails in this one. The preferable course, in my view, is to sever these claims, and require the arson claims to proceed to verdict first. The same is true of Mr. Chaid's separately-pleaded claim for intentional infliction of emotional distress.

An Order follows.

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ORDER

AND NOW, this day of December, 1997, IT IS
ORDERED:

1. The "complaint" filed by the defendant du Pont as
as a plaintiff in Civil Action 97-6275, (now consolidated with
this case), shall hereafter be designated and treated as a
counterclaim. The counterclaim pleaded by plaintiff Chaid, as a
defendant in Civil Action 97-6275, shall hereafter be designated
and treated as a reply.

2. Plaintiff Chaid's claims for malicious abuse of
process are DISMISSED. Plaintiff's reply shall be treated as
asserting a claim for malicious use of process, and a claim for
intentional infliction of emotional distress. Those claims will
be SEVERED for purposes of trial, and all other pending claims
will be tried first.

3. Except as stated above, defendant du Pont's Motion
to Dismiss is DENIED.

John P. Fullam, Sr. J.