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IN THE FRANKLIN COUNTY MUNICIPAL COURT
CIVIL DIVISION
FRANKLIN COUNTY, OHIO

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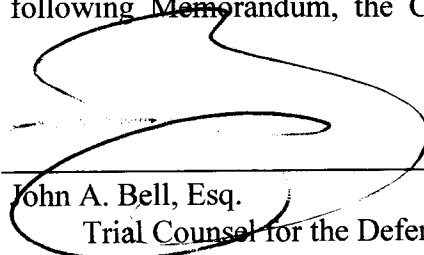
FRANKLIN COUNTY
MUNICIPAL COURT
LORI M. TYACK

Veronica Wagner Covatch, <i>et al.</i> ,	:	
Plaintiffs	:	CASE NO.: 2014-CVF-024571
-vs.-	:	Judge: Brandt
Central Ohio Sheltie Rescue, Inc., <i>et al.</i> ,	:	
Defendants	:	

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO "MOTION TO STRIKE
AND/OR DISMISS COUNTERCLAIMS AND FOR SANCTIONS"**

Now come the Defendants in the above-captioned action, Central Ohio Sheltie Rescue, Inc., hereinafter referred to individually as, "Defendant COSR," and Penny Sanderbeck, hereinafter referred to individually as, "Defendant Sanderbeck," collectively hereinafter referred to as, "these Answering Defendants," and by and through their undersigned attorney, they offer the following Memorandum in Opposition to the "Motion to Strike and/or Dismiss Counterclaims and for Sanctions," hereinafter referred to as the "instant Motion to Strike," which was filed July 15, 2015. For the reasons and authorities contained in the following Memorandum, the Court should **OVERRULE** the instant Motion to Strike.

Respectfully submitted,


 John A. Bell, Esq. 0025853
 Trial Counsel for the Defendants
 2700 East Main Street - Suite 207
 P. O. Box 091022
 Bexley, Ohio 43209-1022
 Telephone: (614)-266-2961
 Facsimile: (614)-239-0543
 E-mail: JohnLegal@aol.com

MEMORANDUM IN OPPOSITION

The Plaintiffs in this action have now filed yet another “Motion to Strike.” The record in this action should reflect that the Plaintiffs filed a Motion to Strike Memorandum of Defendants Central Ohio Sheltie Rescue, Inc., and Penny Sanderbeck Regarding Motion to Dismiss,” on April 17, 2015, in which they asked the Court to strike the reply Memorandum filed by these Answering Defendants on April 9, 2015. The latest “Motion to Strike,” directed at the Counterclaims filed by these Answering Defendants¹, is just as far outside the Rules of Civil Procedure as the April 17, 2015, Motion to Strike.

As previously noted, the ‘Motion to Strike’ is provided in Rule 12(F) of the Ohio Rules of Civil Procedure, which states,

“(F) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty-eight days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.”

The Counterclaims in this action do not contain any “insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.” Therefore, they are not subject to a Motion to Strike.

The instant Motion to Strike alternatively seeks dismissal of the Counterclaims pursuant to Rule 12(B) of the Ohio Rules of Civil Procedure.

¹ It should be noted that at this time, the Defendants have not yet even perfected service of the Counterclaims. Nevertheless, despite the Plaintiffs’ complete failure to respond to proper discovery requests that have now been pending for several months, Plaintiffs’ counsel can prepare and file a ten-page Motion to Strike.

The first argument in the instant Motion to Strike is that the Counterclaims are untimely under Rule 13(A), because the Plaintiffs assert that the Counterclaims are “compulsory counterclaims” which should have been included in the Amended Answer filed in February 2015.

The Plaintiffs referenced the two-prong test for whether counterclaims are “compulsory” under Civil Rule 13(A), from *Rettig Enterprises, Inc., v. Koehler* (1994) 68 Ohio St. 3d 274. The first prong is whether the claim existed at the time of the service of the pleading. While many of the actions which form the basis for the Counterclaims did take place before February 2015, it is evident from the face of the Counterclaims that certain of the causes of action are continuing to accrue, even as of today. *See, e.g.*, Counterclaims at ¶¶ 85, 89, 90.

The second prong of the test for “compulsory” counterclaims is whether the claims arise from the same transaction or occurrence that is the basis of the complaint. Here, the instant Motion to Strike fails completely. The “transaction or occurrence” that is the subject of the Plaintiff’s Complaint was these Defendants’ acquisition of a Shetland Sheepdog from the Franklin County Animal Shelter in April 2014, and the refusal to surrender that dog to the Plaintiffs. All of those actions were completed in April and May 2014, and involved only the Plaintiffs and these answering Defendants. However, the Counterclaims are based upon the Plaintiffs’ campaign of intimidation and harassment which may possibly have been motivated by the events of April and May 2014, but which did not begin until weeks, and in some instances months, after the dog was acquired. Indeed, as noted above, the Plaintiffs’ wrongful conduct as alleged in the Counterclaims is still ongoing at this date. Moreover, the Plaintiffs’ wrongful acts are comprised of tortious communications between Plaintiffs and others, including businesses with which the Defendant COSR had ongoing advantageous relationships. The Plaintiffs’ wrongful actions may have been motivated by their feelings about the events of April and May 2014, but they do not arise from that occurrence.

Further, the provisions of Civil Rule 13(A) are intended to ensure that “[a]ll existing claims between opposing parties that arise out of the same transaction or occurrence must be litigated in a single lawsuit pursuant to Civ.R. 13(A), no matter which party initiates the action.” *Rettig Enterprises, Inc. v. Koehler*, 68 Ohio St.3d 274, 626 N.E.2d 99, 1994-Ohio-127, paragraph one of the syllabus. If a party fails to assert a compulsory counterclaim, that party is barred from litigating the counterclaim in a separate action. *Id. at 277.* In this action, the Defendants are not seeking to initiate a separate or second lawsuit, but rather to assert their claims against the Plaintiffs that arose in the months since the transaction that is the subject of the Plaintiffs’ Complaint.

Therefore, the instant Motion to Strike fails to satisfy the second prong of the test to determine whether the counterclaims are “compulsory.” Thus, the Motion to Strike should be overruled.

To the extent that the Court might believe that there is a “compulsory” counterclaim asserted by these Answering Defendants, the Court should grant leave to amend the Answer to include any of the Counterclaims that are “compulsory.” Pursuant to Rule 15(A) of the Ohio Rules of Civil Procedure, “The court shall freely give leave when justice so requires.” The Plaintiffs do not even allege that they are nor would be prejudiced by permitting the se Defendants to assert their Counterclaims at this time.

The instant Motion to Strike goes on to assert that the Court should dismiss the Counterclaims under Civil Rule 12(B) for failure to state a claim upon which relief could be granted. The Plaintiffs argue that “the Counterclaimants cannot present any facts to legally support the claims for relief,” as opposed to “unsupported legal conclusions.” Even a cursory examination of the Counterclaims belies the Plaintiffs’ arguments in this regard. The Counterclaims are exceptionally detailed, with dates, persons, content of accused communications, and other salient facts.



As a subordinate argument, the Plaintiffs argue that the defamation claims asserted in the Counterclaims are barred by the one-year Statute of Limitations. It appears that Plaintiffs' counsel failed to read the Counterclaims, since the defamation claims are expressly limited to those statements occurring within the one-year before the Counterclaims were filed. See Counterclaims at ¶¶ 94 and 96. (Plaintiffs' counsel mistakenly directed this argument at Counts Three and Six of the Counterclaims, although the defamation claims are actually Counts Two and Three. Count Six of the Counterclaim is "False Light Invasion of Privacy," which is not subject to the one-year period of limitation that applies to defamation.)

As a second subordinate argument, the Plaintiffs' instant Motion to Strike asserts that since a criminal prosecution must be initiated by affidavit or indictment, therefore the Defendants' Counterclaim Count Five, for civil damages based upon the Plaintiffs' criminal acts, should be dismissed. In this regard, Plaintiffs' counsel is again completely mistaken. Section 2307.60 of the Ohio Revised Code, entitled "Civil action for damages for criminal act," states as follows:

"(A)(1) Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code."

Clearly, the claim in Count Five of the Defendants' Counterclaims is expressly authorized by statute, and the Plaintiffs' arguments on this issue should be summarily overruled.

Next, the instant Motion to Strike asserts that the Counts for interference with contract and interference with advantageous relationship "are stated identically and fail to state a claim upon which relief may be granted."



The claims for interference with contract are, indeed, very similar to the claims for interference with advantageous relationship. That is due to the nature of the two types of claims and is not a reason to dismiss either of them. The Court of Appeals of Ohio has stated that,

“The torts of interference with business relationships and contract rights generally occur when a person, without a privilege to do so, induces or otherwise purposely causes a third person not to enter into or continue a business relation with another, or not to perform a contract with another. *A & B-Abell Elevator Co. v. ColumbusCent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 651 N.E.2d 1283 (1995). The main distinction between tortious interference with a contractual relationship and tortious interference with a business relationship is that interference with a business relationship includes intentional interference with prospective contractual relations not yet reduced to a contract. *Diamond Wine & Spirits, Inc. v. Dayton Heidelberg Distrib. Co., Inc.*, 148 Ohio App.3d 596, 604, 2002-Ohio-3932, 774 N.E.2d 775 (3rd Dist.).” *Morrison v. Renner*, 2011 Ohio 6780 (Muskingum Co. App., 2011) at ¶ 20.

In this case, the Defendants allege that the Plaintiffs have interfered with both advantageous relationships which have not yet been reduced to contract, as well as interfered with business relationships which have been reduced to contract. While the conduct of the Plaintiffs in these claims was and is very similar, the Defendants are entitled to seek relief for the interference with both types of relationships: those reduced to contract and those which are not reduced to contract.

The instant Motion to Strike also argues that the claim for tortious interference with contract must be dismissed because no written contract was attached to the Counterclaims, pursuant to Rule 10(D)(1) of the Ohio Rules of Civil Procedure. It is well-settled that oral contracts are enforceable in Ohio. *See, e.g., Ramun v. Ramun*, 2014 Ohio 4440 (Mahoning Co. App., 2014), *Frank Novak & Sons, Inc. v. A-Team, L.L.C.*, 6 N.E.3d 1242 (Cuyahoga Co. App., 2014). Since these Defendants are entitled to relief from the Plaintiffs’ interference with oral contracts, the fact that no written contracts were attached to the Counterclaims is entirely immaterial.

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The instant Motion to Strike next argues that the Defendants are not entitled to injunctive relief solely because the Plaintiffs believe that the Defendants cannot show a likelihood of success on underlying claims. This argument puts the cart before the horse. Clearly, the Plaintiffs would like to believe that the Defendants have no chance of success on their underlying claims, but that does not make it so. To the contrary, the Defendants are far more likely to succeed on their claims which are supported by specific, detailed factual allegations and established law, than are the Plaintiffs. Therefore, the Plaintiffs' arguments in this regard are unavailing and the Motion to Strike should be summarily overruled.

The Plaintiffs' request for sanctions for alleged "frivolous conduct" is, at best, premature. Any consideration of 'frivolous conduct' sanctions should be reserved for post-judgment, since the Defendants' success at trial will preclude any finding that they or their counsel have engaged in any frivolous conduct.

The Plaintiffs' instant Motion to Strike does make (just) one argument that has limited merit: by clerical error, the Defendants' Counterclaims inadvertently used an incorrect figure for the maximum damages sought (Twenty-Five Thousand Dollars rather than Fifteen Thousand Dollars). The Defendants are submitting a Motion for Leave to file Amended Counterclaims, and upon the approval of that Motion, the Defendants will file Amended Counterclaims in which they will limit their claims to the jurisdictional cap applicable in this Honorable Court: Fifteen Thousand Dollars.

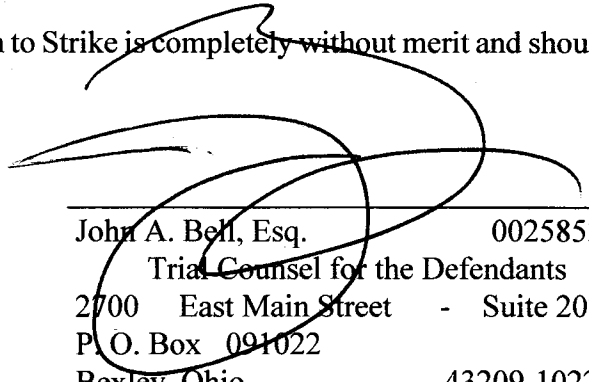
If for some reason this Honorable Court was to decline the request for leave to amend the Counterclaims, the proper remedy for the assertion of claims in excess of the jurisdictional cap is not dismissal of the action, but rather, transfer of the action to the Court of Common Pleas.

Rule 13(J) of the Ohio Rules of Civil Procedure states,

“(J) Certification of proceedings. In the event that a counterclaim, cross-claim, or third-party claim exceeds the jurisdiction of the court, the court shall certify the proceedings in the case to the court of common pleas.”

Therefore, the Plaintiffs' instant Motion to Strike is completely without merit and should be overruled.

Respectfully submitted,



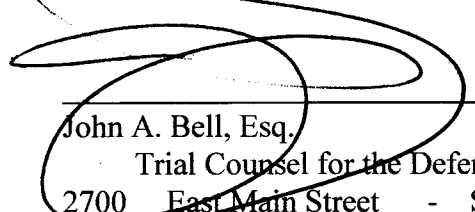
John A. Bell, Esq. 0025853
Trial Counsel for the Defendants
2700 East Main Street - Suite 207
P. O. Box 091022
Bexley, Ohio 43209-1022
Telephone: (614)-266-2961
Facsimile: (614)-239-0543
E-mail: JohnLegal@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-first (21st) day of July 2015, I have served a true copy of the foregoing DEFENDANTS' MEMORANDUM IN OPPOSITION TO "MOTION TO STRIKE AND/OR DISMISS COUNTERCLAIMS AND FOR SANCTIONS" upon all parties or counsel entitled to such service, by hand delivery, or by placing it in regular U.S. Mail, first class postage fully prepaid, addressed to:

Mr. James H. Banks, Esq., and
Ms. Nina M. Najjar, Esq,
P. O. Box 40
Dublin, Ohio 43017-0040

Mr. Scott Sheets, Esq.
Assistant Franklin County Prosecuting Attorney
373 South High Street
Fourteenth Floor
Columbus, Ohio 43215-4591



John A. Bell, Esq. 0025853
Trial Counsel for the Defendants
2700 East Main Street - Suite 207
P. O. Box 091022
Bexley, Ohio 43209-1022
Telephone: (614)-266-2961
Facsimile: (614)-239-0543
E-mail: JohnLegal@aol.com