

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DEWEY HOMES AND INVESTMENT
PROPERTIES, LLC, MARK T. VINSON,
JOSEPH P. ELM, MARK GISENDANER,
BRADLEY KRESS, BRIAN KRESS,
ALBERT McKEE and CHARLOTTE
McKEE, husband and wife, RONALD
MOLINARO, JEAN UTZ, MATTHEW
VINSON, DEAN WEIGLE, and SHARON
WEIGLE, husband and wife,

Plaintiffs,

v.

DELAWARE RIVERKEEPER NETWORK,
CLEAN AIR COUNCIL, DAVID DENK,
JENNIFER CHOMICKI, ANTHONY
LAPINA, JOANN GROMAN, and AMY
NASSIF,

Defendants.

CIVIL DIVISION

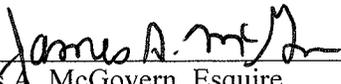
No. 2015-10393

**PRELIMINARY OBJECTIONS OF
DEFENDANTS DELAWARE
RIVERKEEPER NETWORK, CLEAN AIR
COUNCIL, DAVID DENK, JENNIFER
CHOMICKI, ANTHONY LAPINA AND
JOANN GROMAN TO PLAINTIFFS'
COMPLAINT**

NOTICE TO PLEAD

To Plaintiffs:

You are hereby notified to file a written
response to the enclosed **PRELIMINARY
OBJECTIONS** within twenty (20) days
from service hereof or a judgment may be
entered against you.


James A. McGovern, Esquire
Attorney for Defendant,
Delaware Riverkeeper Network

3. Meanwhile, on or about June 17, 2015, counsel for defendant Amy Nassif (“Nassif”) filed Preliminary Objections to Plaintiffs’ Complaint (“Nassif POs”) and a Brief in Support of Preliminary Objections solely on behalf of defendant Nassif. A true and correct copy of the Nassif POs is attached hereto as Exhibit “B.”

4. The Nassif POs summarize the factual background to this dispute as well as the allegations set forth in the Complaint. *Nassif POs at ¶¶1-13.*

5. The Nassif POs accurately note that there are three counts asserted in the Complaint, only two of which are asserted against defendant Nassif: Count II (“Tortious Interference with Prospective Contractual Relations”) and Count III (“Civil Conspiracy”).

6. The Complaint also contains a Count I (“Tortious Interference with Contracts”) that is specifically asserted against “All Defendants Except Nassif”. *Complaint at 11.*

7. The Nassif POs assert preliminary objections to Counts II and III of the Complaint under Pa. R. Civ. P. 1028(a)(2), (3) and (4), also relying upon Pa. R. Civ. P. 1019 and 1020(a). *Id.*

8. Substantively, the Nassif POs assert that the Complaint sets forth broad claims against the entire group of defendants without pleading any specific facts to support their allegations. The Nassif POs also assert that the claims lack any specificity as to which of the defendants’ activities were allegedly engaged in by which specific defendants. *See, e.g., id. at ¶¶19-20, 24-26.*

9. The Nassif POs thus assert, and support with citations to applicable rules and case law, that Counts II and III of the Complaint must be dismissed for failure to state the material facts on which the cause of action is based (Pa. R. Civ. P. 1019(a)); failure of the pleading to conform to law or rule of court (Pa. R. Civ. P. 1028(a)(2)); insufficient specificity of pleading

(Pa. R. Civ. P. 1028(a)(3)); and legal insufficiency of pleading (Pa. R. Civ. P. 1028(a)(4)).
Nassif POs at ¶¶14-40.

10. Separately, the Nassif POs also assert that Counts II and III of the Complaint must be stricken pursuant to Pa. R. Civ. P. 1020(a) because the Complaint fails to set forth each cause of action against each defendant in an individual count under a separate heading. *Id. at ¶¶41-46.*

11. In the interest of efficiency and judicial economy, the Defendants incorporate by reference all of the averments in the Nassif POs as if fully set forth herein.

I. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNTS I, II AND III OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(2), (3) and (4) [Insufficient Specificity]

12. Defendants incorporate the averments contained in the above Paragraphs as if fully set forth herein.

13. In addition, Defendants incorporate all legal arguments and supportive citations set forth in Paragraphs 14 through 40 of the Nassif POs as if fully set forth herein, except that Defendants further extend all such arguments and authorities to support the dismissal of Count I of the Complaint as well as Counts II and III of the Complaint.

14. Accordingly, Defendants respectfully request that this Honorable Court strike and dismiss Counts I, II and III of the Complaint as against all of the Defendants pursuant to Pa. R. Civ. P. 1028(a)(2), (3) and/or (4).

II. PRELIMINARY OBJECTION IN THE FORM OF A MOTION TO STRIKE COUNTS I, II AND III OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(2) [Pleading Deficiency -- Failure to Assert Separate Counts Against Separate Defendants]

15. Defendants incorporate the averments contained in the above Paragraphs as if fully set forth herein.

16. In addition, Defendants incorporate all legal arguments and supportive citations set forth in Paragraphs 41 through 46 of the Nassif POs as if fully set forth herein, except that Defendants further extend all such arguments and authorities in support of the dismissal of Count I of the Complaint as well as Counts II and III of the Complaint.

17. Accordingly, Defendants respectfully request that this Honorable Court strike and dismiss Counts I, II and III of the Complaint as against all of the Defendants pursuant to Pa. R. Civ. P. 1028(a)(2).

III. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNTS I, II AND III OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(4) [Legal Insufficiency of Pleading – *Noerr-Pennington* Doctrine]

18. Defendants incorporate the averments contained in the above Paragraphs as if fully set forth herein.

19. While the Complaint is astonishingly devoid of specific facts as against each of the Defendants (or even the Defendants as a group), the gravamen of the Complaint appears to relate to the Defendants' actions in opposition to an ordinance enacted by Middlesex Township, Pennsylvania and the Township's issuance of a zoning permit for the Geyer wellsite.

20. The ordinance at issue ("Ordinance 127"), if allowed to stand, will permit unconventional natural gas development – fracking -- in substantially all of Middlesex Township, including across the street from the Mars Area School District complex.

21. The Defendants include individuals who are residents of Middlesex Township and who live in close proximity to the Geyer wellsite, and include parents of children in the Mars Area School District who would be exposed, both at school and at home, to air emissions and other risks from the Geyer wellsite and related industrial infrastructure.

22. Although Defendants are left to speculate due to the vagueness of the Complaint, the language contained in the Complaint suggests that the claims arise from Defendants' lawful opposition to the enactment of Ordinance 127 and to the issuance of the zoning permit for the Geyer wellsite, the opposition to which was reflected in filings made by the Defendants with the Township Zoning Hearing Board, and appeals taken thereafter. *See, e.g., Complaint*, ¶¶75-79.

23. Under the well-established *Noerr-Pennington* Doctrine, an individual is shielded from liability for exercising his or her First Amendment right to petition the government. *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-38 (1961) ("*Noerr*"); *United Mine Workers v. Pennington*, 381 U.S.657 (1965) ("*Pennington*"). Since the doctrine is rooted in the U.S. Constitution, it applies in Pennsylvania. *See, e.g., Penllyn Greene Associates, L.P., v. Clouser*, 890 A.2d 424, 429 n.5 (Pa. Cmwlt. 2005).

24. The protection exists "regardless of the defendants' motivations" in waging their campaigns, as it recognized that the right of individuals to petition the government "cannot properly be made to depend on their intent in doing so." *Noerr*, 365 U.S. at 139. *Accord City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, 380 (1991); *Professional Real Estate Investors, Inc. v. Columbia Pictures, Industries, Inc.*, 508 U.S. 49, 58-59 (1993); *Firetree, Ltd v. Fairchild*, 920 A.2d 913, 919 (Pa. Cmwlt. 2007).

25. [*Noerr-Pennington*] protection "extends to persons who petition all types of government entities – legislatures, administrative agencies and courts." *Trustees of University of Pennsylvania v St. Jude Children's Research Hospital*, 940 F. Supp. 2d 233, 240-41 (E.D. Pa. 2013), *citing California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

26. “[P]arties may petition the government for official action favorable to their interest without fear of suit, even if the result of the petition, if granted, might harm the interests of others.” *Tarpley v. Keistler*, 188 F.3d 788, 794 (7th Cir. 1999) (citations omitted).

27. The sole exception to the *Noerr-Pennington* Doctrine is the “sham exception”, under which a defendant will not be protected if he or she is simply using the petition process as a means of harassment. *Omni Outdoor Advertising*, 499 U.S. at 380 (citations omitted); *Penllyn Greene Assoc.*, 890 A.2d at 429 n.5.

28. Plaintiffs appear to insinuate in a conclusory manner in the Complaint the Defendants’ opposition to the permits was a sham. *Complaint*, at ¶77.

29. However, under well-settled U.S. Supreme Court precedent, in order for a suit to constitute a “sham”, it must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits. *Trustees of the University of Pennsylvania*, 940 F.Supp.2d at 244 (quoting *Omni Outdoor Advertising*, 499 U.S. at 381) (emphasis added).

30. Indeed, a court cannot even consider a litigant’s subjective motivation in filing suit unless the court first determines that the suit is objectively without merit. *Professional Real Estate Investors, Inc. v. Columbia Pictures Indus.*, 508 U.S. 49, 60-61 (1993); *Firetree, Ltd. v. Fairchild*, 920 A.2d 913, 919 (Pa. Commw. Ct. 2007) (the doctrine provides “an absolute right that does not depend on whether the speaker has a proper motive or intent.”).

31. The *Noerr-Pennington* Doctrine has been applied in both Pennsylvania federal and state courts, and has been relied upon by courts as a basis for dismissal of complaints. *See, e.g., VIM, Inc. v. Somerset Hotel Ass’n*, 19 F.Supp.2d 422, 426-28 (W.D. Pa. 1998) (motion to dismiss claims for civil conspiracy, tortious interference and malicious use of process granted pursuant to *Noerr-Pennington* Doctrine); *Bethany Bldg., Inc. v. Dungan Civic Ass’n*, March

Term 2001, No. 2043, 2003 WL 1847603 (Phila. C.C.P. Mar. 13, 2003) (preliminary objections sustained as to claims asserted by developers against individuals who opposed development plans, based upon Noerr-Pennington Doctrine).

32. Plaintiffs cannot credibly argue here that the Defendants' actions were "objectively baseless," given that the Defendants filed a Petition for Stay of Permit and Ordinance in this Court before the Honorable S. Michael Yeager, arguing, among other things, that the Defendants were likely to succeed on the merits, that the Court conducted oral argument regarding the Defendants' Petition for Stay, and that this Court entered an Order on July 9, 2015 "to immediately stay the effect of Middlesex Township Ordinance Number 127, pending final adjudication of this proceeding." A true and correct copy of the July 9, 2015 Order is attached hereto as Exhibit "C."

33. Plaintiffs also cannot credibly argue here that the Defendants' action were "objectively baseless," given that the arguments they raised in the Zoning Hearing Board appeal were virtually identical to those that were expressly accepted by the Pennsylvania Commonwealth Court and the Pennsylvania Supreme Court in *Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth*, 52 A.3d 463, 484-85 (Pa. Commw. Ct. 2012), aff'd in part, rev'd in part by *Robinston Twp., Delaware Riverkeeper Network, et al. v. Commw.*, 83 A.3d 901, 980 (Pa. 2013).

34. Despite the seemingly intentional vagueness of the Complaint, it is apparent from the face of the Complaint that Plaintiffs' claims against Defendants are precluded by the *Noerr-Pennington* Doctrine, as the alleged conduct of the Defendants constitutes protected free speech and petitioning under the United States and Pennsylvania constitutions.

35. Accordingly, Defendants respectfully request that this Honorable Court strike and dismiss Counts I, II and III of the Complaint as against all of the Defendants pursuant to Pa. R. Civ. P. 1028(a)(4).

IV. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNTS I, II AND III OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(4) [Legal Insufficiency of Pleading – Failure of Indispensable Element of Claims]

36. Defendants incorporate the averments contained in the above Paragraphs as if fully set forth herein.

37. Count I of the Complaint claims that the Defendants as a collective group should be found liable to the Plaintiffs for tortious interference with contracts, and Count II claims the same group should be found liable for tortiously interfering with prospective contractual relations.

38. Under Pennsylvania law, the requisite elements of a cause of action for tortious interference with contracts or tortious interference with prospective contractual relations are: (1) an existing or prospective contractual relationship between complainant and third party; (2) purposeful action intended to harm existing contractual relation or to prevent a prospective one; (3) absence of privilege or justification; (4) actual occurrence of harm or damage; and (5) for prospective contracts, a reasonable likelihood that the relationship would have occurred but for the defendant's interference. *Accumed LLC v. Advanced Surgical Servs., Inc.*, 561 F.3d 199, 212 (3d Cir. 2009) (quoting *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 530 (3d Cir. 1998)).

39. “[W]here an individual acts legally to advance his own legitimate business interests and did not act solely to intentionally injure the interests of another, a claim for tortious interference with a prospective business relationship must fail.” *Yurcho v. Hazelton Area School*

Distr., No. 1430 C.D. 2011, 2012 WL 8683308 (Commw. Ct. 2012) (citing *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466 (1979)).

40. A plaintiff bringing a civil conspiracy claim is required to allege (1) the persons combined with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act in furtherance of the common purpose has occurred; and (3) the plaintiff has incurred actual legal damage. *Weaver v. Franklin County*, 918 A.2d 194, 202 (Pa. Commw. Ct. 2007).

41. “Proof of malice, i.e., an intent to injure, is essential in proof of a conspiracy.” *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466, 472 (Pa. 1979).

42. The element of malice requires a showing that “the sole purpose of the conspiracy is to cause harm to the party who has been injured.” *Becker v. Chicago Title Ins. Co.*, No. 03-2292, 2004 WL 228672 at *13 (E.D. Pa. 2004).

43. Where the facts show that a person acted to advance his or her own business interests, those facts constitute justification and negate any alleged intent to injure. *Thompson Coal Co.*, *supra*, 412 A.2d at 472; *WM High Yield Fund v. O’Hanlon*, No. 04-3423, 2005 WL 6788446 (E.D. Pa. 2005) (granting motion to dismiss civil conspiracy claim).

44. Here, to the extent any of Defendants’ alleged actions are decipherable from the generically-worded Complaint, those actions necessarily would have been undertaken in furtherance of Defendants’ own constitutionally-protected interests as property owners, as parents, and as advocates for public health, safety and a clean and healthy environment. Pa. Const. art. I, §§1, 27.

45. On the face of the Complaint, even as currently and incompletely drafted, it is apparent that Plaintiffs cannot establish at least one of the requisite elements of all three counts –

that the Defendants acted *solely* with the intention of harming the Plaintiffs, rather than to advance Defendants' own interests.

46. Accordingly, Defendants respectfully request that this Honorable Court strike and dismiss Counts I, II and III of the Complaint as against all of the Defendants pursuant to Pa. R. Civ. P. 1028(a)(4).

WHEREFORE, Defendants Delaware Riverkeeper Network, Clean Air Council, David Denk, Jennifer Chomicki, Anthony Lapina and Joann Groman respectfully request that the Court grant the instant Preliminary Objections and enter an Order dismissing the Plaintiffs' Complaint without prejudice, together with such other and further relief as this Court may deem appropriate.

Respectfully submitted,

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IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DEWEY HOMES AND INVESTMENT :
PROPERTIES, LLC, MARK T. VINSON, :
JOSEPH P. ELM, MARK GISSENDANER, :
BRADLEY KRESS, BRIAN KRESS, ALBERT :
McKEE and CHARLOTTE McKEE, husband :
and wife, RONALD MOLINARO, JEAN UTZ, :
MATTHEW VINSON, DEAN WEIGLE and :
SHARON WEIGLE, husband and wife, :

Plaintiffs, :

v. :

No. 2015- :
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DELAWARE RIVERKEEPER NETWORK, :
CLEAN AIR COUNCIL, :
DAVID DENK, JENNIFER CHOMICKI :
ANTHONY LAPINA, JOANN GROMAN, :
and AMY NASSIF, :
: :
: :
: :

Defendants. :

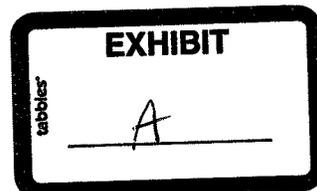
COMPLAINT

AND now, come the Plaintiffs, by and through counsel, Richard B. Sandow, Esquire, and Ronald D. Amrhein, Jr., Esquire and Jones Gregg Creehan & Gerace, LLP, and files this Complaint in Civil Action and in support thereof avers as follows:

I. PARTIES

1. Plaintiff, Dewey Homes and Investment Properties, LLC is a Pennsylvania Corporation with a business address of 2073 Old State Road, Gibsonia, Allegheny County, Pennsylvania 15044;

2. On or about January 14, 2010 Dewey Homes and Investment Properties, LLC



entered into an oil and gas lease with R.E. Gas Development, LLC;

3. The aforementioned lease is with regard to former Parcel Id No.: 230-3F59-8 consisting of approximately 38.06 acres;

4. Pursuant to the lease, Plaintiff Dewey Homes and Investment Properties, LLC are to receive sixteen percent (16%) of the royalties;

5. Plaintiff Mark T. Vinson is an adult individual residing at 159 Ridge Road, Valencia, Butler County, Pennsylvania 16059;

6. On or about August 4, 2010 Mark T. Vinson entered into an oil and gas lease with R.E. Gas Development, LLC;

7. The aforementioned lease is with regard to Parcel Id No.: 10-3F59-A2B consisting of approximately 17.5 acres;

8. Pursuant to the lease, seventeen percent (17%) of the royalties are due;

9. Plaintiff Joseph P. Elm is an adult individual residing at 675 Sandy Hill Road, Valencia, Butler County, Pennsylvania 16059;

10. On or about April 23, 2010, Plaintiff Joseph P. Elm entered into an oil and gas lease currently owned by Range Resources;

11. The aforementioned lease is with regard to 675 Sandy Hill Road, Valencia, Butler County, Pennsylvania 16059 consisting of approximately 33.47 acres;

12. Pursuant to the lease eighteen percent (18%) of the royalties are due;

13. Plaintiff Joseph P. Elm is also the owner, by assignment, of a lease with R.E. Gas Development, LLC;

14. The aforementioned lease is with regard to Parcel Id No.: 230-2F79-20A consisting of approximately 7 acres;
15. Pursuant to the lease one eighth (1/8) of the royalties are due;
16. Plaintiff Mark Gissendaner is an adult individual residing at 387 Seiner Bridge Road, Valencia, Butler County, Pennsylvania 16059;
17. On or about October 1, 2013, Plaintiff Mark Gissendaner entered into an oil and gas lease with R.E. Gas Development, LLC;
18. The aforementioned lease is with regard to 387 Seiner Bridge Road, Valencia, Butler County, Pennsylvania 16059 consisting of approximately 51 acres;
19. Pursuant to the lease, one eighth (1/8) of the royalties are due;
20. Plaintiff Bradley Kress is an adult individual residing at 125 Laddie Lane, Valencia, Butler County, Pennsylvania 16059;
21. On or about September 14, 2010, Plaintiff Bradley Kress entered into an oil and gas lease with Range Resources;
22. The aforementioned lease is with regard Tax Map No.: 10-3F59-A5 consisting of approximately 37.43 acres;
23. Pursuant to the lease, one eighth (1/8) of the royalties are due;
24. Plaintiff Brian Kress is an adult individual residing at 342 Denny Road, Valencia, Butler County, Pennsylvania 16059;
25. On or about January 14, 2010, Plaintiff Brian Kress entered into an oil and gas lease currently with R.E. Gas Development, LLC;

26. The aforementioned lease is with regard to 342 Denny Road, Valencia, Butler County, Pennsylvania 16059 consisting of approximately 51.5 acres;

27. Pursuant to the lease, one sixth (1/6) of the royalties are due;

28. Plaintiffs Albert McKee and Charlotte McKee are husband and wife residing at 1400 Pittsburgh Road, Valencia, Butler County, Pennsylvania 16059;

29. On or about March 25, 2013, Plaintiffs Albert and Charlotte McKee entered into an oil and gas lease with R.E. Gas Development, LLC;

30. The aforementioned lease is with regard to Tax Map No.: 230-3F59-23 consisting of approximately 34.50 acres;

31. Pursuant to the lease, Plaintiffs Albert and Charlotte McKee are to receive one eighth (1/8) of the royalties;

32. Plaintiffs Albert McKee and Charlotte McKee are also the owners of another lease with R. E. Gas Development, LLC;

33. The aforementioned lease, executed on or about March 25, 2013, is with regard to Tax Map No.: 230-S1-12D consisting of approximately 24.31 acres;

34. Pursuant to the lease, Plaintiffs Albert and Charlotte McKee are to receive one eighth (1/8) of the royalties;

35. Plaintiff Ronald Molinaro is an adult individual residing at 155 Denny Road, Valencia, Butler County, Pennsylvania 16059;

36. On or about September 23, 2009, Plaintiff Ronald Molinaro entered into an oil and gas lease with R.E. Gas Development, LLC;

37. The aforementioned lease is with regard to Tax Map No.: 230-3F59-16 consisting of approximately 24.95 acres;

38. Pursuant to the lease, one eighth (1/8) of the royalties are due;

39. On or about June 20, 2012, Plaintiff Ronald Molinaro entered into a second oil and gas lease with R.E. Gas Development, LLC;

40. The aforementioned lease is with regard to Tax Map No.: 230-3F59-9E consisting of approximately 4.42 acres;

41. Pursuant to the lease, one eighth (1/8) of the royalties are due;

42. Plaintiff Jean Utz is an adult individual residing at 203 Valley Drive, Valencia, Butler County, Pennsylvania 16059;

43. On or about May 20, 2010, Plaintiff Jean Utz entered into an oil and gas lease with Dale Property Service, LP;

44. The aforementioned lease is with regard to Parcel Id No.: 230-3F57-13W consisting of approximately 72 acres;

45. Plaintiff Jean Utz is entitled to receive fifty percent (50%) of the royalties due;

46. Plaintiff Matthew Vinson is an adult individual residing at 149 Ridge Road, Valencia, Butler County, Pennsylvania 16059;

47. On or about August 14, 2010, Plaintiff Matthew Vinson entered into an oil and gas lease with R.E. Gas Development, LLC;

48. The aforementioned lease is with regard to 149 Ridge Road, Valencia, Butler County, Pennsylvania 16059 consisting of approximately 17.5 acres;

49. Pursuant to the lease, Matthew Vinson is to receive fifteen percent (15%) of the royalties;

50. Plaintiffs Dean Weigle and Sharon Weigle are husband and wife residing at 120 David Lane, Valencia, Butler County, Pennsylvania 16059;

51. On or about July 29, 2013, Plaintiffs Dean and Sharon Weigle entered into an oil and gas lease with R.E. Gas Development, LLC;

52. The aforementioned lease is with regard to Tax Map No.: 10-3F59-A4 consisting of approximately 28.99 acres;

53. Pursuant to the lease, Dean and Sharon Weigle are to receive one eighth (1/8) of the royalties;

54. All parties identified above are hereinafter jointly referred to as "Plaintiffs;

55. Defendant Delaware Riverkeepers Network (hereinafter "Network") is a non-profit 501(c)(3) corporation organized in the Commonwealth of Pennsylvania with a last known address of 925 Canal Street, Suite 3701, Bristol, Bucks County, Pennsylvania 19007;

56. Defendant, Clean Air Council, (hereinafter "Council") is a Pennsylvania non-profit corporation with a last known address of 135 South 19 Street, Suite 300, Philadelphia, Philadelphia County, Pennsylvania 19103;

57. Defendant, David Denk, ("Denk") is an adult individual with a last known address of 1017 Marsh Drive, Valencia, Butler County, Pennsylvania 16059;

58. Defendant, Jennifer Chomicki, ("Chomicki") is an adult individual with a last known address of 1015 Marsh Drive, Valencia, Butler County, Pennsylvania 16059;

59. Defendant, Anthony Lapina ("Lapina"), is an adult individual with a last known address of 2019 Eagle Ridge Drive, Valencia, Butler County, Pennsylvania 16059;

60. Defendant, Joann Groman ("Groman"), is an adult individual with a last known address of 129 Forsythe Drive, Valencia, Butler County, Pennsylvania 16059;

61. Defendant, Amy Nassif ("Nassif"), is an adult individual with a last known address of 305 Pinto Place, Mars, Butler County, Pennsylvania 16046;

II. FACTUAL BACKGROUND

62. The averments of paragraphs 1 - 61 are incorporated herein as if set forth fully at length and verbatim;

63. At all times relevant and material to this Complaint, all of the Defendants actions were in concert, and on behalf of each Defendant;

64. R.E. Gas Development, LLC (hereinafter referred to as "R.E.") is a corporation with a history of drilling in the Commonwealth of Pennsylvania in an attempt to locate and retrieve, oil, gas, and its constituents;

65. Range Resources is a corporation with a history of drilling in the Commonwealth of Pennsylvania in an attempt to locate and retrieve, oil, gas, and its constituents;

66. Dale Properties, LP is a corporation with a history of drilling in the Commonwealth of Pennsylvania in an attempt to locate and retrieve, oil, gas, and its constituents;

67. R.E., Range Resources and Dale Properties, LP are hereinafter collectively referred to as "Companies";

68. All Plaintiffs hereto are landowners in Middlesex or Adams Township, Butler

County, Pennsylvania whom have entered into, or are successors in interest to, contracts with Companies (hereinafter collectively referred to as "the contracts");

69. The express purpose of the contracts between Plaintiffs and Companies is to allow drilling activities in an attempt to locate and recover, oil, gas, and its constituents and provide income to Plaintiffs;

70. The contracts provide for Plaintiffs to receive substantial income as a result of the activities aforementioned, based on the provisions of the lease as set forth above, calculated based on a percentage related to the oil, gas, and constituents recovered;

71. The provisions of the zoning ordinances of Middlesex Township, Butler County, Pennsylvania (hereinafter referred to as "the Township") allow the proposed activities of Companies, pursuant to the aforementioned contracts, upon Plaintiffs' properties;

72. Appropriate permits have been issued for these activities by all governmental authorities including Township;

73. On or about November 11, 2014, R.E. announced it would cease all actions with regard to Plaintiffs' leases as a result of the improper activity and interference of Defendants, which is more fully set forth herein;

74. Dale Properties, LP and Range Resources ceased activity relating to Plaintiff's leases;

75. Defendants, acting in concert with each other, engaged in a campaign and common plan to interfere with the contractual relationships between Plaintiffs and Companies by making false, misleading, or inflammatory public statements, presenting improper and

unfounded appeals and wrongful and/or unsupported affidavits before the Zoning Hearing Board of Township (collectively "Defendants' Activities");

76. Defendants' Activities were undertaken not for any legitimate purpose, but performed for the improper purpose of causing delays and extra expense in the performance of the contract between Companies and Plaintiffs, with the ultimate goal of causing Companies not to perform under the contracts with Plaintiffs;

77. Defendants' Activities were a sham for the purpose of interfering with the contractual relationships between Plaintiffs and Companies and, to force Companies not to proceed with drilling activities and other actions, due to Defendant caused delays and costs;

78. Defendants' activities are for the purpose of interfering with actual and prospective contractual relationships between Plaintiffs and oil and gas companies;

79. Defendants' Activities include the following:

- (a) intentionally misstating the known facts and health issues in a scorched earth campaign with regard to dissemination of false, misleading, and inflammatory statements;
- (b) filing procedurally not permitted challenges to the substantive ordinance for the purpose of forcing further delays;
- (c) using purposefully inflammatory language to improperly force Companies not to proceed with its planned activities under the contracts;
- (d) pursuing matters which are not properly before the Township Zoning Board for the purpose of causing further delays;
- (e) engaging in an incendiary scorched earth campaign and misusing the legal process in pursuit of a "cause," against all Marcellus Shale

drilling activities, which interferes with the Plaintiffs' specific landowner rights of ownership;

- (f) engaging in such incendiary actions as a scorched earth campaign and misusing the legal process in the use of inflammatory language not for the purposes of any matters appropriately before the Township Zoning Board, but to raise contributions and financial support for Network and Council;
- (g) filing a frivolous substantive challenge to the Township ordinance to interfere with the above referenced contractual relationship;
- (h) filing a frivolous substantive challenge to the issuance of Zoning Permits without a factual or legal basis;
- (i) filing a frivolous challenge to the Zoning Permits for the purpose of interfering with the above contractual relationships;
- (j) improperly and unlawfully engaging in activities contrary to the legal limitations regarding Network's and Council's activities, as 501C(3) charitable organizations, pursuant to law, their organizational documents, purposes, and funding limitations;
- (k) otherwise engaging in such activities to cause delay and for other improper purposes, when Defendants knew or should have known the Township Zoning Ordinance is within the scope of the Township's discretion, as affirmed by the Pennsylvania Supreme Court, and there is no meritorious challenge under the law; and
- (l) Defendants have proceeded with Defendants' Activities despite these activities having no meritorious legal basis and being only for improper and unlawful purposes.

80. Defendants' Activities and actions have caused Companies to stop, suspend, or not proceed with activities, drilling and production, resulting in a loss of substantial income to Plaintiffs;

81. Defendants' activities and actions have had a dampening effect on the pursuit, negotiation, and execution of new leases;

82. All Plaintiffs have lost the benefit of the royalties, as well as those generated as a result of unitization, as provided for in Plaintiffs' leases as set forth above;

83. Additionally, to the extent Plaintiffs leases expire, the actions of Defendants have resulted in a dampening effect on the willingness of companies to negotiate new leases and affected the likelihood of a new lease or value of same;

84. At all times Defendants have knowledge of the contracts between Companies and Plaintiffs, and similar contracts;

COUNT I - TORTIOUS INTERFERENCE WITH CONTRACTS
vs All Defendants Except Nassif

85. Plaintiffs' incorporate herein by reference Paragraphs 1 through 84 of this Complaint;

86. Plaintiffs have contracts with Companies as set forth herein;

87. Defendants have intentionally and tortiously interfered with such contracts as set forth herein;

88. Defendants' activities and actions are malicious;

89. Defendants' activities and actions are wanton, willful, and outrageous;

90. Defendants' activities and actions have been for the purpose of interfering with the contract between Plaintiffs and Companies;

91. Defendants' activities and actions have proximately resulted in interference with the aforementioned contracts;

92. Defendants' activities and actions are the direct proximate cause of Companies' cessation, suspension or non-performance of activity pursuant to the contracts;

93. As a direct and proximate result of Defendants' activities and actions, Plaintiffs have been deprived of the income generated from the contracts, as well as the use of monies generated therefrom, and any interest generated from said monies;

94. Defendants' activities and actions are with the intention of causing Companies to abandon and cease performing under the contracts;

95. Defendants' activities and actions are without privilege or justification;

96. Defendants' activities and actions as set forth herein, have proximately resulted and are resulting in substantial losses and damages to Plaintiffs not yet fully determined, but believed to be in excess of hundreds of thousands of dollars;

97. Defendants' activities and actions are also subject to punitive damages.

WHEREFORE, Plaintiffs demand judgment against each Defendant in an amount not yet fully determined, but in excess of Thirty-Five Thousand Dollars (\$35,000.00), and believed to be in excess of hundreds of thousands of dollars, plus punitive damages, interests, costs, and such other and further relief as is just and proper.

**COUNT II - TORTIOUS INTERFERENCE WITH PROSPECTIVE
CONTRACTUAL RELATIONS**

98. The averments contained in paragraphs 1 - 97 are incorporated herein as if set forth fully at length and verbatim;

99. Several of Plaintiffs' leases expire, have expired, or will expire during the course of the delays caused by Defendants;

100. Plaintiffs have prospective contractual relations with oil and gas companies in

the nature of entering into leases for drilling and recovery of oil, gas, and their constituents;

101. Based on past practice, occurrences, and facts, the execution of leases was reasonably likely;

102. Defendants' actions set forth herein are for the purpose of harming Plaintiffs by preventing the execution of oil and gas leases and the establishment of relationships with oil and gas companies;

103. Defendants' lack justification and privilege for such interference;

104. Defendants' interference has caused actual damage to Plaintiffs in depriving Plaintiffs of receipt of their signing bonuses, execution of oil and gas leases, and receipt of royalties, and the interest and benefits of same;

105. Defendants' actions as set forth herein are wanton, willful and outrageous.

WHEREFORE, Plaintiffs demand judgment against each Defendant in an amount not yet fully determined, but in excess of Thirty-Five Thousand Dollars (\$35,000.00), and believed to be in excess of hundreds of thousands of dollars, plus punitive damages, interests, costs, and such other and further relief as is just and proper.

COUNT III - CIVIL CONSPIRACY - vs All Defendants

106. The averments contained in paragraphs 1 - 105 are incorporated herein as if set forth fully at length and verbatim;

107. Defendants Activities and actions, as set forth herein, have been in concert and

combination with each other pursuant to a common plan to do an unlawful act or to do a lawful act by unlawful means;

108. As a direct and proximate result of Defendants' conspiracy, Plaintiffs have been damaged as set forth herein;

109. Defendants' activities and actions as set forth herein are overt actions taken in furtherance of and in combination with the plan and in concert with each other;

110. As a direct and proximate result of Defendants' conspiracy, Plaintiffs have been damaged as set forth herein;

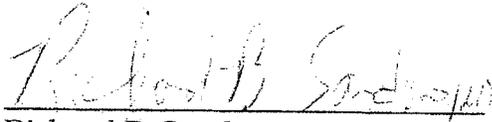
111. As a proximate result of Defendants' activities and actions, Plaintiffs have been deprived of the income to be generated from the ongoing activities pursuant to the contract, as well as the use of monies generated therefrom, and any interest generated from said monies;

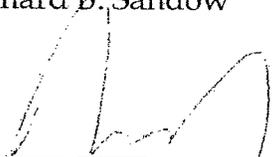
112. Defendants' activities and actions and conspiracy, as set forth herein, have proximately resulted and are resulting in substantial losses and damages to Plaintiffs not yet fully determined but believed to be in excess of hundreds of thousands of dollars;

113. Defendants' activities and actions and conspiracy, as set forth herein, are wanton, reckless, and outrageous behavior, subjecting each Defendant to punitive liability.

WHEREFORE, Plaintiffs demand judgment against each Defendant in an amount not yet fully determined, but in excess of Thirty-Five Thousand Dollars (\$35,000.00), and believed to be in excess of hundreds of thousands of dollars, plus punitive damages, interests, costs, and such other and further relief as is just and proper.

JONES, GREGG, CREEHAN & GERACE, LLP

By: 
Richard B. Sandow

By: 
Ronald D. Amrhein, Jr.

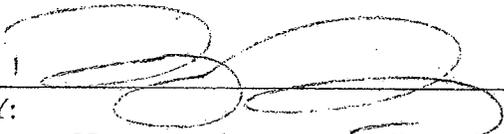
Attorneys for Plaintiff

JURY TRIAL DEMANDED

VERIFICATION

I verify the statements made in the *Complaint* are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

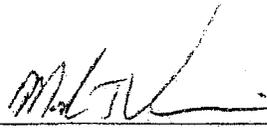
Dated: 5-20-15


BY: _____
Dewey Homes and Investment Properties, LLC

VERIFICATION

I verify the statements made in the *Complaint* are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 5/19/15



Mark T. Vinson

VERIFICATION

I verify the statements made in the *Complaint* are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 5/18/15



Brian Kress

VERIFICATION

I verify the statements made in the *Complaint* are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 5/19/2015

Joseph P. Elm
Joseph P. Elm

VERIFICATION

We verify the statements made in the *Complaint* are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 05/18/2015

Albert McKee

Albert McKee

Dated: 05/18/2015

Charlotte McKee

Charlotte McKee

VERIFICATION

I verify the statements made in the *Complaint* are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 5-20-15

Ronald Molinaro
Ronald Molinaro

VERIFICATION

I verify the statements made in the *Complaint* are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 3-18-2015



Matthew Vinson

VERIFICATION

We verify the statements made in the *Complaint* are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 5-19-15

Dean Weigle
Dean Weigle

Dated: 5-19-15

Sharon Weigle
Sharon Weigle

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DEWEY HOMES AND INVESTMENT
PROPERTIES, LLC, MARK T. VINSON,
JOSEPH P. ELM, MARK GISSENDANER,
BRADLEY KRESS, BRIAN KRESS,
ALBERT McKEE and CHARLOTTE
McKEE, husband and wife, RONALD
MOLINARO, JEAN UTZ, MATTHEW
VINSON, DEAN WEIGLE and SHARON
WEIGLE, husband and wife,

Plaintiffs,

vs.

DELAWARE RIVERKEEPER NETWORK,
CLEAN AIR COUNCIL, DAVID DENK,
JENNIFER CHOMICKI, ANTHONY
LAPINA, JOANN GROMAN, and AMY
NASSIF,

Defendants.

CIVIL DIVISION

No. 2015-10393

**PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT**

Filed on behalf of Defendant: Amy Nassif

Counsel of record for this Party:

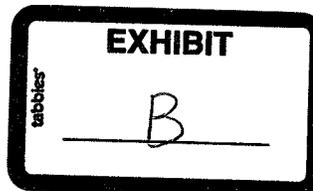
Mark R. Lane, Esquire
Pa. ID No. 61923

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753

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Phone: (412) 471-1180
Fax: (412) 471-2693

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DEWEY HOMES AND INVESTMENT PROPERTIES, LLC, MARK T. VINSON, JOSEPH P. ELM, MARK GISSENDANER, BRADLEY KRESS, BRIAN KRESS, ALBERT McKEE and CHARLOTTE McKEE, husband and wife, RONALD MOLINARO, JEAN UTZ, MATTHEW VINSON, DEAN WEIGLE and SHARON WEIGLE, husband and wife,

CIVIL DIVISION

No. 2015-10393

Plaintiffs,

vs.

DELAWARE RIVERKEEPER NETWORK, CLEAN AIR COUNCIL, DAVID DENK, JENNIFER CHOMICKI, ANTHONY LAPINA, JOANN GROMAN, and AMY NASSIF,

Defendants.

DEFENDANT'S PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

AND NOW, comes Defendant Amy Nassif, by and through her attorneys, Dell, Moser, Lane & Loughney, LLC, and Mark R. Lane, Esquire, and files the instant Preliminary Objections to Plaintiffs' Complaint, stating as follows:

1. The present action arises out a series of oil and gas leases (the "Leases") allegedly entered into between R.E. Gas Development, LLC ("R.E. Gas"), Range Resources ("Range") and Dale Properties, LP ("Dale") (hereinafter collectively the "Gas Companies") and the fourteen Plaintiffs named in this action, with respect to various properties owned by the Plaintiffs within Butler County, Pennsylvania between September 23, 2009 and July 29, 2013. (Complaint, ¶¶ 1 - 53).

2. The multiple Defendants named in this action include two non-profit corporations, the Delaware Riverkeepers Network (the "Network") and the Clean Air Council (the "Council"), and five individuals. Included among the individual Defendants is Amy Nassif ("Nassif"), an adult individual with an alleged address of 305 Pinto Place, Mars, PA 16046. (Complaint, ¶¶ 55 – 61).

3. According to the Plaintiffs' Complaint, the purpose of the Leases between Plaintiffs and the Gas Companies was to allow drilling activities on the Plaintiffs' properties in an attempt to locate and recover oil, gas and its constituents and to provide income to the Plaintiffs through royalty payments. (Complaint, ¶¶ 69, 70).

4. Plaintiffs have alleged that the Defendants, acting in concert with each other, engaged in a campaign and common plan to interfere with the contractual relationships between Plaintiffs and the Gas Companies by making false, misleading or inflammatory public statements, presenting improper and unfounded appeals and wrongful and/or unsupported affidavits before the Township Zoning Hearing Board. (Complaint, ¶ 75).

5. Plaintiffs maintain that these alleged actions were carried out for the purpose of causing the Gas Companies not to perform under the Leases with the Plaintiffs. (Complaint, ¶ 76).

6. Plaintiffs specifically allege that on or about November 11, 2014, R.E. Gas announced it would cease all actions with regard to Plaintiffs' Leases as a result of "improper activity and interference of Defendants", and that Dale and Range also ceased activity relating to the Leases. (Complaint, ¶¶ 73, 74).

7. Thus, according to the Plaintiffs, the conduct of the Defendants has allegedly resulted in the loss of the royalty benefits attendant to the current Leases and a dampening effect on the willingness of the Gas Companies to negotiate new leases. (Complaint, ¶¶ 82, 83).

8. Plaintiffs filed a Complaint on May 22, 2015 asserting several claims against the Defendants as a group. In Count I, Plaintiffs assert a claim for Tortious Interference with Contracts against all Defendants except Nassif. In Counts II and III, Plaintiffs assert claims for Tortious Interference with Prospective Contractual Relations and for Civil Conspiracy against all Defendants, including Nassif.

9. In their Complaint, Plaintiffs do not set forth specific allegations against any individual Defendants, but rather refer to the Defendants' alleged conduct collectively as "Defendants' Activities". (Complaint, ¶ 75, *passim*). As a result, Plaintiffs have failed to identify any conduct relative to their allegations that is specific to Nassif or any other individual Defendant.

10. In short, Plaintiffs' Complaint fails to support the broad allegations contained in Counts II and III with any material facts specific to Nassif, precluding her from being able to prepare a defense in this case and violating Rules 1019 and 1028(a)(2) and (a)(3) of the Pennsylvania Rules of Civil Procedure.

11. Further, these failures render Counts II and III of Plaintiffs' Complaint legally insufficient against Nassif under Pa. R.C.P. 1028(a)(4).

12. In addition, Plaintiffs have failed to plead separate counts against Nassif and the other named Defendants, in violation of Rule 1020(a) of the Pennsylvania Rules of Civil Procedure.

13. Accordingly, and for the reasons that follow, Amy Nassif respectfully requests this Honorable Court to strike and dismiss Counts II and III of the Complaint against her for failure to conform to a rule of law, insufficient specificity and legal insufficiency. Pa. R.C.P. 1019, 1020(a); 1028 (a)(2), (3), (4).

I. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNTS II AND III OF PLAINTIFFS' COMPLAINT AGAINST DEFENDANT AMY NASSIF PURSUANT TO PA. R.C.P. 1028(a)(2), (3) AND (4).

14. Amy Nassif incorporates Paragraphs 1 through 13 above as if set forth at length herein.

15. Rule 1028(a)(2) provides that a party may file preliminary objections to a pleading if it fails to "conform to a law or rule of court." *Britt v. Chestnut Hill College*, 429 Pa. Super. 263, 269, 632 A.2d 557, 560 (Pa. Super. 1993).

16. Pennsylvania Rule of Civil Procedure 1019(a) mandates that the material facts on which a cause of action is based shall be stated in a concise and summary form.

17. In addition, Rule 1028(a)(3) permits the filing of preliminary objections to a pleading for "insufficient specificity", while Rule 1028(a)(4) permits preliminary objections based upon "legal insufficiency of a pleading".

18. Thus, where a pleading fails to set forth material facts and lacks sufficient specificity to establish a cause of action against a defendant, it violates Rule 1019 and Rules 1028(a)(2), (3) and (4).

19. Here, Plaintiffs have set forth broad claims against a group of Defendants without pleading specific facts in support of their allegations, and their claims lack any specificity with respect to which of the Defendants' activities were allegedly engaged in by Nassif or any individual Defendants.

20. Consequently, Plaintiffs have failed to plead sufficient factual averments with respect to Nassif to sustain any cause of action against her. Pa. R.C.P. 1019; 1028 (a)(2), (3), (4).

21. The purpose of Rule 1019(a) is to require the pleader to sufficiently disclose material facts to enable the adverse party to prepare his case, and "Rule 1019(a) is satisfied if allegations in a pleading (1) contain averments of all facts the plaintiff will eventually have to prove in order to recover, and (2) [t]hey are sufficiently specific so as to enable the party served to prepare a defense thereto." *Landau v. Western Pennsylvania Nat'l Bank*, 282 A.2d 335, 339 (Pa. 1971); *Dep't of Transp. v. Shipley Humble Oil Co.*, 370 A.2d 438, 439-40 (Pa. Commw. 1977) (citations omitted).

22. In reviewing the objection under Rule 1028(a)(3), the pertinent inquiry is "whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that [it] may know without question upon what grounds to make [its] defense." *Rambo v. Greene*, 2006 PA Super 231, 242, 906 A.2d 1232, 1236 (Pa. Super. 2006).

23. Notably, the Pennsylvania Supreme Court has ruled that a trial court "may strike any such vague language from the complaint in order to prevent a defendant from being prejudiced in preparing a defense." *Liquori v. Wind Gap Chiropractic Ctr.*, 75 Pa. D. & C.4th 106, 111-12 (Northampton Cty. 2005) (citing *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600 (Pa. 1983)).

24. In Paragraph 75 of their Complaint, the Plaintiffs have alleged that all of the Defendants, "acting in concert with each other, engaged in a campaign and common plan to interfere with the contractual relationships between Plaintiffs and [the Gas Companies] by making

false, misleading, or inflammatory public statements, presenting improper and unfounded appeals and wrongful and/or unsupported affidavits before the Zoning Hearing Board of Township". (Complaint, ¶ 75).

25. In support of these sweeping accusations, Plaintiffs set forth a number of equally broad allegations against all Defendants in Paragraph 79, Subparagraphs (a) through (l), which form the basis of Counts I, II and III of Plaintiffs' Complaint. The alleged activity is as follows:

- a. intentionally misstated the known facts and health issues in a scorched earth campaign with regard to dissemination of false, misleading, and inflammatory statements;
- b. filing procedurally not permitted challenges to the substantive ordinance for the purpose of forcing further delays;
- c. using purposefully inflammatory language to improperly force [Gas Companies] not to proceed with its planned activities under the contracts;
- d. pursuing matters which are not properly before the Township Zoning Board for the purpose of causing further delays;
- e. engaging in an incendiary scorched earth campaign and misusing the legal process in pursuit of a "cause," against all Marcellus Shale drilling activities, which interferes with the Plaintiffs' specific landowner rights of ownership;
- f. engaging in such incendiary actions as a scorched earth campaign and misusing the legal process in the use of the inflammatory language not for the purposes of any matters appropriately before the Township Zoning Board, but to raise contributions and financial support for Network and Council;
- g. filing a frivolous substantive challenge to the Township ordinance to interfere with the above referenced contractual relationship;
- h. filing a frivolous substantive challenge to the issuance of Zoning Permits without a factual or legal basis;
- i. filing a frivolous challenge to the Zoning Permits for the purpose of interfering with the above contractual relationships;
- j. improperly and unlawfully engaging in activities contrary to the legal limitations regarding Network's and Council's activities, as 501C(3) charitable organizations,

pursuant to law, their organizational documents, purposes, and funding limitations;

- k. otherwise engaging in such activities to cause delay and for other improper purposes, when Defendants knew or should have known the Township Zoning Ordinance is within the scope of the Township's discretion, as affirmed by the Pennsylvania Supreme Court, and there is no meritorious challenge under the law; and
- l. Defendants have proceeded with Defendants' Activities despite these activities having no meritorious legal basis and being only for improper and unlawful purposes.

(Complaint, ¶ 79, Subparagraphs (a) through (l)).

26. The allegations in Paragraphs 75 and 79, Subparagraphs (a) through (l), are merely conclusory statements, replete with vague terms and allegations that cannot be specifically attributed to Nassif or any individual Defendant.

27. The allegations do not provide a summary of the individual actions of Nassif upon which these claims are based, or why or how Nassif individually would be responsible to Plaintiffs under any theory or liability. *Smith v. Brown*, 423 A.2d 743, 744-46 (Pa. Super. 1980) (holding that broad and conclusive allegations of wrongdoing that did not provide facts to support the allegations were properly stricken); *Shipley*, 370 A.2d at 439-40.

28. Indeed, Plaintiffs plead no specific facts in support of their allegations, such as what "inflammatory" statements were made by what individual Defendants and when, what legal filings and challenges they consider "frivolous" and when they were filed, and what actions constituted the alleged "scorched earth campaign".

29. This lack of specificity is of particular significance with respect to the allegations that relate to Defendants' participation in Township Zoning proceedings, as such activity is

generally protected under the First Amendment pursuant to the *Noerr-Pennington* Doctrine¹. *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657, 669-70, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965).

30. Instantly, without specifically identifying what legal actions, filings and challenges which form the basis of Plaintiffs' claims, Nassif is unable to determine which of Plaintiffs' claims concern constitutionally protected activity, although it is likely that all of her activity is protected by the First Amendment.

31. Notably, this may allow Nassif and the other Defendants to pursue dismissal of certain claims through Preliminary Objections, significantly reducing the scope of this lawsuit. See *Bethany Bldg., Inc. v. Dungan Civic Ass'n*, 2003 WL 1847603, Not Reported in A.2d (Pa. Com. Pl. 2003) (trial court granted Preliminary Objections to Plaintiff's Complaint, finding claims against civic association were barred by the *Noerr-Pennington* doctrine).

32. With respect to Rule 1028(a)(4), a preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient. *Kirschner v. K&L Gates, LLP*, 46 A.3d 737, 747 (Pa. Super. 2012).

33. When considering preliminary objections, all material facts set forth in the challenged pleadings and inferences reasonably deducible therefrom are admitted as true. *Id.* However, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Penn Title Ins. Co. v. Deshler*, 661 A.2d 481, 483 (Pa. Commw. 1995); *see also Feingold v. Hendrzak* 15 A.3d 937, 942 (Pa. Super. 2011).

¹ Pursuant to the *Noerr-Pennington* Doctrine, in recognition that the "right of petition is one of the freedoms protected by the Bill of Rights," individuals and organizations are immune from tort liability for certain political activity. *Penlynn Greene Associates, L.P. v. Clouser*, 890 A.2d 424, FN. 5 (Pa. Commw. 2005), citing *Noerr*, 365 U.S. at 138, 81 S.Ct. 523.

34. Here, because Plaintiffs have failed to plead sufficient factual averments with respect to Nassif, Counts II and III of Plaintiffs' Complaint are also legally insufficient against her under Rule 1028(a)(4).

35. Under Pennsylvania law, the requisite elements of a cause of action for interference with prospective contractual relations, asserted by Plaintiffs in Count II, are as follows: (1) a prospective contractual relationship; (2) the purpose or intent to harm the plaintiff by preventing the relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage resulting from the defendant's conduct. *Restatement (Second) of Torts § 766B (1979)*; *Phillips v. Selig*, 2008 PA Super 244, 959 A.2d 420, 428 (Pa. Super. 2008).

36. In Count II of their Complaint, Plaintiffs have broadly alleged that the "Defendants' activities" stated above were for the purpose of harming Plaintiffs by preventing the execution of oil and gas leases. Yet Plaintiffs have not pled any specific actions by Nassif to satisfy the elements of Plaintiff's claimed cause of action.

37. A plaintiff bringing a civil conspiracy claim must allege (1) the persons combined with a common purpose to do an unlawful act or to do a lawful act by unlawful means or unlawful purpose, (2) an overt act in furtherance of the common purpose has occurred, and (3) the plaintiff has incurred actual legal damage. *Id.*

38. As above, Plaintiffs have not alleged any specific material facts with respect to Nassif to demonstrate that she engaged in any conduct evincing an agreement with the other Defendants to engage in an unlawful act, or to demonstrate any "over act" committed by Nassif in furtherance of the agreement.

39. Accordingly, Counts II and III of Plaintiffs' Complaint are legally insufficient, as Plaintiffs have not pled sufficient material facts to establish actions for tortious interference with prospective contracts or civil conspiracy against Nassif.

40. Accordingly, this Honorable Court to strike and dismiss Counts II and III of the Complaint against Nassif.

II. PRELIMINARY OBJECTION IN THE FORM OF A MOTION TO STRIKE COUNTS II AND III OF PLAINTIFFS' COMPLAINT AGAINST DEFENDANT AMY NASSIF PURSUANT TO PA. R.C.P. 1028(a)(2).

41. Amy Nassif incorporates Paragraphs 1 through 40 above as if set forth at length herein.

42. Pa. R.C.P. 1028(a) provides that preliminary objections may be filed by any party to any pleading on the following grounds: ...2) failure of a pleading to conform to law or rule of court...and 3) insufficient specificity in a pleading... See Pa. R.C.P. 1028(2), (3).

43. Pa. R.C.P. 1020(a) mandates that a plaintiff set forth each cause of action against each defendant in an individual count under a separate heading, or else the complaint can be stricken in its entirety. See *Goodrich Amram 2d § 1020(a):5 citing General State Authority v. Lawrie and Green*, 356 A.2d 851 (Pa. Commw. 1976)).

44. In the instant case, Plaintiff's Complaint violates Pa. R.C.P. 1020(a) by failing to separate the claims for Tortious Interference with Prospective Contractual Relations and Civil Conspiracy against the two non-profit corporation Defendants and the five individual Defendants, into individual counts under separate headings.

45. The Complaint is also insufficiently specific, since Nassif is unable to determine exactly what activities she allegedly performed, as opposed to the alleged activities the two non-profit corporation Defendants and four other individual Defendants performed.

46. Based upon the foregoing, this Honorable Court should sustain this Defendant's Motion to Strike Count II and Count III of Plaintiffs' Complaint for failure to conform to a Pa. R.C.P 1020(a) and/or for legal insufficiency. See Pa. R.C.P. 1028(a)(2) and (3).

WHEREFORE, Defendant, Amy Nassif, respectfully requests that this Honorable Court sustain her Preliminary Objections to Plaintiffs' Complaint and enter the proposed Order attached hereto.

DELL, MOSER, LANE & LOUGHNEY, LLC



Mark R. Lane, Esquire
Counsel for Defendant, Amy Nassif

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT has been served upon all counsel of record by U.S. Mail, postage prepaid, this 17th day of June, 2015.

Richard B. Sandow, Esquire
Ronald D. Amrhein, Jr., Esquire
Jones, Gregg, Creehan & Gerace, LLP
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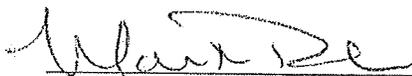
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Mark R. Lane, Esquire
Counsel for Defendant, Amy Nassif

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DEWEY HOMES AND INVESTMENT
PROPERTIES, LLC, MARK T. VINSON,
JOSEPH P. ELM, MARK GISSENDANER,
BRADLEY KRESS, BRIAN KRESS,
ALBERT McKEE and CHARLOTTE
McKEE, husband and wife, RONALD
MOLINARO, JEAN UTZ, MATTHEW
VINSON, DEAN WEIGLE and SHARON
WEIGLE, husband and wife,

CIVIL DIVISION

No. 2015-10393

Plaintiffs,

vs.

DELAWARE RIVERKEEPER NETWORK,
CLEAN AIR COUNCIL, DAVID DENK,
JENNIFER CHOMICKI, ANTHONY
LAPINA, JOANN GROMAN, and AMY
NASSIF,

Defendants.

ORDER

AND NOW, this _____ day of _____, 2015, it is hereby
ORDERED, ADJUDGED and DECREED that the Preliminary Objections to Plaintiffs'
Complaint filed by Defendant, Amy Nassif are SUSTAINED.

It is further ORDERED that Counts II and III of Plaintiffs' Complaint against Amy Nassif
are dismissed with prejudice.

BY THE COURT:

JUDGE

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DEWEY HOMES AND INVESTMENT
PROPERTIES, LLC, MARK T. VINSON,
JOSEPH P. ELM, MARK GISSENDANER,
BRADLEY KRESS, BRIAN KRESS,
ALBERT McKEE and CHARLOTTE
McKEE, husband and wife, RONALD
MOLINARO, JEAN UTZ, MATTHEW
VINSON, DEAN WEIGLE and SHARON
WEIGLE, husband and wife,

Plaintiffs,

vs.

DELAWARE RIVERKEEPER NETWORK,
CLEAN AIR COUNCIL, DAVID DENK,
JENNIFER CHOMICKI, ANTHONY
LAPINA, JOANN GROMAN, and AMY
NASSIF,

Defendants.

CIVIL DIVISION

No. 2015-10393

**BRIEF IN SUPPORT OF PRELIMINARY
OBJECTIONS TO PLAINTIFFS'
COMPLAINT**

Filed on behalf of Defendant: Amy Nassif

Counsel of record for this Party:

Mark R. Lane, Esquire
Pa. ID No. 61923

DELL, MOSER, LANE & LOUGHNEY, LLC
Firm #753

Two Chatham Center, Suite 1500
112 Washington Place
Pittsburgh, PA 15219

Phone: (412) 471-1180
Fax: (412) 471-2693

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DEWEY HOMES AND INVESTMENT
PROPERTIES, LLC, MARK T. VINSON,
JOSEPH P. ELM, MARK GISSENDANER,
BRADLEY KRESS, BRIAN KRESS,
ALBERT McKEE and CHARLOTTE
McKEE, husband and wife, RONALD
MOLINARO, JEAN UTZ, MATTHEW
VINSON, DEAN WEIGLE and SHARON
WEIGLE, husband and wife,

CIVIL DIVISION

No. 2015-10393

Plaintiffs,

vs.

DELAWARE RIVERKEEPER NETWORK,
CLEAN AIR COUNCIL, DAVID DENK,
JENNIFER CHOMICKI, ANTHONY
LAPINA, JOANN GROMAN, and AMY
NASSIF,

Defendants.

**BRIEF IN SUPPORT OF DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT**

AND NOW, comes Defendant Amy Nassif, by and through her attorneys, Dell, Moser, Lane & Loughney, LLC, and Mark R. Lane, Esquire, and files the instant Brief in Support of Preliminary Objections to Plaintiffs' Complaint:

I. STATEMENT OF FACTS

The present action arises out a series of oil and gas leases (the "Leases") allegedly entered into between R.E. Gas Development, LLC ("R.E. Gas"), Range Resources ("Range") and Dale Properties, LP ("Dale") (hereinafter collectively the "Gas Companies") and the fourteen Plaintiffs named in this action, with respect to various properties owned by the Plaintiffs within

Butler County, Pennsylvania between September 23, 2009 and July 29, 2013. (Complaint, ¶¶ 1 - 53). The multiple Defendants named in this action include two non-profit corporations, the Delaware Riverkeepers Network (the "Network") and the Clean Air Council (the "Council"), and five individuals. Included among the individual Defendants is Amy Nassif ("Nassif"), an adult individual with an alleged address of 305 Pinto Place, Mars, PA 16046. (Complaint, ¶¶ 55 - 61).

According to the Plaintiffs' Complaint, the purpose of the Leases between Plaintiffs and the Gas Companies was to allow drilling activities on the Plaintiffs' properties in an attempt to locate and recover oil, gas and its constituents and to provide income to the Plaintiffs through royalty payments. (Complaint, ¶¶ 69, 70). Plaintiffs have alleged that the Defendants, acting in concert with each other, engaged in a campaign and common plan to interfere with the contractual relationships between Plaintiffs and the Gas Companies by making false, misleading or inflammatory public statements, presenting improper and unfounded appeals and wrongful and/or unsupported affidavits before the Township Zoning Hearing Board. (Complaint, ¶ 75). Plaintiffs maintain that these alleged actions were carried out for the purpose of causing the Gas Companies not to perform under the Leases with the Plaintiffs. (Complaint, ¶ 76). Plaintiffs specifically allege that on or about November 11, 2014, R.E. Gas announced it would cease all actions with regard to Plaintiffs' Leases as a result of "improper activity and interference of Defendants", and that Dale and Range also ceased activity relating to the Leases. (Complaint, ¶¶ 73, 74). Thus, according to the Plaintiffs, the conduct of the Defendants has allegedly resulted in the loss of the royalty benefits attendant to the current Leases and a dampening effect on the willingness of the Gas Companies to negotiate new leases. (Complaint, ¶ 82, 83).

Plaintiffs filed a Complaint on May 22, 2015 asserting several claims against the Defendants as a group. In Count I, Plaintiffs assert a claim for Tortious Interference with Contracts against all Defendants except Nassif. In Counts II and III, Plaintiffs assert claims for Tortious Interference with Prospective Contractual Relations and for Civil Conspiracy against all Defendants, including Nassif. In their Complaint, Plaintiffs do not set forth specific allegations against any individual Defendants, but rather refer to the Defendants' alleged conduct collectively as "Defendants' Activities". (Complaint, ¶ 75, *passim*). As a result, Plaintiffs have failed to identify any conduct relative to their allegations that is specific to Nassif or any other individual Defendant.

In short, Plaintiffs' Complaint fails to support the broad allegations contained in Counts II and III with any material facts specific to Nassif, precluding her from being able to prepare a defense in this case and violating Rules 1019 and 1028(a)(2) and (a)(3) of the Pennsylvania Rules of Civil Procedure. Further, these failures render Counts II and III of Plaintiffs' Complaint legally insufficient against Nassif under Pa. R.C.P. 1028(a)(4). In addition, Plaintiffs have failed to plead separate counts against Nassif and the other named Defendants, in violation of Rule 1020(a) of the Pennsylvania Rules of Civil Procedure. Accordingly, and for the reasons that follow, Amy Nassif respectfully requests this Honorable Court to strike and dismiss Counts II and III of the Complaint against her for failure to conform to a rule of law, insufficient specificity and legal insufficiency. Pa. R.C.P. 1019, 1020(a); 1028 (a)(2), (3), (4).

II. STATEMENT OF ISSUES INVOLVED

- A. Should the Court strike and dismiss Counts II and III of Plaintiffs' Complaint against Amy Nassif for failure to conform to rule of law or court, insufficient specificity of a pleading and/or legal insufficiency, pursuant to Pa. R.C.P. 1028(a)(2),(3) and (4)?

Suggested Answer: Yes.

- B. Should Count II and Count III of Plaintiff's Complaint be struck for failure to conform to Pa. R.C.P. 1020(a), thus violating Pa. R.C.P. 1028(a)(2)?

Suggested Answer: Yes.

III. STANDARD OF REVIEW

When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. *Hawn v. Community Health Systems, Inc.*, 14 A.3d 120, 123 (Pa. Super. 2011) (citing *Hykes v. Hughes*, 835 A.2d 382, 383 (Pa. Super. 2003)). However, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Penn Title Ins. Co. v. Deshler*, 661 A.2d 481, 483 (Pa. Commw. 1995); *see also Feingold v. Hendrzak* 15 A.3d 937, 942 (Pa. Super. 2011).

IV. ARGUMENT

- I. This Honorable Court should strike and dismiss Counts II and III of Plaintiffs' Complaint against Amy Nassif for failure to conform to rule of law or court, insufficient specificity of a pleading and/or legal insufficiency, pursuant to Pa. R.C.P. 1028(a)(2),(3) and (4).

Rule 1028(a)(2) provides that a party may file preliminary objections to a pleading if it fails to "conform to a law or rule of court." *Britt v. Chestnut Hill College*, 429 Pa. Super. 263, 269, 632 A.2d 557, 560 (Pa. Super. 1993). Pennsylvania Rule of Civil Procedure 1019(a) mandates that the material facts on which a cause of action is based shall be stated in a concise and summary form. In addition, Rule 1028(a)(3) permits the filing of preliminary objections to a pleading for "insufficient specificity". Thus, where a pleading fails to set forth material facts against a defendant and lacks sufficient specificity, it violates both Rule 1019 and 1028(a)(3). Furthermore, where, as a result of these failings, the pleading is also legally insufficient, it violates Rule 1028(a)(4). Here, Plaintiffs have set forth broad claims against a group of Defendants without pleading specific facts in support of their allegations. Moreover, their claims lack any specificity with respect to which of the Defendants' "activities" were allegedly engaged in by Nassif or any individual Defendants. Consequently, Plaintiffs have failed to plead sufficient factual averments with respect to Nassif to sustain any cause of action against her.

The purpose of Rule 1019(a) is to require the pleader to sufficiently disclose material facts to enable the adverse party to prepare his case, and "Rule 1019(a) is satisfied if allegations in a pleading (1) contain averments of all facts the plaintiff will eventually have to prove in order to recover, and (2) [t]hey are sufficiently specific so as to enable the party served to prepare a defense thereto." *Landau v. Western Pennsylvania Nat'l Bank*, 282 A.2d 335, 339 (Pa. 1971); *Dep't of Transp. v. Shipley Humble Oil Co.*, 370 A.2d 438, 439-40 (Pa. Commw. 1977) (citations omitted). In reviewing the objection under Rule 1028(a)(3), the pertinent inquiry is

"whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that [it] may know without question upon what grounds to make [its] defense." *Rambo v. Greene*, 2006 PA Super 231, 242, 906 A.2d 1232, 1236 (Pa. Super. 2006). Notably, the Pennsylvania Supreme Court has ruled that a trial court "may strike any such vague language from the complaint in order to prevent a defendant from being prejudiced in preparing a defense." *Liquori v. Wind Gap Chiropractic Ctr.*, 75 Pa. D. & C.4th 106, 111-12 (Northampton Cty. 2005) (citing *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600 (Pa. 1983)).

In Paragraph 75 of their Complaint, the Plaintiffs have alleged that all of the Defendants, "acting in concert with each other; engaged in a campaign and common plan to interfere with the contractual relationships between Plaintiffs and [the Gas Companies] by making false, misleading, or inflammatory public statements, presenting improper and unfounded appeals and wrongful and/or unsupported affidavits before the Zoning Hearing Board of Township". (Complaint, ¶ 75). In support of these sweeping accusations, Plaintiffs set forth a number of equally broad allegations against all Defendants in Paragraph 79, Subparagraphs (a) through (l), which form the basis of Counts I, II and III of Plaintiffs' Complaint. The alleged activity is as follows:

- a. intentionally misstated the known facts and health issues in a scorched earth campaign with regard to dissemination of false, misleading, and inflammatory statements;
- b. filing procedurally not permitted challenges to the substantive ordinance for the purpose of forcing further delays;
- c. using purposefully inflammatory language to improperly force [Gas Companies] not to proceed with its planned activities under the contracts;
- d. pursuing matters which are not properly before the Township Zoning Board for the purpose of causing further delays;

- e. engaging in an incendiary scorched earth campaign and misusing the legal process in pursuit of a "cause," against all Marcellus Shale drilling activities, which interferes with the Plaintiffs' specific landowner rights of ownership;
- f. engaging in such incendiary actions as a scorched earth campaign and misusing the legal process in the use of the inflammatory language not for the purposes of any matters appropriately before the Township Zoning Board, but to raise contributions and financial support for Network and Council;
- g. filing a frivolous substantive challenge to the Township ordinance to interfere with the above referenced contractual relationship;
- h. filing a frivolous substantive challenge to the issuance of Zoning Permits without a factual or legal basis;
- i. filing a frivolous challenge to the Zoning Permits for the purpose of interfering with the above contractual relationships;
- j. improperly and unlawfully engaging in activities contrary to the legal limitations regarding Network's and Council's activities, as 501C(3) charitable organizations, pursuant to law, their organizational documents, purposes, and funding limitations;
- k. otherwise engaging in such activities to cause delay and for other improper purposes, when Defendants knew or should have known the Township Zoning Ordinance is within the scope of the Township's discretion, as affirmed by the Pennsylvania Supreme Court, and there is no meritorious challenge under the law; and
- l. Defendants have proceeded with Defendants' Activities despite these activities having no meritorious legal basis and being only for improper and unlawful purposes.

(Complaint, ¶ 79, Subparagraphs (a) through (l)).

The allegations in Paragraphs 75 and 79, Subparagraphs (a) through (l), are merely conclusory statements, replete with vague terms and allegations that cannot be specifically attributed to Nassif or any individual Defendant. The allegations do not provide a summary of the individual actions of Nassif upon which these claims are based, or why or how Nassif individually would be responsible to Plaintiffs under any theory or liability. *Smith v. Brown*, 423 A.2d 743, 744-46 (Pa. Super. 1980) (holding that broad and conclusive allegations of

wrongdoing that did not provide facts to support the allegations were properly stricken); *Shipley*, 370 A.2d at 439-40. Indeed, Plaintiffs plead no specific facts in support of their allegations, such as what “inflammatory” statements were made by what individual Defendants and when, what legal filings and challenges they consider “frivolous” and when they were filed, and what actions constituted the alleged “scorched earth campaign”.

This lack of specificity is of particular significance with respect to the allegations that relate to Defendants’ participation in Township Zoning proceedings, as such activity is generally protected under the First Amendment pursuant to the *Noerr-Pennington* Doctrine. *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657, 669-70, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965). Pursuant to the *Noerr-Pennington* Doctrine, in recognition that the “right of petition is one of the freedoms protected by the Bill of Rights,” individuals and organizations are immune from tort liability for certain political activity. *Penllyn Greene Associates, L.P. v. Clouser*, 890 A.2d 424, FN. 5 (Pa. Commw. 2005), citing *Noerr*, 365 U.S. at 138, 81 S.Ct. 523. Instantly, without specifically identifying what legal actions, filings and challenges form the basis of Plaintiffs’ claims, Nassif is unable to determine which of Plaintiffs’ claims concern constitutionally protected activity, although it is likely that all of Nassif’s activities are protected by the First Amendment. Notably, this may allow Nassif and the other Defendants to pursue dismissal of certain claims through Preliminary Objections, significantly reducing the scope of this lawsuit. See *Bethany Bldg., Inc. v. Dungan Civic Ass’n*, 2003 WL 1847603, Not Reported in A.2d (Pa. Com. Pl. 2003) (trial court granted Preliminary Objections to Plaintiff’s Complaint, finding claims against civic association were barred by the *Noerr-Pennington* doctrine).

With respect to Rule 1028(a)(4), a preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient. *Kirschner v. K&L Gates, LLP*, 46 A.3d 737, 747 (Pa. Super. 2012). When considering preliminary objections, all material facts set forth in the challenged pleadings and inferences reasonably deducible therefrom are admitted as true. *Id.* However, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Penn Title Ins. Co. v. Deshler*, 661 A.2d 481, 483 (Pa. Commw. 1995); *see also Feingold v. Hendrzak* 15 A.3d 937, 942 (Pa. Super. 2011). Here, because Plaintiffs have failed to plead sufficient factual averments with respect to Nassif, Counts II and III of Plaintiffs' Complaint are also legally insufficient against her under Rule 1028(a)(4).

Under Pennsylvania law, the requisite elements of a cause of action for interference with prospective contractual relations, asserted by Plaintiffs in Count II, are as follows: (1) a prospective contractual relationship; (2) the purpose or intent to harm the plaintiff by preventing the relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage resulting from the defendant's conduct. *Restatement (Second) of Torts § 766B (1979)*; *Phillips v. Selig*, 2008 PA Super 244, 959 A.2d 420, 428 (Pa. Super. 2008). In Count II of their Complaint, Plaintiffs have broadly alleged that the "Defendants' activities" stated above were for the purpose of harming Plaintiffs by preventing the execution of oil and gas leases. Yet Plaintiffs have not pled any specific actions by Nassif to satisfy the elements of Plaintiff's claimed cause of action.

A plaintiff bringing a civil conspiracy claim is required to aver "material facts which will either directly or inferentially establish elements of conspiracy." *Weaver v. Franklin County*, 918 A.2d 194, 202 (Pa. Commw. 2007). Additionally, a plaintiff must allege (1) the persons

combined with a common purpose to do an unlawful act or to do a lawful act by unlawful means or unlawful purpose, (2) an overt act in furtherance of the common purpose has occurred, and (3) the plaintiff has incurred actual legal damage. *Id.* As above, Plaintiffs have not alleged any specific material facts with respect to Nassif to demonstrate that she engaged in any conduct evincing an agreement with the other Defendants to engage in an unlawful act, or to demonstrate any “over act” committed by Nassif in furtherance of the agreement. Accordingly, Counts II and III of Plaintiffs’ Complaint are legally insufficient, as Plaintiffs have not pled sufficient material facts to establish actions for tortious interference with prospective contracts or civil conspiracy against Nassif.

Accordingly, this Honorable Court to strike and dismiss Counts II and III of the Complaint against Nassif.

II. This Honorable Court should strike and dismiss Counts II and III of Plaintiffs’ Complaint against Amy Nassif for failure to conform to Pa. R.C.P. 1020(a), pursuant to Pa. R.C.P. 1028(a)(2).

Pa. R.C.P. 1028(a) provides that preliminary objections may be filed by any party to any pleading on the following grounds:...2) failure of a pleading to conform to law or rule of court...and 3) insufficient specificity in a pleading... *See* Pa. R.C.P. 1028(2), (3). Pa. R.C.P. 1020(a) mandates that a plaintiff set forth each cause of action against each defendant in an individual count under a separate heading, or else the complaint can be stricken in its entirety. *See* Goodrich Amram 2d § 1020(a):5 (“The requirement that a plaintiff set forth each cause of action against each defendant in a separate count under a separate heading is mandatory, and a complaint may be stricken for failure to comply with this requirement”) (*citing General State Authority v. Lawrie and Green*, 356 A.2d 851 (Pa. Commw. 1976)). In the alternative, “[a] court

may permit a plaintiff to amend a complaint to state a separate cause of action, in separate counts, with respect to each defendant.” Goodrich Amram, *citing General State Authority, supra*.

In the instant case, Plaintiff’s Complaint violates Pa. R.C.P. 1020(a) by failing to separate the claims for Tortious Interference with Prospective Contractual Relations and Civil Conspiracy against the two non-profit corporation Defendants and the five individual Defendants, into individual counts under separate headings. The Complaint is also insufficiently specific, since Nassif is unable to determine exactly what activities she allegedly performed, as opposed to the alleged activities the two non-profit corporation Defendants and four other individual Defendants performed. Based upon the foregoing, this Honorable Court should sustain this Defendant’s Motion to Strike Count II and Count III of Plaintiffs’ Complaint for failure to conform to a Pa. R.C.P 1020(a) and/or for legal insufficiency. See Pa. R.C.P. 1028(a)(2) and (3).

V. CONCLUSION

For the foregoing reasons, Defendant, Amy Nassif, respectfully requests that this Honorable Court sustain her Preliminary Objections to Plaintiffs’ Complaint and enter the proposed Order attached hereto.

DELL, MOSER, LANE & LOUGHNEY, LLC



Mark R. Lane, Esquire
Counsel for Defendant, Amy Nassif

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT has been served upon all counsel of record by U.S. Mail, postage prepaid, this 17th day of June, 2015.

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Valencia, PA 16059

Jennifer Chomicki
1015 Marsh Drive
Valencia, PA 16059

Anthony Lapina
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Valencia, PA 16059

Joann Groman
129 Forsythe Drive
Valencia, PA 16059



Mark R. Lane, Esquire
Counsel for Defendant, Amy Nassif

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DELAWARE RIVERKEEPER NETWORK,
CLEAN AIR COUNCIL, DAVID DENK,
JENNIFER CHOMICKI, and JOANN
GROMAN

CIVIL DIVISION
A.D. No. 15-10429

Appellants,

v.

MIDDLESEX TOWNSHIP ZONING
HEARING BOARD,

Appellee,

v.

R.E. GAS DEVELOPMENT, LLC and
MIDDLESEX TOWNSHIP,

ROBERT C. YEAGER
Intervenors.

Robert C. Yeager

2015 JUL -9 P 12:55

PROthonotary's
OFFICE - BUTLER CO.
ENTERED & FILED

Yeager, J.

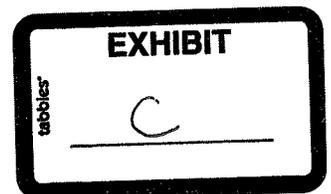
July 9, 2015

ORDER OF COURT

AND NOW, this 9TH day of July, 2015, upon consideration of the motions of R.E.

Gas Development, LLC and Middlesex Township, and the answers and memorandum of law in response thereto by Appellants Delaware Riverkeeper Network, Clean Air Council, David Denk, Jennifer Chomicki, and Joann Groman, and after argument thereon, it is hereby ordered as follows:

1. The Order of Court dated June 26, 2015 is rescinded.
2. A stay is issued pursuant to Municipalities Planning Code Section 1003-A(d) in this matter to immediately stay any and all activity relative to unconventional natural gas development as presently being conducted at 451 Denny Road, Middlesex Township, Butler County, Pennsylvania, pending final adjudication of this proceeding.



3. A stay is issued pursuant to Municipalities Planning Code Section 1003-A(d) in this matter to immediately stay the effect of Middlesex Township Ordinance No. 127, pending final adjudication of this proceeding.

4. The motions R.E. Gas Development, LLC and Middlesex Township filed on July 2, 2015 are hereby denied.

BY THE COURT,


S. MICHAEL YEAGER

JUDGE



IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DELAWARE RIVERKEEPER NETWORK,
CLEAN AIR COUNCIL, DAVID DENK,
JENNIFER CHOMICKI, and JOANN
GROMAN

CIVIL DIVISION
A.D. No. 15-10429

Appellants,

v.

MIDDLESEX TOWNSHIP ZONING
HEARING BOARD,

Appellee,

v.

R.E. GAS DEVELOPMENT, LLC and
MIDDLESEX TOWNSHIP,

ROBERT C. CEYER Intervenor.

PROthonotary's
OFFICE - BUTLER CO.
CLERKED & FILED
2015 JUL - 9 P 2:55
Melissa S. Walters

RULE TO SHOW CAUSE

AND NOW, this 9th day of July, 2015, upon consideration of the foregoing
petition, it is hereby ordered that

(1) a rule is issued upon the Respondents to show cause why the Petitioner is not entitled
to the relief requested;

(2) the Respondents shall file answers to the Petition within 30 days of this date;

(3) the Petition shall be decided under Section 1003-A of the Municipalities Planning
Code;

~~(4) Depositions shall be completed within _____ days of this date;~~

(4) ~~(5)~~ Argument shall be held on September 18th, 2015, at 11:00 o'clock P.M. in Courtroom 3 of the Butler County

Courthouse; and

(5) ~~6~~ notice of the entry of this order shall be provided to all parties by the Petitioner.

BY THE COURT,


S. MICHAEL YEAGER
JUDGE



IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY

DELAWARE RIVERKEEPER
NETWORK, CLEAN AIR COUNCIL,
DAVID DENK and JENNIFER
CHOMICKI,

Appellants,

v.

MIDDLESEX TOWNSHIP ZONING
HEARING BOARD,

Appellee.

CIVIL DIVISION

No. AD 15-10429

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OFFICE BUTLER CO.
ENTERED & FILED

ORDER OF COURT

AND NOW, upon consideration of Intervenor Robert G. Geyer's instant Motion to Vacate Order of Court Dated June 26, 2015, and to Dissolve Injunction, and to Alternatively Modify Bond, it is hereby **ORDERED, ADJUDGED** and **DECREED** that said Motion is GRANTED.

~~THE~~ The June 26, 2015, Order of this Court is ^{RESCINDED.} ~~VACATED,~~ and the Preliminary Injunction is hereby DISSOLVED.

By the Court:

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MDM
Handwritten signature

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DELAWARE RIVERKEEPER
NETWORK, CLEAN AIR COUNCIL,
DAVID DENK, and JENNIFER
CHOMICKI,

CIVIL DIVISION

NO. AD 15-10429

Appellants,

v.

MIDDLESEX TOWNSHIP ZONING
HEARING BOARD,

Appellee.

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OFFICE BUTLER CO.
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CLERK

ORDER

Upon consideration of Respondent R.E. Gas Development LLC's Motion to Strike Appellants' Petition for Stay of Permit and Ordinance, it is hereby ORDERED that such Motion is ~~granted. The Petition is hereby STRICKEN, without prejudice.~~ ^{DENIED.}

By the Court:

~~William J. ...~~
J.
JULY 9, 2015

~~Frank ...~~

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DELAWARE RIVERKEEPER NETWORK,
CLEAN AIR COUNCIL, DAVID DENK,
and JENNIFER CHOMICKI,

A.D. No. 2015-10429

Appellants,

v.

MIDDLESEX TOWNSHIP ZONING HEARING
BOARD,

Appellee.

v.

R.E. GAS DEVELOPMENT, LLC, and
MIDDLESEX TOWNSHIP,

Intervenors.

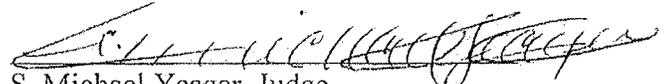
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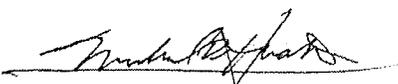
ORDER OF COURT

AND NOW, this 9th day of July, 2015, upon consideration of Intervenor Middlesex Township's Motion to Reconsider and Vacate Order,

IT IS ORDERED that the Motion is granted and this Court's Order dated June 26, 2015, ^{IS} ~~be~~ RESOUND and hereby is vacated.

BY THE COURT:


S. Michael Yeager, Judge



CERTIFICATE OF SERVICE

I hereby certify that I have served upon counsel listed below a true and correct copy of the **PRELIMINARY OBJECTIONS OF DEFENDANTS DELAWARE RIVERKEEPER NETWORK, CLEAN AIR COUNCIL, DAVID DENK, JENNIFER CHOMICKI, ANTHONY LAPINA AND JOANN GROMAN TO PLAINTIFFS' COMPLAINT** in the above-captioned matter this 15th day of July, 2015, by electronic mail and U.S. First Class Mail:

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Delaware Riverkeeper Network