

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

KEVIN R. CORRELL, LISA J.
CORRELL BENTLEY, LEROY
CORRELL and THELMA CORRELL,

Plaintiffs

VS

XXXX, SHICKSHINNY LAKE
ASSOCIATION, INC.,

Defendants

CIVIL ACTION - LAW

NO. 11738 of 2016

EXCERPT OF PROCEEDINGS - BENCH TRIAL
(Opening and closing statements)

BEFORE:

THE HONORABLE TINA POLACHEK GARTLEY
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, Pennsylvania 18711-1001
Third Floor

Commencing, Monday, March 27, 2023

APPEARANCES:

- On behalf of the Plaintiffs:
William E. Vinsko, Jr., Esquire

- On behalf of the Defendants:
Andrew D. Bigda, Esquire

1 **(Whereupon, the following opening statements**
2 **occurred on Monday, March 27, 2023:)**

3 **THE COURT:** I'm going to ask Counsel to approach
4 with regard to the motions in limine. So I did receive the
5 motions in limine. I'm going to ask Counsel if you'd like to
6 provide any oral argument with regard to those?

7 **MR. VINSKO:** I would, absolutely. Good morning,
8 Your Honor, William Mr. Vinsko on behalf of the Plaintiffs.

9 Motions in limine specifically have to do with the
10 determination of the Shickshinny Lake Association has no
11 authority. As you are aware, this Court entertained a very
12 similar case, and the decision that the Court reached addressed
13 the issue of whether or not the Shickshinny Lake Association had
14 authority. And the Court made its determination based upon
15 that.

16 We are asking, number one, that the Court take
17 judicial notice of that opinion and that order, but also that
18 the Court confirm as part of this case that the Shickshinny Lake
19 Association had no authority because of the fact that not all
20 the lots are sold. And, most importantly, the lots were not
21 sold as of 2015. The case that you had was in 2019, and as of
22 that time the lots were not sold.

23 Now, there's going to be testimony today with
24 regard to the fact that the lots are still not sold. But for
25 purposes of taking judicial notice of that motion or that order

1 the fact is that as of 2015, which is what we're talking about,
2 the lots were not sold, and as a result the Shickshinny Lake
3 Association does not have authority.

4 The response to the motion in limine addressed
5 issues as to whether or not evidence is admissible. This is an
6 evidentiary issue because of the fact that this Court has made a
7 prior determination on these specific facts and on documents you
8 can take judicial notice of. It's not a matter of whether or
9 not it's a factual issue, it's a legal conclusion based on the
10 determination of the language in the specific deeds.

11 The Shickshinny Lake Association does not have
12 authority over who has access to the lake or the control over
13 the dam or any other issues except when the last lot is sold.
14 The last lot was not sold as of 2015; therefore, based on that
15 decision, the Shickshinny Lake Association also had no authority
16 at that time. That's issue number one.

17 Number two is that there were request for
18 admissions that were provided to the opposing side. The request
19 for admissions have specific admissions. We attached those to
20 our motion in limine. We want those admissions to be confirmed
21 today before the trial so that we can streamline some of the
22 questions or some of the issues; but, most importantly, the
23 decision or the admissions that were made confirm that there's
24 no recorded documents with regard to the lake whereupon -- and
25 that becomes the crux of a lot of issues here today because

1 those are admissions that should be addressed.

2 The response to the motion in limine and the
3 request for admissions was that we phrased them. The fact is
4 that the Court can accept the entire request for the admissions
5 because they are admissions as they stand, but the information
6 related to what the admissions admit came right from their
7 language, and the numbers of the requests of admissions are
8 identified under each statement so that they're specifically
9 there. We're not asking the Court to admit facts that were
10 denied, only the parts that said we admit X. So because those
11 issues address the admission of evidence they are ripe and they
12 are appropriate for a motion in limine on both sides so we would
13 ask that you grant both motions. Thank you.

14 **THE COURT:** Response, Attorney Bigda.

15 **MR. BIGDA:** Judge, the two motions in limine I
16 don't know where this business comes in, business about the
17 Court having prior determinations of facts. The fact of the
18 matter is this is new litigation, there isn't a motion in limine
19 asking you to borrow your judgment from a different case two
20 years ago.

21 I have a motion in limine that says motion to
22 confirm that the Shickshinny Lake Association has never had any
23 control over the Correll properties and there is no mandatory
24 memberships requirement in the Correll property deeds.

25 Judge, I can tell you this right now, we're not

1 going to offer any document that contradicts that so that solves
2 that, number one. Number two is the motion in limine is motion
3 to confirm admissions made by the defendants for trial and to
4 preclude any evidence or testimony which is contrary to these
5 admissions. The request for admission to ask for documents just
6 because you request documents and maybe the Defendant hasn't
7 provided you documents doesn't allow the Court to say, okay, you
8 don't have documents, therefore, I'm not going to allow any
9 evidence or testimony that contradicts it.

10 If they want to move in their request for
11 admissions, let them move in their request for the admissions in
12 the trial. The Court doesn't need to make a preemptive judgment
13 ahead of time about the effects of these admissions. We don't
14 have a jury here. There's nothing that has to prevent the jury
15 from hearing things. If they want to move their request for
16 admissions, they can move their request for admissions in.

17 And I can tell you that for purposes of A through
18 F, I can tell you that we're not going to provide any documents
19 in opposition to A through F. And G says, The association is
20 unaware of any document, map, diagram or drawing which states,
21 depicts or confirms that the Shickshinny Lake Association
22 consists of a lake portion and a pond portion. I can tell you,
23 Judge, we are not going to tell you that the Shickshinny Lake
24 association consists of a pond or a lake portion. That's all I
25 have on that, Judge.

1 **MR. VINSKO:** If I can briefly respond.

2 **THE COURT:** Sure.

3 **MR. VINSKO:** If there's no opposition to that in
4 respect that they're not going to put evidence into the
5 contrary, then there's no reason why this Court cannot accept
6 its order which it relied upon. Again, they're not factual
7 issues. They're confirmed documents that the Court can take
8 judicial notice of with respect, primarily, to the determination
9 that the Shickshinny Lake Association has no authority.

10 **MR. BIGDA:** It's a procedural issue, Judge. Let
11 them move in their request for admissions. Let them stand up
12 there rather than ask the Court to make determinations about the
13 effect of the request for admissions before they're even
14 entered.

15 **THE COURT:** So I do take judicial notice of my
16 prior order. I've had multiple Shickshinny Lake cases, and I
17 did, in fact, enter an order that was filed on June 9, 2020 in
18 Shickshinny Lake vs. John Jerome Ftorkowski. And in my prior
19 ruling I indicate that the clear and unambiguous language in the
20 deed, the Plaintiff does not have rights at this time because
21 there are lots that have not been sold, and, as such, the SLA
22 does not have standing.

23 So I ruled on that. No one appealed it. So the
24 bottom line is I made that ruling. I take judicial notice of
25 that ruling for today's proceeding. I'm not borrowing facts.

1 It's a ruling that Shickshinny Lake does not -- that the SLA,
2 Shickshinny Lake Association, does not have standing because the
3 lots were not sold. So that I take judicial notice of.

4 Whatever Shickshinny Lake continues to do, despite
5 the ruling of the Court that stands and is the law of the County
6 right now because it would be binding on any other Judge also,
7 that's where that portion stands. I take judicial notice of
8 that.

9 The remainder of it, I concur. I agree with
10 Counsel. I'm going to deny it as a motion in limine. You can
11 present it during the course of your trial with what their
12 admissions were and then we can proceed accordingly, as it will
13 come in through the evidentiary hearing.

14 **MR. BIGDA:** Judge, if I can respond for one second.
15 That litigation you're talking about involved the Shickshinny
16 Lake Association vs. Ftorkowski or Ftorkowski. I'm not sure how
17 to pronounce his name. The issue was the Shickshinny Lake
18 Association having to do with Mr. Ftorkowski and the Ftorkowski
19 Enterprises --

20 **THE COURT:** No. I ruled unequivocally and without
21 doubt. They do not have standing because they don't exist. The
22 lots aren't sold. Listen, my ruling stands. They had lawyers.
23 They were here. No one appealed the order. No one objected to
24 it. The whole basis was they didn't have standing because they
25 do not by the clear and unambiguous language of -- and I put it

1 in my opinion so it was clear, that it was the clear and
2 unambiguous language of the deeds in this matter which brought
3 me to that point that -- in accordance with the clear and
4 unambiguous language in the deed, the Plaintiff does not have
5 the right at this time because the lots have not been sold, and,
6 as such, the successor of Shickshinny Lake currently holds title
7 and right to the property.

8 I went on and we went through all of the arguments.
9 The Plaintiffs argue that SLA maintains standing in that the
10 Defendant admits that Shickshinny Lake is a planned community.
11 I go through the Uniformed Planned Community Act, and we
12 discussed this previously at one of the conferences that we had.

13 Ultimately, I made some findings, and I'm taking
14 judicial notice of those findings as they stand today because a
15 huge part of that litigation was whether or not they have
16 standing to bring any lawsuit, not just this lawsuit. They lack
17 standing because --

18 **MR. BIGDA:** They're defendants in this case. We're
19 not bringing the action, Your Honor.

20 **THE COURT:** I understand. So the order maintains.
21 I'm just taking judicial notice of my prior order so we're not
22 going forward to relitigate issues that have been decided with
23 regard to the SLA.

24 **MR. BIGDA:** Judge, I'm not trying to make this more
25 difficult, but what I'm saying is that when you say in regards

1 to the SLA, the context was SLA vis-à-vis Ftortowski, the
2 defendant. These are individual defendants that were not part
3 of that litigation. And the order that you had indicated in
4 that was not that the Shickshinny Lake Association does not have
5 a right to exist. It's existed since 1967.

6 **THE COURT:** Correct. And I ruled that it shouldn't
7 exist. Counsel, I ruled that it does not have standing because
8 it cannot be formed. We had this argument. Until that last lot
9 is sold as in the deeds they -- and, again, no one appealed that
10 order. No one appealed it. It's in existence, and my rulings
11 were very clear at the time when this case was going on. And,
12 again, Shickshinny Lake brought the action. Different lawyers
13 were here. Maybe some of the same parties, but that, again,
14 remains part of my prior findings. And Shickshinny Lake, again,
15 is the named Defendant in this case, and my order remains the
16 same.

17 I'm taking judicial notice of that prior order and
18 we could go from there. I don't think you objected to that a
19 few minutes ago because you said that's not going to be an issue
20 in this case.

21 **MR. BIGDA:** What's not going to be an issue, Your
22 Honor? I'm sorry.

23 **THE COURT:** You said early on his first motion in
24 limine, he wanted it as a motion in limine, you said that those
25 issues were -- I could read back what you said, but, ultimately,

1 I'm taking judicial notice of my prior order. I told you that
2 five conferences ago that I decided issues regarding SLA, which
3 were never appealed, and that I'd be taking judicial notice of
4 those. That was a conversation we had several conferences ago
5 that I've been down this path with regard to findings on the
6 deeds and my review of the deeds and whether or not SLA had any
7 standing whatsoever to bring a lawsuit, and I said they did not
8 because of the clear and unambiguous language in the deeds.

9 So that portion of my -- and the rest, again, was a
10 different lawsuit, but that portion remains the same. So I'm
11 taking judicial notice of it. You can argue what you choose
12 throughout the course of the hearing, and I'll maintain any
13 objections as we go forward.

14 **MR. BIGDA:** Your Honor, if I could, I would like to
15 note my objection for that ruling.

16 **THE COURT:** It's noted. Multiple times, but it's
17 noted. Again, I brought this up months ago that this was going
18 to be my position with regard to this case, that there is an
19 order, that SLA did not have standing in that case because they
20 do not exist pursuant to the clear and unambiguous language of
21 the deeds, and no one appealed it, and that's a standing order.

22 So the rest of it, again, had to deal with other
23 issues, but SLA -- and that's why summary judgment was
24 granted -- did not have standing to bring the suit because they
25 didn't conform to the clear and unambiguous language confirmed

1 in those deeds that go back quite some time. And that, too, was
2 a multiple day bench trial where multiple people testified. So
3 the rest will go forward at this time. Your objection is noted
4 for the record, and we'll begin. Do you want to give opening
5 statements?

6 **MR. VINSKO:** I'm prepared to if you'd like.

7 **THE COURT:** Go ahead.

8 **MR. VINSKO:** May it please the Court, Your Honor.

9 I represent four individuals today. I represent Lisa Correll
10 Bentley, Kevin Correll, and Leroy and Thelma Correll, who owned
11 property, as some still do, on Shickshinny Lake. And when they
12 were kids you're going to hear that they played in the lake.
13 They used the lake, but they grew up, and mom and dad wanted to
14 give a portion of their property to the kids. The kids decide
15 to sell, and that's where everything went off the rails.

16 You're going to hear the operative date of
17 September 3rd, 2015. That's the date where things really went
18 off the rails because a letter was sent not to the Corrells, not
19 to Lisa, not to Kevin, not to Leroy and Thelma, it was sent to
20 the real estate agent saying that they don't have access to the
21 lake. They can't swim. They can't boat. They can't do
22 anything. Again, they didn't send it to them.

23 You're going to hear too that the property was for
24 sale by owner prior to that. Nobody said anything. You're
25 going to hear testimony today about a pond and a lake. I will

1 note for you that you're going to hear expert testimony that
2 there is no Shickshinny Pond. There's one body of water,
3 Shickshinny Lake. That's it. That's all there is. The letter
4 has never been retracted and so it just stood out there.

5 I will ask the Court, and I'm not going to mention
6 in my opening, but I would ask the Court to take notice of what
7 is in that letter, and you will see that this caused a financial
8 difficulty to everyone sitting on my side of this courtroom, and
9 that's why we're here today.

10 So the two things I'd ask you to think about
11 through this trial is, number one, there is no Shickshinny Pond.
12 There's one body of water. And, number two, you could ask
13 yourself why did the Defendants never contact my clients? They
14 sent it to a real estate agent, a third party. Thank you, Your
15 Honor.

16 **THE COURT:** Attorney Mr. Bigda.

17 **MR. BIGDA:** Your Honor, this has a lot of deeds and
18 paperwork flying around and all that kind of business and gives
19 the illusion that somehow this is a complicated case, but the
20 reality of it is that it really isn't.

21 This is a tortious interference case, and I can
22 tell you right out of the box Shickshinny Lake Association as a
23 Defendant is out because the statute of limitations was
24 violated. The triggering date, call it September 3rd, call it
25 September 12th, call it September 14, 2015, which is the day in

1 which they claim that they were damaged by this letter, it runs
2 two years. So by September 14th, 2017, it's over with, and they
3 didn't file against the Shickshinny Lake Association. They
4 filed against the Shickshinny Lake Association October of 2018.
5 So right out of the box the Shickshinny Lake Association is out.

6 Their claim that somehow this is a continuing tort
7 is specious. It isn't. The law in Pennsylvania is your action
8 accrues from the date of injury. They claim injury on September
9 14th, 2015. They didn't get it done. They're out. Who's left?
10 The individual defendants.

11 The individual defendants, they have to prove
12 against them four elements of tortious interference; and the
13 reality of it is, Your Honor, is they're not going to be able to
14 do it. There's no tortious interference here. These individual
15 defendants, these are volunteers for the Shickshinny Lake
16 Association, all acted at the behest for the Shickshinny Lake
17 Association on the advice of counsel. Their actions were
18 justified and their actions didn't have any malice, ill will, or
19 any bad intent. They can't prove their case, and you should
20 find in our favor, Your Honor. Thank you.

21 **THE COURT:** Thank you.

22 **(Whereupon, the opening statements concluded.)**

23 *****

24 **(Whereupon, testimony in this matter took place,**
25 **but was not requested to be transcribed.)**

1 *****

2 (Whereupon, the following closing statements
3 occurred on Tuesday, March 28, 2023:)

4 THE COURT: Attorney Bigda, we're going to turn
5 back to you with your motion. Attorney Mr. Bigda, I'll turn to
6 you, sir. You have a motion at this time.

7 MR. BIGDA: I have several motions, Your Honor, but
8 they are all pursuant to Rule 230.1 under the Pennsylvania Rules
9 of Civil Procedure. Your Honor, pursuant to Pa. Rule 230.1, the
10 Defendant, Shickshinny Lake Association, moves for a nonsuit on
11 counts one and two. That is tortious interference with
12 prospective business relations. That's count one. Tortious
13 interference with existing business relations, that is count
14 two.

15 On behalf of the association as to both counts, the
16 first motion for nonsuit is under the statute of limitations.
17 The statute of limitations for interference with business
18 relations and with tortious interference is two years. That's
19 in 42 Pa. Consolidated Statute 5524 Section 3.

20 Time limitations, period, for any claim begins to
21 run from the time the cause of action accrues, Section 5502 of
22 the same statutory provision. In Pennsylvania, cause of action
23 accrues when the Plaintiff could have first sustained the action
24 to a successful conclusion. That's under Fine versus Checcio,
25 870 A.2d 850, Pennsylvania Supreme Court 2005.

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1 So, in this case, at the latest the tort claim in
2 this case expired on September 14th, 2017. That's because that
3 would be two years from the date in which the Plaintiffs are
4 claiming their proposed real estate transaction was skulled by
5 the Evans letter that was dated September 3rd, 2015.

6 As reflected in the docket, the Plaintiffs filed
7 writs of summons against the individual defendants on November
8 17th, 2016. The Shickshinny Lake Association was not named a
9 Defendant until October 25, 2018 in a complaint and in a
10 subsequent amended complaint on September 14th, 2018. So the
11 tort claims against the Shickshinny Lake Association are more
12 than one year time barred.

13 The Evans letter to Kozlowski does not constitute a
14 continuing tort. A continuing tort doctrine requires evidence
15 of a defendant's ongoing affirmative acts cited in the
16 materials. On behalf of this principle, Your Honor, is Beasley
17 vs. Young, Pa. Superior Court Case from November 4th, 2013.

18 **THE COURT:** Beasley spoke to a right of process
19 case. That was the basis of that case, correct?

20 **MR. BIGDA:** The right of process.

21 **THE COURT:** In the continuing action.

22 **MR. BIGDA:** I'm not sure.

23 **THE COURT:** Okay.

24 **MR. BIGDA:** So there's no affirmative acts in this
25 case, actually, beyond September 3rd, 2015. So if you give the

1 benefit of the doubt past our affirmative act, which is
2 September 3rd, 2015, that is Evans' act, that takes us to
3 September 14th, two years, and then it doesn't work.

4 The Plaintiffs initially claimed that this is a
5 continuing tort because, well, we had damages that are
6 continuing; and then that doesn't work, because if that were
7 true every car accident case, every medical malpractice case
8 would continue on and on and on, and now the latest claim seems
9 to be it's a continuing claim because it was never retracted.
10 The reality of it is accrual begins at the time the action
11 should have been precluded and sustained, and that is September
12 14th, 2017.

13 **THE COURT:** But Beasley spoke to specifically
14 claims dealing with abuse of process and civil conspiracy. So
15 those required an ongoing -- and my reading of it, looking at
16 all of the cases and the different factual scenarios that are
17 encompassed in this area of the law, this is an unreported
18 Pennsylvania case. But, ultimately, the Court did argue that it
19 aired in finding that its claims for abuse of process and civil
20 conspiracy were time barred because they were not based solely
21 upon the fact of the improper representation.

22 The claims were predicated upon the whole course of
23 conduct upon which that condition was tortuously manifested,
24 including every act enabled and taken via the impermissible
25 conflict. So that spoke to a specific abuse of process in its

1 ongoing tort.

2 Are there different standards for different kinds
3 of actions or do you think it's just a general standard that
4 applies?

5 **MR. BIGDA:** I think it's a general standard that
6 applies, Your Honor.

7 **THE COURT:** Okay.

8 **MR. BIGDA:** Moving on, Your Honor, for purposes of
9 the nonsuit on behalf of George Hasay, Your Honor, we had
10 previously submitted --

11 **THE COURT:** Is there any objection to that one?

12 **MR. VINSKO:** No, Your Honor.

13 **THE COURT:** I was going to say, before you waste
14 argument time, the nonsuit -- I think he's deceased, as we all
15 noted, so the nonsuit is granted with regard to John Hasay.

16 **MR. BIGDA:** Thank you. If I can move on to the
17 individual defendants from here, Your Honor, and I also could --
18 what I'm going to say on behalf of the individual defendants
19 also applies to the Shickshinny Lake Association as a whole,
20 even though I've already made my motion about --

21 **THE COURT:** Understood.

22 **MR. BIGDA:** Thank you. Your Honor, interference
23 with prospective business relations and tortious interference
24 require an affirmative act by the alleged tortfeasor. I cited
25 in my materials *Frain vs. American Sanitary Sales and Services,*

1 which is a 1970 Delaware County case.

2 An affirmative action requires or is characterized
3 by something that leads to an immediate result. None of the
4 defendants in this case, except for Evans, on this point
5 committed an affirmative act. That is because if we look at
6 what happened in this case, it's July 16, 2015, and the board
7 members have a meeting and they request Evans to re-confirm with
8 Attorney Young his opinion about lake rights, and if that
9 continued to be his opinion to write a letter to Kozlowski
10 expressing the SLA's concerns about her advertisement.

11 That's the last thing that the non-Evans board
12 members have any kind of involvement in this case. There is no
13 immediate result and so there can be no affirmative act and
14 there can be no tort.

15 As we know, that July 16 meeting was in 2015.
16 Nothing happens in August. Nothing happens after that until
17 Evans sends the letter, until September 3rd, 2015. The
18 September 3rd, 2015 letter probably categorized as an
19 affirmative act, but the other board members didn't write that
20 letter, and, therefore, did not have an affirmative act for
21 purposes of that.

22 The next motion, Your Honor, is on behalf of all
23 defendants, nonsuit for interference with prospective business
24 relations. There's four requirements for this tort. That is,
25 you have to have a prospective contractual relation. The

1 purpose or the intent is to harm the Plaintiff by preventing the
2 relation from occurring. There's an absence of privilege or
3 justification on the part of the Defendant, and it occasions
4 actual damages resulting from the defendant's conduct. The cite
5 for that is Salsgiver Communications Inc. vs. Consolidated
6 Communications Holdings, 150 A.3d 957. It's a Pa. Superior
7 Court case from 2016. I think both Mr. Vinsko and I have cited
8 this case in our materials for purposes of elucidating the
9 standard.

10 So the next focus here, Your Honor, is on the
11 prospective business relation, item one or element one. In this
12 case, the Plaintiffs have not established that they have an
13 actual prospective contractual relation with a potential buyer.
14 What that is has been described under Thompson Coal Company vs.
15 Pike Coal Company, a Pa. Supreme Court case from 1979 that says
16 the Plaintiffs are required to establish but for the wrongful
17 acts of the Defendant, it is reasonably probable that the
18 Plaintiffs would have sold their property for what they claim.

19 The amended complaint first says that we accepted
20 offers for \$285,000. We had an offer, we had an acceptance, and
21 we were on our way to closing. Suddenly, this July 16, 2015
22 meeting happens between the board and our case -- or our real
23 estate deal goes south. When the reality of it is there's a
24 prospective interest in the property in September of 2015.

25 Again, the Pennsylvania Supreme Court says it's

1 gotta be reasonably probable and it's gotta be but for the
2 wrongful conduct. So what do we have in this case? What we
3 don't have that's required from the Plaintiffs is, do we have an
4 offer? No. Do we have an acceptance? No. What we do have,
5 Your Honor, are emails from the agents involved, and those
6 emails say, Interested in purchasing possibly.

7 In those emails, they are stressing the importance
8 of past written perc tests that we know failed specifically as
9 to Lot 3. Now, do we know whether those perc tests could have
10 been remedied? We don't know. Maybe, maybe not, but that
11 doesn't meet the standard of reasonably probable.

12 The testimony from all the witnesses who knew
13 anything about perc test say, yeah, that thing's important and
14 that's an important part of any kind of real estate.

15 **THE COURT:** Didn't one of the witnesses say they
16 were buying both lots so as long as four perc'd it was
17 irrelevant because they were buying two lots?

18 **MR. BIGDA:** They didn't say they were buying both
19 lots, Your Honor. It never got to that. They said they were
20 interested in them.

21 **THE COURT:** Right, in both lots if one would perc.
22 That was some of the testimony.

23 **MR. BIGDA:** Right. But whether or not that was
24 going to be an available remedy that they were interested in,
25 that never came out on the witness chair at all. No one said it

1 was okay if one perc test failed.

2 **THE COURT:** A witness did say that. One of the
3 witnesses, I believe, testified perc'd on one, not the other, so
4 they didn't think it would be a problem. Again, I may have
5 notes for that but that's what I wrote down. Okay.

6 **MR. BIGDA:** The other evidence that came out of the
7 emails, Your Honor, was that the email from the purchaser's
8 agent said, In looking at the letter and the other things. And
9 the other things have never been defined. Who knows what it
10 could have been.

11 And, again, the Plaintiffs have the obligation to
12 say but for the behavior that they found wrongful caused them
13 not, and that same witness testified that open things could be
14 anything. It could be finance. It could be more different
15 kinds of properties people found more suitable. It could have
16 been price. Who knows?

17 The reality of it is the Plaintiffs didn't bring
18 the buyer into the courtroom to say, you know what, I would have
19 bought the property if I didn't get this letter. There was no
20 buyer who came in here and said, So what about the perc tests.
21 I would have bought the property. I loved it.

22 Then all of a sudden this thing comes in and upsets
23 the apple cart. That didn't happen. And that was their
24 responsibility. At best, what we get are vague emails from the
25 agents involved that don't meet the standard.

1 The second element, Your Honor, of a tortious
2 interference claim is there has to be an intent to harm the
3 Plaintiffs. Generally, Your Honor, for a director or officer of
4 a corporation of personal liability for damages suffered by a
5 third party, he or she has to knowingly participate in a
6 wrongful act.

7 For tortious interference, to prove that the
8 Defendants had a purpose or intent to harm the Plaintiff by
9 preventing their business from occurring -- or business relation
10 from occurring.

11 Again, this is Salsgiver case that both Attorney
12 Vinsko and I have cited in our materials. The Plaintiff must
13 prove not only that a Defendant acted intentionally to harm the
14 Plaintiff, but also that the actions were improper. The factors
15 from the Restatement Second Torts Section 767, those factors are
16 the nature of the conduct, the actors' motive, the interest of
17 the others with which the actors' conduct interferes, the
18 interest sought to be advanced by the actor, social interests,
19 and protecting the freedom of action of actor, and the
20 contractual relations of other, the proximity or remoteness of
21 the actors' conduct to the interference and the relations
22 between the parties.

23 So where is the intention to harm? The
24 parties -- or Mr. Evans and the board authorized a letter to
25 Heidi Kozlowski. They didn't authorize a letter to a

1 prospective buyer. Why did they send a letter to Heidi
2 Kozlowski? Is because the Plaintiffs wanted her to -- they
3 wanted them to send to her. She was the person identified in
4 all the marketing materials. Contact Heidi Kozlowski. She's
5 the one. She's essentially the equivalent of the Plaintiffs
6 because she is their agent. They can't complain that they sent
7 it to Heidi Kozlowski because Heidi Kozlowski is essentially the
8 same as her. And, in this case, it didn't make a difference
9 anyway because if it had gone to them they were required under
10 the contract to give it to Heidi Kozlowski anyway.

11 How did individual members of the board in July of
12 2015 seek to harm the Plaintiffs' prospective business relation
13 that wasn't even created until September of 2015? There is no
14 evidence that Jeff Evans knew about any prospective contract
15 that the Plaintiffs had with any prospective buyer when he sent
16 the letter. How could Evans have an intent to harm the
17 prospective contract if he doesn't even know about the
18 prospective contract.

19 All of the Defendants testified that there was no
20 ill will toward the Corrells. The reason why they did what they
21 did was because they had members complaining to them and they
22 were responding to those complaints under their fiduciary
23 obligations to the Shickshinny Lake Association.

24 Members had deeded interests in the main section of
25 the lake. They spent considerable resources insuring it and

1 caring for it, and the Defendants in good faith did the exact
2 opposite of an intent to harm. They sought their lawyer's
3 advice. It was more than just seeking the lawyer's advice.
4 They already knew that Attorney Young told them, hey, those
5 people on that upper part of the lake don't have lake rights.
6 They didn't just say, All right. Send a letter. They said,
7 hey, Evans, re-confirm this with Young to make sure that we're
8 solid on this. And that's what Evans does.

9 So if the board members are bending over backwards
10 to show or to get it done right, to do the right thing, how is
11 that any evidence of intent to try to stick it to the Corrells?

12 **THE COURT:** But they do have lake rights to the
13 northern part of the lake. You just said they don't have lake
14 rights.

15 **MR. BIGDA:** And the letter demonstrates that, Your
16 Honor.

17 **THE COURT:** The letter says there's a pond.
18 There's two sections of the lake. They only have access to the
19 pond. But you just said they don't have lake rights, but they
20 do to the northern part of the lake, where the members of the
21 association have rights to the southern part of the lake. If
22 we're taking it for the letter of what all these people
23 testified today, especially board members, people who have
24 rights to the south shouldn't go to the north, and people who
25 have rights to the north shouldn't go to the south.

1 It seems as if there's some -- I just want to be
2 clear. You just said again they do not have lake rights, but
3 they do to that portion in front of their property that was
4 flooded.

5 **MR. BIGDA:** That's right.

6 **THE COURT:** That's why this is so interconnected,
7 but go ahead.

8 **MR. BIGDA:** Right. And I think the Evans letter
9 bears that out. He explains the whole thing.

10 **THE COURT:** The Evans letter, and I think we can
11 agree for the facts of the record, says there's two portions of
12 the lake, what's known as pond and what's known as Shickshinny
13 Lake, and he and everyone else testified that was inaccurate,
14 that it's one body of water and that there is no pond.

15 I think, just for the record, we all agree, and the
16 letter says clearly, the lake is divided into two bodies of
17 water, which is a misstatement, because it's not. It's one
18 lake. There is no pond.

19 So I don't think that's in conflict, Counsel.
20 Everybody testified -- a hundred times testified to that, right?

21 **MR. BIGDA:** Judge, I think we all agree on the same
22 thing, and I think the Evans letter says when you look at the
23 lake it appears as one body of the water. There's no debate
24 about that at all, and the Evans letter says that, but the lake
25 bed is separately owned.

1 **THE COURT:** Counsel, I'm not arguing with you, I'm
2 stating -- you're in argument. You're making some statements,
3 which I want to clarify, because the record is clear from every
4 testimony, and it's not disputed, that there's one body of
5 water.

6 **MR. BIGDA:** I agree with that.

7 **THE COURT:** And that the Evans letter says without
8 a doubt what most people refer to as Shickshinny Lake is
9 actually comprised of two parts, the large main section of the
10 lake, and the pond at the north end of the overall body of
11 water. Shickshinny Lake actually ends at the unimproved
12 controlled -- then he goes on to say, and then the pond. The
13 balance of the water is the pond. So he's saying specifically
14 it's divided into two parts. That we know is not accurate as of
15 now because it's owned by different people but one body of
16 water. Do you disagree with that as the facts are put out?

17 **MR. BIGDA:** It's a statement. If you're asking me
18 is it one body of water but is owned separately, the lake bed is
19 owned separately, I agree with that.

20 **THE COURT:** Thank you.

21 **MR. BIGDA:** Your Honor, when I was making this
22 motion the last thing I remember saying was that the Shickshinny
23 Lake Association, the board members, not only remembered the
24 advice that Young had given them, they asked them to -- asked
25 Evans to re-confirm it.

1 So if you're looking for intent, bad intent, intent
2 to undermine any kind of transaction that the Corrells possibly
3 could have, that's not evidence in this case because of what
4 they did.

5 Attorney Young re-confirmed the advice to Evans and
6 where a fiduciary act upon the advice of counsel while not a
7 blanket of immunity in all circumstances. Such a fact is a
8 factor to be considered in determining good faith, and the
9 materials we've cited, *In re Lohm's Estate*, a Supreme Court case
10 from 1970. And all the witnesses testified that they had no ax
11 to grind with any of these people who are the Plaintiffs.

12 Now, as for these individual defendants, Member
13 Thomas Ide didn't remember much, but Evans, Boyle, Zardecki, and
14 Mr. Pozluszny testified that they acted on Young's advice and as
15 to why they did what they did. The minutes reflect that, too.

16 Now, I understand in our struggles here in the last
17 couple of days, Your Honor, that it would have preferred to have
18 Mr. Young in here and testify to say, hey, this is what I said.
19 But the reality of it is, Your Honor, his advice is reflected
20 not only in the testimony of the people involved in this case,
21 but it's also reflected in the minutes from the Shickshinny Lake
22 Association. And we pled that we relied on the advice of
23 counsel in the pleadings. And because the Plaintiffs didn't
24 depose Mr. Young, they could have subpoenaed Mr. Young to be
25 here, and they didn't.

1 So you may not think there's a lot of evidence
2 other than the testimony of the people here and the minutes that
3 reflect Mr. Young's advice, but the only evidence that there is
4 is for us and not for the Plaintiffs. And to think that any of
5 these people that would come into court here and say we relied
6 on Mr. Young's advice and to not be telling the truth about
7 that, I think is very far-fetched.

8 The funny thing about this whole thing too is the
9 Plaintiffs know this well because they sued Attorney Young. He
10 was a Defendant in this litigation. They sued Young and Haros,
11 his firm, and they were kicked out on the preliminary objections
12 that they filed when this case started.

13 The third element, Your Honor, that the Plaintiffs
14 have to prove is that the Evans letter was not justified. We
15 don't have to prove that it was justified. They have to prove
16 that it was not justified, but it's the opposite side of the
17 same coin. Under Ruffing vs. 84 Lumber Company, which is a
18 Pennsylvania Superior Court case from 1991, an actor is
19 justified in interfering with another's performance of a
20 contract when the actor has a legally protected interest he acts
21 or threatens to act to protect the interest and the threat is to
22 protect it by proper means.

23 So what's the protected interest? The protected
24 interest of the Shickshinny Lake Association is they have
25 members who pay money to the association. Their members have

1 deeds that are -- deeded rights to the lake that they care for,
2 and the Plaintiffs are claiming that they have a right to use at
3 no cost.

4 Did they act to protect it? Yes, they did. They
5 wrote a letter. Mr. Evans wrote a letter at the board's
6 approval to protect that right, and they also employed the use
7 of a lawyer to make sure that that was the appropriate thing to
8 do.

9 Did they do it by proper means? Yes. Of course,
10 they did. They asked their lawyer what they should do, and they
11 sent a letter. They didn't firebomb the Corrells' house. They
12 didn't allege any kind of improper or illegal conduct. They
13 didn't do anything like that at all. They didn't do any threats
14 of legal conduct. They didn't do anything that was illicit.
15 What they sought to do was persuade you, which is what is
16 accepted as something that society is willing to accept and is
17 something that is within the rules of the game, and for that,
18 Your Honor, we cite Empire Trucking Company vs. Reading and
19 Anthracite Coal Company, which is a Pennsylvania Superior Court
20 case from 2013.

21 Remember, Your Honor, that the association was
22 trying to avoid the problem. They thought reasonably that if
23 they can just let these people know that the association was not
24 going to agree with their right to use the lake, they could
25 solve the problem before it became a problem. And the

1 association has to operate on behalf of their members. And if
2 the association board doesn't act to protect their interest, the
3 board is violating their fiduciary obligation to their members.
4 They couldn't just sit there and do nothing. That would also
5 give a waiver right possibly to the people who are purchasing
6 it. They could say, wait a minute, you guys knew all this all
7 along that they were saying they could use the lake and you guys
8 knew this and you didn't do anything. You just sat there. So
9 they felt that they needed to assert their rights to let them
10 know that they did not agree with their right to use the lake.

11 Your Honor, the Phillips vs. Selig case also says
12 that a letter or something that expresses an opinion is not
13 something that is improper for purposes of tortious
14 interference. Just because the letter doesn't say this is our
15 opinion or just because the letter doesn't say I think, doesn't
16 mean that it's not an opinion letter. It's a letter that says
17 these are our rights, or this is what -- you can't come onto our
18 property. You don't have rights to our lake. It's an opinion
19 piece. It's not actionable for purposes of tortious
20 interference.

21 We spent a lot of time or we heard a lot of stuff
22 from the Plaintiffs about, did you ever go over to their house
23 or did you ever call them on the phone or did you ever do this?
24 That is all misdirection. The issue in this case is not what
25 could have been done. The issue is they made a claim for

1 tortious interference as to what was done, not what could have
2 been done. So all this business about alternative means,
3 perhaps, or nicer ways that maybe the association could have
4 asserted itself, has nothing to do with this case.

5 The next thing, Your Honor, is the thing that we
6 probably enjoyed the most in this whole thing, is that there's
7 no interference if the person is giving truthful information.
8 The ownership of the lake bed in this case, and forgive me for
9 doing this, but I'm going to do it, Your Honor. I made an
10 exhibit.

11 **THE COURT:** You made an exhibit?

12 **MR. BIGDA:** There it is. It's simple and it tries
13 to prove a point.

14 **THE COURT:** I thought that was it. I was like,
15 wait, prove a point. It's blank. This is even better.

16 **MR. BIGDA:** The reality of it is is that this is a
17 lake. It's owned by somebody else. This part of the lake that
18 is owned here (indicating), the lake that is owned by somebody
19 else over here (indicating), and here's property on the side of
20 the lake that goes under the lake here (indicating). And the
21 law in Pennsylvania, since the 1930's, is that if you own the
22 lake bed here (indicating), you control the entire lake. If you
23 own the lake bed here (indicating), you control the lake water
24 here (indicating).

25 And the fact that anyone may own a piece of

1 property that runs along the lake or may go into the lake,
2 doesn't give any rights beyond what it is. The fact that
3 someone may own property here (indicating) that goes into here
4 (indicating) does not give them lake rights to use this lake
5 under here (indicating). That's the simple fact of the matter
6 of the case, and it's been the most difficult part of this case
7 because this is black letter law from the 1930's. The reality
8 of it is, is that the Corrells don't have a right to use this
9 part of the lake because Ftorkowski owns this.

10 So when all of the Plaintiffs testified, Lisa
11 Bentley, Kevin Correll, what was their basis for saying they had
12 a right to use it? Well, we've always kind of had it, nobody
13 ever gave us a problem. But it wasn't a legal basis for which
14 they could assert themselves because they don't have one. We
15 spent all this time. Give us a legal basis for it. They don't
16 have one. They were asked to provide one for purposes of the
17 people who were going to buy the property. That never
18 materialized. They didn't give one to Heidi Kozlowski. They
19 didn't give one to the agent for the potential purchaser.

20 I mean, the reality of it is is that the Evans
21 letter was truthful because it says, look, you don't have a
22 right to use Shickshinny Lake lower. You don't because they
23 don't. The citation for these longstanding Pennsylvania
24 property provisions, Your Honor, from Miller vs. Lutheran
25 Conference, which is 1938 case from the Pennsylvania Supreme

1 Court, 280 A.2d 879. Loughran, which is another Pennsylvania
2 Supreme Court case from 1951. Also, there's another case, Your
3 Honor, that basically says that just because you own land that
4 abuts a lake doesn't mean you have a right to use the lake. I
5 never knew that this was the law, Your Honor, until you started
6 getting into this stuff.

7 The fact that some people come across a lake, and I
8 think the Corrells were operating under this idea that, jeez, if
9 I got a house or a property that's along the lake that means I
10 get to use the whole lake. It's not their fault for not knowing
11 that but they just don't know.

12 Now, for purposes of what it is the Plaintiffs seem
13 to be saying here is that if someone disagrees with an ad
14 involving one's interests and one goes to an experienced lawyer
15 and the lawyer says, hey, you know what, you're right, you
16 should send these people a letter. Well then, that means these
17 folks should be able to find tortious conduct. And that's
18 simply just not the case.

19 Now, for purposes of the causal damages, Your
20 Honor, the reality of it is, like we've said, if there's a
21 causal relationship between what it is we sent to Kozlowski that
22 got transferred over that prevented their real estate
23 transaction, the reality of it is we wrote it to Kozlowski and
24 Kozlowski was the one who made the decision to give it to the
25 prospective buyers. So if there was some error of it going to

1 the prospective buyers, it was Kozlowski who did that, we didn't
2 do that. There's no cause there.

3 Now, for purposes, Your Honor, of the tortious
4 interference with business relations, the elements are
5 relatively the same except for the first one. We're willing to
6 admit that there was a business relation with Heidi Kozlowski.
7 The listing agreements were part of the evidence. There's no
8 issue there. But for purposes of the remaining elements that
9 are required to be proved, they're the same as the tortious
10 interference ones for prospective business relations. And we
11 just would incorporate the arguments that we made for that for
12 purposes of the Heidi Kozlowski contract.

13 What's interesting about the Heidi Kozlowski
14 contract is there are no causal damages with that one either,
15 and the reason for that is is that Kozlowski has got a contract
16 with the Corrells and she gets a commission if there's a sale.
17 If there isn't a sale, she doesn't get anything. She hasn't
18 sued the Corrells. And, I think, what the Plaintiffs are going
19 to try to do is they are going to try to say we're going to
20 borrow that \$135,000 claim that we have in the tortious
21 interference with prospective business relations case and we're
22 going to borrow that and bring that in in the Heidi Kozlowski
23 case. They can't do it. If they got any damages, Your Honor,
24 it's in the tortious interference with prospective business
25 relations case, not the Kozlowski's case because there isn't

1 any, because it was a commission-type of a contract and nothing
2 became of it.

3 Again, like I said, Your Honor, for the remaining
4 elements for the Kozlowski tortious interference case, I just
5 would ask the Court to consider those same arguments I made for
6 the prospective business relations claim.

7 Your Honor, with great trepidation, I'm going to
8 make a reference now to the Court's Order from the 29th of June
9 of 2020, and I just would like to address what our perspective
10 is for purposes of the significance of the order. And that is,
11 Your Honor, this order was issued in June of 2020. That was
12 five years after this business with the Shickshinny Lake
13 Association, so I didn't want the Court to think or under the
14 impression that somehow this was a defiance of the Court's Order
15 from 2020.

16 Secondly, Your Honor, the Court had determined that
17 the Shickshinny Lake Association didn't have standing for
18 purposes of a declaratory judgment. I understand that's what
19 the order says.

20 **THE COURT:** As a party they don't have standing
21 based on the deeds.

22 **MR. BIGDA:** What I would like to point out, Your
23 Honor, is that in addition to those findings that the Court made
24 was that that does not mean that the Shickshinny Lake
25 Association does not have an interest in the lake itself.

1 **THE COURT:** I agree. They provide services to the
2 lake, and that was -- I said they do not have standing as a
3 party. There was issues of dues collection because they're not
4 owners. That was a very specific order dealing with their
5 standing based on the deeds, that they lacked it, because the
6 association based upon the deeds is not in a position to be an
7 active -- to be doing what they were saying they could do.

8 **MR. BIGDA:** I understand.

9 **THE COURT:** There's two properties left, I think.
10 Two Ftorkowski properties left. And I don't even know if they
11 were for sale because they weren't when we were here a couple
12 years ago. Go ahead.

13 **MR. BIGDA:** Your Honor, the last thing I would like
14 to ask the Court to consider, and I think you indicated this
15 when you were doing the direct examination of Mr. Evans, was
16 that the record is replete with indications of the problems with
17 the dam up until the time that Evans letter was sent, so I just
18 want to --

19 **THE COURT:** I think my order if you quote it, Mr.
20 Bigda, says I was made privy to complaints since, I think, 2006
21 to -- notices and DEP documentation with regard to the dam in
22 2006 to 2008 until the time of that order. So I'm very aware,
23 and my order says I'm very concerned about the dam, but DEP
24 needs to do their job.

25 **MR. BIGDA:** And I think the testimony also was,

1 Your Honor, despite all that evidence and all that, I don't
2 think there was any testimony from any witness that said
3 I -- there was no witness that said the description of the
4 problems with the dam served as a reason why the property wasn't
5 purchased.

6 It seemed that any of the problems were all related
7 to our position is you can't use the lake. So based on all of
8 that that I submitted, Your Honor, I'd ask that you nonsuit the
9 Shickshinny Lake Association as Defendant, as well as all of the
10 individual defendants in this case. You've already granted the
11 Hasay motion. That's it, Your Honor. Thank you.

12 **THE COURT:** Thank you very much, Attorney Bigda. I
13 appreciate your argument. Counsel, your response.

14 **MR. VINSKO:** Thank you, Your Honor. And I think at
15 least the conversation I had with Attorney Bigda that this was
16 going to constitute, I think, our closing argument.

17 **THE COURT:** Why don't we just superimpose this? I
18 don't --

19 **MR. BIGDA:** My suggestion, Your Honor, would be as
20 Bill and I discussed that, and as long there wasn't some other
21 thing that you wanted us to address. Is that okay?

22 **MR. VINSKO:** That's fine. First of all, thank you
23 for your time in this matter. Obviously, this is a very
24 important issue, particularly with my clients. And when I
25 opened my case I asked the Court to consider two things, the

1 fact that there is not a pond and a lake, there's only a lake.
2 And the second thing was that no one ever asked the Corrells to
3 address this matter, only to send it to the real estate agent.

4 I'm going to get into the specifics of the law, but
5 the fact of the matter is it's more to highlight the facts of
6 the case that were elicited. I understand specifically that the
7 Court is aware of most of them, but the first thing I want to
8 say is that they're saying that this is an opinion letter. This
9 is not an opinion letter. This was a directive.

10 When they say that Heidi Kozlowski made the
11 decision to give it to the prospective buyers, it actually
12 directs her and says, Please make sure that this information is
13 disclosed to each potential purchaser of the property you have
14 listed. Do you know what Heidi Kozlowski's answer was when she
15 terminated the contract was? I don't want to get involved in
16 this.

17 So to state they didn't interfere with Heidi
18 Kozlowski's termination of that listing contract is really
19 misdirection because they told her, hey, you gotta tell
20 everybody, and now she's not going to be able to sell, and she
21 said she didn't want to get involved, terminated the contract.
22 Their action caused Heidi Kozlowski to terminate their contract.
23 I don't think it gets any clearer than that.

24 The problem with lawyers, and I'm one so I totally
25 see it, is the only difference between everybody in this room

1 and me and Andy is that we had to sit through law school and
2 listen to this crap for three years, but the law is common
3 sense, and that's what we have to focus on here.

4 You can say that Heidi didn't get an offer or you
5 could say that she pushed it along, but these individuals have
6 to live a real life and this letter stopped any sale. This
7 letter stopped Heidi Kozlowski. This letter stopped Mark
8 Humphries. This letter stopped everything and then created a
9 financial avalanche for these people. It was all because they
10 wanted money.

11 All you heard from everybody was, hey, we pay, you
12 should pay. It was all about money. But they claim that it's
13 in the interest of fairness that, hey, I pay, you pay. That's
14 the way it goes. But they don't think it's a big deal or fair
15 to call the Corrells. They've been living there since 1974 and
16 they claim I couldn't find their number. They claim I couldn't
17 identify who owned the property.

18 Mr. Evans said that the address and phone number
19 was not on the Century 21 sign. I looked it up online and found
20 it out. He never looked up the Corrells. So we have to take
21 this from a commonsense approach, and that's what all these
22 cases that I'm about to go into and the ones that Mr. Bigda did.
23 You have to put it into the factual context. Take the 50,000
24 foot view. What happened here?

25 Let's start with the interference with prospective

1 contractual relations. You have two causes of action. One is
2 interference with prospective contractual relations. The other
3 one is interference with business relations. If you have an
4 existing contract, it's not prospective, it's the business
5 relations. So to try to hide the ball and say, hey, you didn't
6 have an actual offer, actual acceptance, then you're really
7 saying that it's count two.

8 But the fact is they did have that. In fact,
9 Attorney Bigda and I actually used the same argument here, that
10 in the Phillips vs. Selig case it says, In turning to what a
11 prospective contractual relation is, Courts have admittedly
12 stated that arriving at the definition can be difficult -- is
13 very difficult. Of course it is. Then it says it has to be
14 something more than a mere hope or the innate optimism of the
15 salesman.

16 You cannot argue that this is more than -- this is
17 not more than mere hope. They had a guy that says, hey, this is
18 all we need. You can talk about the perc tests all you want,
19 but they stopped the contract not because of the perc test, they
20 stopped it because they said the letter -- they didn't want to
21 fight with the lake. That's why they didn't even look at the
22 perc test. They said the hell with the perc test. We're not
23 fighting with the lake. We're out. Goodbye. This is
24 absolutely more than a mere hope.

25 You know what, Pennsylvania, unfortunately, has not

1 had a large body of law on this, about this particular issue,
2 but other cases have. In fact, the Western District of
3 Pennsylvania, the Northern District of California, the Fourth
4 Circuit, the Eastern District of Virginia, the DC Courts and the
5 Hawaiian Courts have. You know what they said, they said,
6 accordingly, a prospective business relationship is not
7 necessarily required to take the form of an offer or a contract.
8 The party asserting the claim should be able to point to
9 specific facts tending to prove the possibility of future
10 association. It's right from the law.

11 We have the possibility and likelihood of future
12 association. That's what was said. That's what these people
13 expected. In fact, nobody -- my mother always said to me that
14 sometimes the loudest voice is the one you don't hear. You
15 didn't hear anything about the fact that both Kevin and Lisa
16 testified they believed the offer was done. They believed they
17 were called and said you're getting one for 135 and you're
18 getting one for 150, uncontradicted.

19 So then you turn to -- so you definitely have count
20 one or part one of the count addressed, but then you get to
21 intent. Let's talk about intent. As this Court knows, intent
22 is not limited to consequences which are desired if the actor
23 knows that the consequences are certain or substantially certain
24 to result from his act and still goes ahead and is treated by
25 the law as if he had desired, in fact, to produce the result.

1 Then, as Attorney Bigda had stated, there's the
2 factors, the nature of the contact, the motive. Let's talk
3 about the motive for a second. They said -- and it was Mr.
4 Boyle who said we didn't care about the Corrells. We don't care
5 about the Corrells. We sent this letter because we don't care
6 about them. We only care about the membership. That's all they
7 care about. I actually said to him, are you telling me you
8 didn't care about them but you only care about the membership?
9 He said, yes. That's the motive.

10 The interest of the others with which the actors
11 conduct interferes. You have to consider that. They did not
12 consider the interests of the others. The interest sought to be
13 advanced by the actor. We already addressed that. The social
14 interest of protecting the freedom of the action under the actor
15 in the contractual interest of the other. That's almost like
16 the public policy side of the argument.

17 Are you telling me, and I think the Judge asked the
18 question, are you telling me you can say anything to anybody and
19 force these people to do this because the slippery slope on that
20 is going to be terrible. You can say anything to stop a sale
21 and then be held not accountable.

22 The proximity or remoteness of the actor's conduct
23 to the interference. Everybody testified when this letter was
24 received there was a hard stop. There was another thing. They
25 said the truth is the defense to interference with contract, and

1 I would beg to differ, Your Honor, because it says, first of
2 all, that the first inquiry is also whether the conduct or the
3 action person is sanctioned by the rules of the game. It says
4 their truth is not a defense to intentional interference with
5 contractual relations. And that case is Walnut Street
6 Associates, Inc. vs. Brokerage Concepts Inc., 610 Pa. 371, 2011
7 case. It is not a defense, and it can't be held as a defense.

8 The absence or privilege or justification on the
9 part of the Defendant. Third prong of the test. They don't own
10 anything. They don't own anything. If you have a right to go
11 through and maintain the lake or pay insurance, which by the
12 way, I have never heard being able to pay insurance on property
13 you do not own, but if they do that, that does not
14 give -- there's been no testimony that said, hey, we as
15 Shickshinny Lake have the right to declare who is owning the
16 rights through a deed. They never said that.

17 They're not the Shickshinny Lake police except to
18 maybe whether or not they're going to clean up the algae.
19 That's it. They don't have authority over people who are not
20 members. That's right in their bylaws. I think it was number
21 six that says they have no right to levy anything against
22 non-members so they didn't even follow their bylaws.

23 So we did prove there is an absence of privilege or
24 justification. Notwithstanding the fact, Your Honor, as
25 Attorney Bigda stated from your order, your order says in

1 accordance with the clear and unambiguous language of the deed,
2 the Plaintiff does not have rights at this time because there
3 are lots that have not been sold. They don't have rights. They
4 don't have rights.

5 Then you go to the occasioning of actual damages.
6 I already cited for the Court the fact that they can have any
7 type of damages possible, but I submit to this Court that the
8 damages are substantial. As were testified to, Kevin sustained
9 damages of \$136,884.80. Lisa has damages of \$69,675.99 and
10 Leroy and Thelma wanted to give their kids a gift and it cost
11 them \$27,500. You don't even get into the punitive damages or
12 attorney fees, which I'll get into next. But there are
13 absolutely damages.

14 So I do believe that the law is abundantly clear,
15 and this court can't grant a non-suit for counts one or two
16 because you have the interference with the prospective who is
17 the individual who was going to make an offer, and you have the
18 interference with the listing because when the listing contract
19 was terminated by her, which she testified to -- Heidi
20 Kozlowski -- they had no one to sell the property. Lisa is down
21 in South Carolina. Kevin is a truck driver. He's working.
22 That's why you hire a real estate agent.

23 I would note for the Court the only reason that
24 Kevin got somebody years later was because your order says they
25 didn't have standing. That's how the title company got it

1 anyway.

2 The next is punitive damages. Punitive damages can
3 be awarded for reckless indifference to the interest of others.
4 Reckless indifference to the interest of others. As Mr. Boyle
5 stated, he didn't care about the Corrells. He only cared about
6 his membership. That is absolutely unequivocally reckless
7 indifference to the interest of others. They sent this letter
8 saying I don't care what happens to them. I asked him and I
9 asked Mr. Evans, did you know that this was going to do? Oh, I
10 didn't know. I had no idea. Mr. Evans, when he got his story
11 straight said that he did this because he wanted to bring them
12 to the table. But then when Mr. Bigda correctly asked him what
13 the purpose was he wanted to keep this so we don't have this
14 problem in the future. That's reckless indifference to these
15 people. Punitive damages are awarded to punish the Defendant
16 for certain outrageous conduct and deter them or others from
17 engaging in similar conduct.

18 I would submit to the Court that this is absolutely
19 reckless indifference. When you have to take a loan for three
20 grand to cover your taxes because you can't pay them -- or six
21 grand or whatever it is, these were not, hey, I'm going to
22 finance the whole thing and take an \$80,000 loan and do my whole
23 thing. One guy cashed in his entire pension. Another lady, she
24 and her husband had problems so they had to get all this money
25 to get it together. There's been no argument on the declaratory

1 judgment. This Court has been asked that a declaration be made
2 that the Plaintiffs enjoy unrestricted lake rights.

3 Number two, that the developer has yet to sell 250
4 lots at Shickshinny Lake. And, number three, that the
5 Plaintiffs are free to market and sell their respective
6 properties located at Shickshinny Lake. I think that is all
7 fair. It is within the bounds of this Court to do so. It is
8 not affecting anybody else but the people in this room, so
9 everybody is here, and on top of that --

10 **THE COURT:** I thought, Attorney Dunkin [sic], you
11 in your trial brief indicated you believed the declaratory
12 action on the two lots that were sold were moot?

13 **MR. BIGDA:** That's correct, Your Honor.

14 **THE COURT:** But Mr. and Mrs. Correll continued to
15 live on a lot there and they're named Plaintiffs.

16 **MR. BIGDA:** My understanding is they sold their
17 lots as well.

18 **MR. VINSKO:** They gave their lot to their son.

19 **MR. BIGDA:** So they're also moot as well, Your
20 Honor. We didn't get the opportunity to amend the pleadings
21 because we just learned about that.

22 **MR. VINSKO:** But the issue is, Judge, you can take
23 determination that the Plaintiff's property enjoys unrestricted
24 lake rights. You can state that. And you can state that they
25 are free to market and sell their respective properties located

1 at Shickshinny Lake.

2 **THE COURT:** But if none of them own the property
3 right now -- I was under the impression that Mr. and Mrs.
4 Correll still owned one lot because you said Lots 3 and 4 were
5 moot.

6 **MR. BIGDA:** Yes.

7 **THE COURT:** He said Lots 3 and 4. So that was a
8 question I had because when Mr. Correll testified, I think he
9 said he doesn't own any of the four lots right now, and he was a
10 named Plaintiff. So Scott Correll is not a named Plaintiff.

11 **MR. VINSKO:** He is not a named Plaintiff. That's
12 correct, Your Honor.

13 We have to address the issue of the statute of
14 limitations. They're saying that the statute of limitations
15 should apply to the Shickshinny Lake Association, and our
16 argument on that is that that's addressed under the continuing
17 tort doctrine. Every single board member, every single
18 individual Defendant specifically stated that letter was never
19 retracted and it was sent to Heidi Kozlowski.

20 Now, the Defendants cannot have their cake and eat
21 it too on this. They can't say that Kevin and Lisa have to tell
22 Heidi everything so it doesn't matter who they told, but that
23 Heidi Kozlowski shouldn't have to tell Lisa and Kevin.

24 So when this went to Heidi Kozlowski, Heidi gives
25 it to Lisa and Kevin and it says here, Please make sure that

1 this information is disclosed to each potential purchaser of the
2 properties. So just because Heidi Kozlowski was not their real
3 estate agent after December of 2015, they had to disclose this
4 to every single real estate agent they had going forward, and,
5 therefore, it is a continuing requirement, and they admitted,
6 they never retracted it. And that's what -- they had to ask
7 Kevin and said that that's what they wanted to do, they wanted
8 to retract it. So, therefore, it is absolutely falling under
9 the continuing tort doctrine.

10 To highlight some of the issues that Attorney Bigda
11 raised, Mr. Young -- Attorney Young is not here. He was not
12 here at all. But I want to focus your attention on the
13 testimony of Mr. Evans who said that he went to Mr. Young
14 generally about lots on the north part of the lake. But he
15 didn't go to him about the Corrells until after the meeting on
16 July 19th, 2015. That's when he said that he was told to send
17 it. But he had already decided that he was going to send it to
18 Heidi Kozlowski and not to the individual Corrells. And the
19 board all agreed with him. If Shickshinny Lake does not have
20 rights and the last lot is not sold, then every one of the
21 individuals acted outside of their scope of authority.

22 As the complaint said, they were ultra vires. They
23 had no right to do that. Attorney Bigda said this is a letter
24 of persuasion. That is the strongest letter of persuasion that
25 anyone can ever write. He said he had a fiduciary duty. The

1 problem is their fiduciary duty interfered with the rights of
2 others, which, again, goes back to the prongs of the test. It
3 says that Heidi Kozlowski was not going to get her commission.
4 That's irrelevant because of the fact that it was terminated by
5 her because she could not sell the properties and did not want
6 to get involved but that stopped the Corrells from being able to
7 do anything with that property. As you saw, the moment that
8 they were able to sell it, they sold and it was done.

9 Final issue, Your Honor, I'm going to leave you
10 with the language of the restatement second of torts that says
11 that one who intentionally and improperly interferes with
12 another prospective contractual relation is subject to the
13 liability to the other for a pecuniary harm resulting from the
14 loss of the benefits of the relation.

15 The Corrells are here because they lost the
16 benefits of the relation because of the actions of the
17 Shickshinny Lake Association. And the good part is they
18 mitigated their damages as best they could. They put it up for
19 sale and sold it. I would ask this Court, and I know that we're
20 all attorneys and lawyers and putting this out here, but it's
21 common sense. These people lost because of this letter. They
22 lost because the Shickshinny Lake artificially created a
23 Shickshinny Pond. They lost because there was no understanding
24 by the Shickshinny Lake Association that there's one body of
25 water where you float from one side to the other.

1 With that, I would ask that damages be awarded as
2 stated, attorneys fees be awarded as stated, and specifically
3 punitive damages be awarded as stated. Thank you.

4 **MR. BIGDA:** I had a procedural question, Your
5 Honor. Mr. Vinsko and I had made an agreement that I didn't
6 address the declaratory judgment issue just because I was making
7 a nonsuit and I wasn't making a motion on the nonsuit. So for
8 purposes of addressing that issue, if it's permissible with the
9 Court, I would ask the Court to consider the trial brief and the
10 conclusions of law and findings of fact I've already submitted,
11 unless the Court wants me to address those issues.

12 **THE COURT:** No. Obviously, I was aware of your
13 position with regard to the lots being moot, but I was under
14 the -- and I understand that one lot went to his son, Scott, but
15 I was under the impression coming into today that Mr. and Mrs.
16 Correll still owed one.

17 **MR. BIGDA:** Me too.

18 **THE COURT:** But the record is very clear now, and I
19 actually think they transferred it in a quitclaim in '21. Is
20 that in your binder?

21 **MR. VINSKO:** That's correct.

22 **THE COURT:** I saw that and had it tagged. It was a
23 quitclaim deed from the two of them. I wasn't sure it that was
24 the transfer of another lot, but it was '21, so I assumed it was
25 recently. So I think with that, if there's anything more you

1 want to offer, you can, but I understand your argument that
2 there's no Plaintiff now who owns any of the property.

3 **MR. BIGDA:** Right. Thank you, Your Honor.

4 **THE COURT:** Okay. So with regard to the matters
5 that were just put in front of me, I'm going to decide all of
6 them in the context of the trial that occurred here. So I can
7 for purposes -- Attorney Dunkin [sic], you need the opportunity
8 to present a case if that's your intention to call additional
9 witnesses?

10 **MR. BIGDA:** We do not, Your Honor. We rest.

11 **THE COURT:** I'm going to take the whole matter
12 under advisement as to whether or not I'm granting nonsuit or
13 I'm denying that. Everything else is of record and clear.

14 Do Counsel want to submit additional findings of
15 fact and conclusions of law based upon the testimony?

16 **MR. VINSKO:** I don't believe we need to, Your
17 Honor.

18 **MR. BIGDA:** I don't think so either, Your Honor. I
19 think our laundry lists were included in the testimony here
20 today. Now that I think of it, there may be one or two things
21 that came out of here today. Findings of fact, that is.

22 **THE COURT:** I can give you both time if you want to
23 amend it. Ten days if there's anything you want to amend or add
24 in addition to a finding of fact or conclusion --

25 **MR. BIGDA:** That would be the only thing. I

1 wouldn't want to add any conclusions of law, but the findings of
2 fact, I think, that might be something worth doing.

3 **THE COURT:** Are you both agreeable if you choose to
4 add any of the testimony to your findings of facts, do you want
5 the transcript or are you going to do it off your notes of
6 testimony?

7 We're here at the end of a 2016 case. If there's
8 anything you want to put into the record, I'm going to give you
9 that opportunity, and then, obviously, I'm bound to rule
10 relatively quickly.

11 Again, you've all provided extensive findings of
12 fact and conclusions of law. I thank both counsel. The law in
13 your findings of facts are to the caliber that both counsel are.
14 Attorney Bigda and I prosecuted many years together. I've known
15 Bill since we were brand new lawyers, so I know they're both
16 extremely well prepared and have clearly presented their cases
17 and provided me with great findings of fact and conclusions of
18 law.

19 We all know after trial you may want to look at
20 them and add some testimony. So if you do I'll give you that
21 opportunity. It's up to you. So you can do it without the
22 transcript?

23 **MR. VINSKO:** I have no problem.

24 **THE COURT:** So without transcript, you're going to
25 do it based upon your notes, within 10 days if you want to amend

1 any of your findings of facts, you may do so.

2 **MR. BIGDA:** Thank you, Judge.

3 **THE COURT:** And provide them to me so I have that
4 opportunity. Do you think 10 is good? I can do 15 to make it
5 easier.

6 **MR. VINSKO:** Let's just say by next Friday because
7 I think 10 days falls on Easter Sunday.

8 **THE COURT:** I want you all to work on Easter
9 Sunday. No. Ten days from today you can submit additional
10 findings. Obviously, I am bound by rules in this matter also
11 towards my findings.

12 Pennsylvania Rule of Civil Procedure 1038,
13 basically, says seven days. I'm going to give you 10. I'm
14 going to look for a brief extension so I can do a thorough
15 review, and I'll have this done within 30 days if Counsel are
16 fine with that. Any objection?

17 **MR. VINSKO:** No objection.

18 **MR. BIGDA:** No objection.

19 **THE COURT:** So that way we can take the
20 opportunity. To all of -- the case always tends -- cases
21 involving lakes tend to bring out a whole lot of -- I do a lot
22 of lake cases. At one point, I think, I had five lakes in
23 Luzerne County at once that I was dealing with issues on.

24 Again, no matter what, when we have conflicting
25 testimony as to who's advancing the opportunity to new buyers,

1 to new members, conflicting testimony as to what rights existed,
2 I'm just going to say to all the people here in this courtroom,
3 you're so blessed to live on such a beautiful lake. I heard it
4 from some of the members here who said, you know, if we can all
5 just get along and move forward.

6 This lake is subject of multiple litigation
7 matters. And I've heard from members, some of you perhaps
8 before complaining about one issue or another in other cases.
9 But the bottom line is you live in a beautiful place.
10 Communication goes a far way, and then you remove Judges from
11 this. This is your home or it was your home. If you can do
12 that, we always encourage in the future that communication seems
13 to be the key.

14 In a perfect world, communication would have
15 resolved this issue long before we were here today. But you
16 are, and the case is old, it's a '16 case. Seven years old.
17 We're coming into this where we're finally getting to a
18 conclusion.

19 I will do my best to honor my duty and to follow
20 the law and to render what I think is an appropriate resolution
21 to this matter. Again, everybody should communicate. You're
22 blessed to live in such a beautiful place, and, hopefully, I
23 won't see Shickshinny Lake for a while because you're working it
24 out in a good way. Not that I don't like seeing all the lovely
25 people who live there, but there are better ways to spend your

1 days than here in the courtroom in the courthouse. Fishing, and
2 I'm not going to say what part of the lake. We'll leave that
3 for later on. Have a good day everyone. Be well.

4 **(Whereupon, the proceedings concluded.)**

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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the notes of testimony by me in the proceedings of the above cause, and that this is a true and correct transcript thereof.

/S/ Kimberly Hearity
Kimberly M. Hearity, RPR
Official Court Reporter

The foregoing record of the proceedings of the above cause is hereby approved and directed to be filed.

DATE: 6-26-2023

/S/
Tina Polachek Gartley,
Judge