**IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA**

**CIVIL DIVISION**

Harold Bella and Deborah Bella, et al, Plaintiffs,
Vs.
Laurel Mountain Midstream, LLC, Defendant

No. 2734 of 2012, G.D.

☑ **Plaintiff** Tate J. Kunkle
350 Fifth Avenue, Suite 7413
New York, NY 10118

**NOTICE OF ORDER**

**You are hereby notified that the following Order has been entered on June 20, 2014 in the above case.**

☑ **Defendant** Michael G. Connelly/Kevin M. Eddy
301 Grant Street, Suite 3440
Pittsburgh, PA 15219

☑ **Order**

☐ **Amended Order**

☐ **Case Management Order**

☐ **Opinion and Order**

☐ **Pretrial Adjudication**

☐ **Decree in Divorce**

*****COPIES ATTACHED!*****

**NINA CAPUZZI FRANKHOUSER, PROTHONOTARY**

BY: Yolanda Cooper, Clerk

Mailed: June 20, 2014

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

HAROLD BELLA and
DEBORAH BELLA, et al.,
Plaintiffs

vs.

THE WILLIAMS COMPANIES, INC. and
LAUREL MOUNTAIN MIDSTREAM, LLC,
Defendants

No. 2734-12, G.D.

FILED
2014 JUN 20 PM 2 07
FAYETTE COUNTY
PROTHONOTARY

**OPINION and ORDER**

Wagner, P.J.

Before the Court are the preliminary objections of Defendant in the nature of demurrers and a motion for more specific pleading to Plaintiffs' Second Amended Complaint.[1] The Second Amended Complaint seeks damages on behalf of residential property owners for alleged property damage, environmental contamination and polluting events arising from the Defendant's oil and natural gas compressor station located in Lake Lynn, Springhill Township, Fayette County, Pennsylvania. Defendants are partners in a joint venture, Williams having 51 percent. Complaint paragraph 13.

According to the pleading, the compressor station is within 500 feet of the residences of four of the plaintiffs, and within 1000 feet of the fifth. Id. paragraph 17. The compressor station allegedly does not have sufficient noise, odor and pollution control equipment and unreasonably interferes with the Plaintiffs', and the public's, enjoyment of life and property, and said compressor runs twenty-four hours daily, seven days per week. Id. paragraphs 20- 21. The

[1] By joint stipulation of the parties, the preliminary objections filed to the first Amended Complaint have been renewed and applied to the Second Amended Complaint, which is now at issue. The preliminary objection pertaining to failure to comply with Pa.R.C.P. 1020(b) has been withdrawn since it is now moot in light of the Second Amended Complaint.

compression operations emit abnormal and unreasonable noise, as well as numerous hazardous air pollutants and contaminants, causing significant harm to Plaintiffs. Id. paragraph 21. Defendants constructed the compressor station without obtaining proper permits and/or have violated the permits during and after the construction. Id. paragraph 22. In operating the compressor station, Defendants have violated several Fayette County Ordinances, as well as the emissions limitations of the Operating Permit issued by the Pennsylvania Department of Environmental Protection, and in violation of air quality regulations promulgated by that entity. Id. paragraph 24. The operation of the compressor station is also in violation of minimal risk levels established jointly by the United States Environmental Protection Agency and the Agency for Toxic Substances and Disease Registry, and in violation of the Pennsylvania Pollution Control Act. Id. paragraph 25.

Plaintiffs further aver that they have complained to Defendants on numerous occasions to no avail. Id. paragraph 27. The pollutants emitted from the compressor station combine with each other and water to form industrial particulate which falls on Plaintiffs' property. Defendants knowingly generate, utilize and discharge chemicals, gases, and particulates, among which are acetone, acetaldehyde, benzene, formaldehyde, methylene chloride, naphthalene, and polycyclic aromatic hydrocarbons. Id. paragraphs 35-37. In addition to the chemicals, the compressor station discharges a red particulate or powder that requires constant cleaning and is difficult to remove, and also emits unreasonably loud noise, all of which makes Plaintiffs virtual prisoners in their homes and prevents them from having the full use and enjoyment of their properties. Id. paragraphs 38, 40.

In their first cause of action, Negligence, Plaintiffs allege that Defendants have an ordinary duty of care in "constructing, maintaining, operation, controlling, engineering and/or

designing the Springhill Compressor Station," but knowingly breached the duty by improperly constructing, maintaining, operation, engineering and/or designing it, and knew, or should have known, that the breach of that duty would cause Plaintiffs' property to be "invaded by particulates, malodors, excessive noise and hazardous air contaminants." The Plaintiffs also plead that Defendants have breached a duty imposed on them by the laws and regulations of the Commonwealth to construct, maintain, operate, engineer, and/or design the facility in a manner that does not jeopardize their health, safety and welfare, or contaminate the air. The pollution and noise have invaded their properties, causing Plaintiffs mental anguish, anxiety, embarrassment, distress, undue annoyance and related nervous conditions and emotional consequences. Defendants conduct constitutes gross negligence and/or recklessness, and demonstrates a substantial lack of concern for Plaintiffs.

Plaintiffs title their second cause of action "Private Nuisance," and their third, "Public Nuisance." In each of these causes of action, Plaintiffs aver that Defendants' discharges of noise and various pollutants and particulates create intolerable conditions that are offensive and unreasonable intrusions on their properties. They further allege that Defendants have the duty, ability, and means to control the emissions and discharges, but fail to do so, intentionally or negligently or recklessly, knowing the operation of the compressor station was substantially certain to result in the discharges of noxious particles and chronic high frequency, high volume noise. By their operation of the compressor station in the manner alleged, Defendants have created and perpetuated a continuing nuisance, spreading the particulate and noise pollution to Plaintiffs' properties, in a manner which constitutes an "extreme annoyance to a person of ordinary sensibility." The contamination results in exposure to unsafe levels of toxic pollutants and noise causing personal injury to Plaintiffs at the cellular level, but which injuries have not

yet manifested. The nuisances of all of the emissions and discharges are likely to continue in the future. As set forth in the pleading of the Public Nuisance cause of action, the emissions of the particulates and pollutants which invades the properties of the Plaintiffs and causes harm to them also are offensive to the public, invading the public's right to breathe clean air and enjoy land near and surrounding the compressor station. The pollutants and noise from the compressor unreasonable endanger the health and well-being of the public, including the Plaintiffs, causing scenic rural lands to be marred by excessively loud noise and hazardous contamination. Such conditions constitute interference by Defendants with the public health, public safety, public peace, and public convenience. The interference with the public's rights is unreasonable since the conduct of Defendants in producing the contamination and pollution is proscribed by the Pennsylvania Department of Environmental Protection and the Pennsylvania Constitution.

Plaintiffs' fourth and final cause of action is entitled Trespass, and alleges that the pollution and contaminants generated by Defendants in the operation of the compressor station have caused the said unsafe and hazardous materials to reach and be deposited on Plaintiffs' land, interfering with their enjoyment and their right to quiet possession. The deposits, in the form of contaminated air and in the visible film of toxic contaminants onto Plaintiffs' land, were made by Defendants through their actions and conduct in the operation of the compressor, and were done without Plaintiffs' permission or any other authority. The depositing of the unwanted material constitutes a continuous trespass on Plaintiffs' properties, causing property damage, interference with their right to peaceful and exclusive possession, and potential health complications due to the exposure to toxins created by Defendants.

The Court will discuss Defendants' preliminary objections in seriatim fashion, noting that "[a] demurrer ... admits all relevant facts sufficiently pleaded ... and all inferences

fairly deducible therefrom, but not conclusions of law... In ruling on a demurrer, the court may consider only such matters as arise out of the complaint itself..." Butler v. Charles Powers Estate, 29 A.3d 35, 38-39 (Pa.Super.2011). The question presented by the demurrer is whether, on the facts as pleaded, the law says with certainty that no recovery is possible. The demurrer should be sustained only if, assuming the averments of the complaint to be true, the plaintiff has failed to assert a legally cognizable cause of action. Soto v. Nabisco, Inc., 32 A.3d 787, 789-790. (Pa.Super.2011).

1. Demurrer to all claims against Defendant Williams

In this demurrer, Defendant states that the Pennsylvania Department of Environmental Protection lists Defendant Laurel Mountain Midstream, LLC, (hereinafter "LMM") as the sole owner and operator of the compressor station. The Court finds the supplying of such alleged fact to be an impermissible speaking demurrer, averring the existence of facts not apparent from the face of the challenged pleading, and thus the Court will not consider the same. See Welteroth v. Harvey, 912 A.2d 863 (Pa.Super. 2006). Moreover, despite Defendants' claims that Pennsylvania law does not hold a parent company liable for the actions of its subsidiaries, Pennsylvania law is very clear that in a joint venture, which Plaintiffs have pleaded and this Court must accept as true, "each joint venturer is both an agent and a principle of the joint venture. ... Every member of a partnership is liable for a tort committed by one of the members acting in the scope of the firm business, even if the other partners did not participate in, ratify or have knowledge of the tort." 15 Pa.C.S. § 8325; Svetik v. Svetik, 547 A.2d 794, 799 (Pa.Super. 1988). Applying the standard for determination of a demurrer to the averments of the Complaint, the Court cannot say as a matter of law at this time that no recovery against Defendant Williams is possible.

2. Demurrer to any claims seeking punitive damages

Defendants' next demur to Plaintiffs' claims for punitive damages, arguing that Plaintiffs have not and cannot allege facts showing an evil motive or reckless indifference to the rights of others. "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." Empire Trucking Co., Inc. v. Reading Anthracite Coal Co., 71 A.3d 923 (Pa.Super. 2013), quoting Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 745 (1984). Punitive damages are awarded to punish the tortfeasor and to deter him and others like him from similar conduct. Empire Trucking, *supra*. The state of mind of the actor is vital, and the act must be intentional, reckless or malicious. Id. The mindset and the outrageousness and/or reckless indifference and/or malice of the alleged tortfeasor are generally questions of fact to be resolved at trial by the factfinder. Plaintiffs have averred that Defendants knowingly have constructed, maintained, and operated the compressor station in such a way as to cause red particulate matter to invade their properties, and they have further pled that remediation is possible, but Defendants will not spend the money necessary to ameliorate the situation. They also claim that Defendants operate in such a way as to violate statutes and regulatory standards for air quality and noise levels. If Plaintiffs are able to prove their allegations, the factfinder would have sufficient evidence on which to base a finding of outrageousness and/or reckless indifference to Plaintiffs' property rights. There is no reason to strike the claim at this time.

3. Demurrer to any claims for damages for emotional distress

Defendants demur on the basis that Plaintiffs have failed to allege facts that permit recovery for "emotional distress" since, absent some manifestation of injury, Plaintiffs are not

entitled to damages for emotional distress or any other type of non-economic loss. Although Defendants have cited the case of Redland Soccer Club, Inc. v. Department of the Army, Dept. of Defense, 696 A.2d 137, 143-145 (Pa.1997), in support of their argument, the Court finds the case to be unconvincing on this point. Redland, citing Simmons v. Pacor, Inc., 674 A.2d 232 (Pa.1996), extended the holding of that case so as to allow a plaintiff with asymptomatic pleural thickening to recover the costs of medical monitoring, which monitoring would serve to lessen the emotional distress of wondering whether exposure to poisons and toxins might lead to cancer or other physical ailments. Such holding is, in light of the allegations in Plaintiffs' complaint herein, enough to cause doubt as to whether Plaintiffs may be able to recover monetary damages in this case. A demurrer may be sustained only where the case is free and clear of doubt. Weiley v. Albert Einstein Med. Center, 51 A.3d 202 (Pa.Super.2012), and thus this demurrer cannot be sustained.

4. Demurrer to allegations of strict liability/ultra hazardous liability

In deciding this demurrer to Plaintiffs' cause of action based on the strict liability imposed on one who engages in an ultrahazardous activity, the Court must determine as a matter of law whether the alleged activity is abnormally dangerous. Albig v. Municipal Auth. of Westmoreland Co., 502 A.2d 658 (Pa.Super.1985). In determining whether an activity is abnormally dangerous, the following factors are to be considered:

(a) existence of a high degree of risk of some harm to the person, land or chattels of others;

(b) likelihood that the harm that results from it will be great;

(c) inability to eliminate the risk by the exercise of reasonable care;

(d) extent to which the activity is not a matter of common usage;

(e) inappropriateness of the activity to the place where it is carried on; and

(f) extent to which its value to the community is outweighed by its dangerous attributes. Restatement (Second) of Torts § 520 (1977).

The federal case of Roth v. Cabot Oil & Gas Exploration, 919 F.Supp.2d 476 (M.D.Pa.2013) states in dicta that the parties in that case were in agreement that no [Pennsylvania] court has to date expressly decided whether natural gas drilling is or should be considered an abnormally dangerous activity so as to subject its practitioners to strict liability. Although Defendant cites several cases in its preliminary objections, in ruling on a demurrer, a court may only consider the four corners of the pleading demurred to. Therefore, in the absence of legal authority to the contrary, the Court, accepting as true Plaintiffs' averments, cannot grant the demurrer to this claim.

5. Demurrer to attorney fees

Defendants next demur to Plaintiffs' claim for attorney fees, arguing that the facts pled do not support a claim for such fees. The Court agrees. The factual averments in Plaintiffs' complaint do not encompass any obdurate, vexatious or dilatory conduct by Defendants in this litigation process, nor do Plaintiffs cite any statutory authority for the award of attorney fees. In opposition to this preliminary objection, Plaintiffs assert that it is "too early" in the litigation to dismiss this claim because obdurate, vexatious, and/or dilatory conduct might arise later. Such assertion is purely speculative. If such conduct does appear, Plaintiffs at that time can file a motion for sanctions which may include a request for attorney fees. This demurrer has merit and will be sustained.

6. Demurrer to the negligence cause of action

Consideration of the Complaint as a whole reveals that Plaintiffs allege that Defendants owes them a duty of care to not contaminate their properties, breached that duty by causing

particulate matter to accumulate on their land and residences, and the breach has caused Plaintiffs' harm by affecting their breathing and causing them worry about possible medical repercussions in the future. The Court finds such pleading to be distinct enough from the facts necessary to support the nuisance claim so as to plead and support a sufficient claim for negligence.

7. Demurrer on account of economic loss doctrine

Next, Defendants demurs to the negligence claim because the claim is barred by the economic loss doctrine which provides that there is no cause of action for negligence that results solely in economic damages, without accompanying property damage or physical injury. The Court finds no merit in this demurrer since Plaintiffs have pled possible physical harm that may require medical monitoring.

8. Demurrer to the cause of action for public nuisance

The demurrer to Plaintiffs' claim of public nuisance argues that Pennsylvania does not recognize such cause of action, and in the alternative, that a project authorized by a governmental agency through a legislatively mandated process cannot be the subject of a public nuisance claim. The case cited by Defendants in support of such proposition, Duquesne Light Co. v. Pennsylvania Am. Water Co., 850 A.2d 701 (Pa.Super. 2004), does not expressly so state and is rather vague on that point. This Court does not find it to be controlling precedent in that regard. The other cases cited by Defendants as support for its claim that a governmental agency cannot be subjected to a claim for public nuisance are so dated that the Court finds them to be without precedential value, and have been apparently superceded by a long line of cases allowing a public nuisance cause of action involving regulated and permitted industries, as well as the agencies which are charged with their regulation. A public nuisance is "an unreasonable

interference with a right common to the general public." Saint Thomas Tp. Bd. of Supervisors v. Wycko, 758 A.2d 755, 759 (Pa.Cmwlth. 2000). "The definition of public nuisance is, at best, imprecise." Wycko at 759. Obviously, the conduct complained of must annoy the community in general, not only a particular person or group of persons, in order to constitute a public nuisance. Feeley v. Borough of Ridley Park, 551 A.2d 373 (Pa.Cmwlth.1988). Accepting as true the facts pleaded, the alleged pollution and contamination emitted by the compressor station is an annoyance to the community as a whole.

9. Demurrer to the sufficiency of the pleading to support claims under HSCA

Defendants next contend that Plaintiffs have failed to plead enough factual averments to establish a claim under the HSCA because they have failed to allege that they have incurred response costs or that such costs were reasonable and necessary. Reading the Complaint in its entirety and accepting all averments as true, the Court finds this demurrer to be meritless. Resolving all doubt in Plaintiffs' favor, it can readily be inferred that Plaintiffs will incur necessary costs to scrub off and/or remove the particulate contaminates which emanate from the compressor station and befoul their properties. Defendants' additional claim, that Plaintiffs have not specifically identified the "hazardous substances" which are alleged to be causing the harm and thus have failed to put Defendants on proper notice of the same, are so lacking in merit as to be nearly frivolous. Defendants know, better than Plaintiffs, what substances are being discharged at their compressor station, and moreover, their objection in this regard is not properly a demurrer, but rather should have requested a more specific pleading of the allegation.

10. Failure of the HSCA claim as a matter of law

In their penultimate preliminary objection, Defendants assert that the HSCA claim is fatally deficient because 35 P.S. §6020.1115 requires a 60-day notice to the Department of

Environmental Resources, to the municipality where the alleged violation is taking place, and to the alleged violator prior to the filing of an individual lawsuit. This objection is lacking in merit since Plaintiffs are not pursuing the instant action as a "citizen suit" under Section 1115, but rather have commenced the suit as a private action. See Smith v. Weaver, 665 A.2d 1215 (Pa.Super.1995), expressly holding that no notice is required and Section 1115 is inapplicable to private causes of action under the HSCA.

11. No basis to seek damages pursuant to the HSCA

Lastly, Defendants, citing 35 P.S. 702(a), contend that Plaintiffs' HSCA claims for damages arising from "personal injuries" and harm to their property must be dismissed because the statute does not allow for the recovery of such damages. The recoverable damages under this statutory section encompass any response to the alleged personal injuries, as well as the costs of medical monitoring as a result of those injuries. The Court agrees with Defendants that any alleged property damage and/or diminution in property value is not within the scope of the statute's allowable damages. To the extent that Plaintiffs are seeking monetary damages under the HSCA for property damage and/or lessened property value as the result of the alleged violation of this act by Defendants' compressor station, such claim is not proper. If Plaintiffs seek to present evidence or make any argument at trial based on a property damage or dimunition of value under the HSCA, an objection thereto should be raised by motion in limine or orally during the trial.

In accordance with the foregoing discussions of each preliminary objection raised by Defendants, the Court enters the following:

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

| | | |
|---|---|---|
| HAROLD BELLA and DEBORAH BELLA, et al., | : | |
| Plaintiffs | : | |
| vs. | : | No. 614 of 2013, G.D. |
| THE WILLIAMS COMPANIES, INC. and LAUREL MOUNTAIN MIDSTREAM, LLC, | : | |
| Defendants | : | |

FILED
2014 JUN 20 PM 2 07
FAYETTE COUNTY
PROTHONOTARY

**ORDER**

Wagner, P.J.

AND NOW, JUNE 20, 2014, Defendants' Preliminary Objections in the nature of a Demurrer to Plaintiffs' claim for attorney fees set forth in the Second Amended Complaint) are hereby SUSTAINED, and such claim is dismissed. All other Preliminary Objections filed by Defendants in this case are hereby OVERRULED.

BY THE COURT:

_____, P.J.

ATTEST: Nina Cassisi Prothonotary

Prothonotary