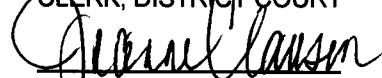


STATE OF IDAHO)
County of KOOTENAI) ss

FILED 10/15/19

AT 8:25 O'Clock A M
CLERK, DISTRICT COURT


Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

JERRY EDWARDS,
Plaintiff,
vs.
JOHN BOURGEOIS HALL, ET AL,
Defendants.

Case No. **CV28-19-1634**

**MEMORANDUM DECISION
AND ORDER DENYING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Jerry Edwards (Edwards) filed a Complaint for Abatement of Nuisance and Trespass against Defendants John Bourgeois Hall and Lisa Bourgeois Hall (Halls) on March 4, 2019.¹ Edwards' house and the Halls' house are next door to each other. The Halls use their house, "...as a vacation rental managed by Vacasa, LLC" and periodically as a vacation home for themselves. Compl. 4, ¶ 2.4. Edwards alleges that the "[s]hort term tenant rentals turn over sometimes as often as every two (2) days, and that it "has been on-going for the past five (5) to six (6) years, and the frequency of tenant turnovers gets more frequent every year." *Id.*

¹ The additional named defendants are "JOHN C. HALL and LISA M. BOURGEOIS-HALL, as Co-Trustees of the JOHN C. HALL REVOCABLE LIVING TRUST, dated February 15, 1996; and LISA M. BOURGEOIS-HALL and JOHN C. HALL, Co-Trustees of the LISA M. BOURGEOIS-HALL REVOCABLE LIVING TRUST, dated February 15, 1996." Compl., 1-2.

Edwards alleges a nuisance due to the party atmosphere that accompanies the use of the hot tub. This results in the drinking of alcohol and loud conversations late into the evening and early morning hours. *Id.* ¶ 2.5. Edwards also alleges physical trespass by renters walking onto his property as well as trash and debris being tossed onto the property of Edwards from the deck area of the hot tub, sometimes onto the deck adjacent to Edwards' master bedroom. Compl. 7-8, ¶ 2.12, 2.13, 2.16, ¶ 2.6. Additionally, Edwards alleges physical trespass by chlorine and other chemicals, gray water which is drained onto his property every time the hot tub is emptied. *Id.* at 9-10, ¶ 2.19. Edwards alleges the hot tub is drained every two days. *Id.* at 10-11, ¶ 2.22.

Halls filed Defendants' Answer to Complaint for Abatement of Nuisance and Trespass and Counterclaim of Tortious Interference with Contract on April 2, 2019. The Counterclaim alleges that "Plaintiff/Counter-Defendant has routinely disrupted the Halls and their guests and as a result of Plaintiff/Counter-Defendant's conduct, the Halls have lost rental income from their home." Answer and Countercl. 7. Edwards filed Plaintiff's Answers to Defendants' Counterclaim on July 29, 2019. No party has requested a jury trial.

The Halls filed Motion for Summary Judgment on September 11, 2019, along with accompanying Declarations and Memorandum in Support for Summary Judgment. The Halls' filled Motion to Withdraw Admissions on September 25, 2019. Edwards' filed his Memorandum in Opposition to Defendants' Motion for Summary Judgment along with supporting Declarations on September 27, 2019. The Halls filled Motion to Strike Declaration of Kelvin Sato, Memorandum in Support of Motion, Motion for Leave to Supplement Declaration of Kelly Naylor Pursuant to IRCP (C)(4), Second Declaration of Kelly Naylor in Support of Defendants' Motion for Summary Judgment, and Defendants' Opposition to Plaintiff's IRCP 36(b) Motion to Withdraw and Amend Admissions on

October 1, 2019. The Halls filed their Reply to Memorandum in Opposition to Defendants' Motion for Summary Judgement, Amended Motion for Leave to Supplement Declaration of Kelly Naylor and Declaration of Lisa Hall Pursuant to IRCP 56(C)(4), Declaration of Kelly Naylor In Support of Defendants' Motion for Summary Judgement, and Second Declaration of Lisa Hall in Support of Motion for Summary Judgement on October 2, 2019. Edwards filed his Memorandum in Opposition to Defendants' Motion to Strike Declarations of Jerry L. Edwards and Kelvin Sato, Memorandum in Opposition to Defendants' Amended Motion for Leave to Supplement Declaration of Kelly Naylor and Declaration of Lisa Hall Pursuant to I.R.C.P. 56(c)(4), and Supplemental Declaration of Jerry L. Edwards Authenticating Exhibits on October 3, 2019. Oral argument was held on October 9, 2019, at the conclusion of which the Court took Halls' Motion for Summary Judgment under advisement, and gave its ruling on the remaining motions.

II. STANDARD OF REVIEW: MOTION FOR SUMMARY JUDGMENT

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to Rule 56, summary judgment must be granted, "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact, or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." I.R.C.P. 56(c).

If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
- (4) issue any other appropriate order.

I.R.C.P. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). “Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party” to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party “must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact.” *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). “Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence.” *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the

record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

The moving party may also meet "the 'genuine issue of material fact' burden . . . by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick* at 311, 882 P.2d at 478).

Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial, or to offer a valid justification for the failure to do so under [I.R.C.P. 56(d)]. *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App.1994) (alteration added).

Dunnick at 311, 882 P.2d at 478; *see also Heath* at 712, 8 P.3d at 1255.

If an action will be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment. Rather, the judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982); *Blackmon v. Zufelt*, 108 Idaho 469, 700 P.2d 91 (Ct. App. 1985); *Sewell v. Neilsen, Monroe, Inc.*, 109 Idaho 192, 706 P.2d 81 (Ct. App. 1985).

III. ANALYSIS

In their Motion for Summary Judgment, the Halls ask the Court to rule as a matter of law on four claims within the case. These claims are: (A) Edwards' nuisance claim

against the Halls, (B) Edwards' trespass claim against the Halls, (C) the Halls' tortious interference counterclaim against Edwards, and (D) an award of reasonable attorney's fees and costs for the Halls.

A. Nuisance Claim

First, some definitions. Nuisance is defined as follows:

Anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

I.C. § 52-101. A "public nuisance" is defined:

A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

I.C. § 52-102. A "private nuisance" is "Every nuisance not defined by law as a public nuisance or a moral nuisance, is private." I.C. § 52-107. A "nuisance per se" is defined as follows:

A nuisance per se is that which is a nuisance at all times and under all circumstances. A nuisance in fact is that which is not inherently a nuisance, or one per se, but which may become such by reason of surrounding circumstances, or the manner in which conducted.

Rowe v. City of Pocatello, 70 Idaho 343, 348 (1950).

The Halls argue that, "the undisputed facts establish there is no nuisance and Edwards' claim of nuisance fails as a matter of law, and "...there is no evidence to support Edwards' claim of nuisance." Mem. in Supp. of Mot. for Sum. J. 5-6. The Halls make four arguments to support their Motion for Summary Judgement on Edwards' claims of nuisance. First, the Halls argue that "there is no nuisance per se, because Edwards has admitted that Hall's use and rental of their property is legal and

permissible.” *Id.* 5. Second, the Halls argue that there is no nuisance in fact because the fact pattern in “[t]his case is not like those found in other Idaho cases where private nuisance has been found.” *Id.* The Halls cite *Payne*, *Ashton*, *Larson*, and *Sundowner* in making this assertion.² Third, the Halls argue that Edwards right’s must be judged “by common sense, not super sensitive standards[,]” and when judged under this common sense standard the Halls use of their property to rent as a vacation home and socialization in an outdoor hot tub that was known to Edwards before the purchase of his land is reasonable. Mem. In Supp. Of Defs.’ Mot. for Summ. J. 9. Fourth, the Halls argue their “use of their property does not unreasonably interfere with Edwards’ use and enjoyment of his own property.” *Id.*

Edwards agrees with the Halls that that the activities on the Halls property do not amount to a nuisance per se, but instead he argues that, “the loud obnoxious late-night activities on the Halls’ property... are a private nuisance in fact.” *Id.* at 12:15-16.

Edwards argues that all the cases cited by the Halls do not eliminate the possibility of the Halls’ and their renters’ noisy behavior giving rise to a successful nuisance claim. *Id.* at 12:18-21. Edwards makes a prime example of *Ashton*, were the Court held that while the game of baseball is not a nuisance per se, the excessive noise and lighting does amount to a nuisance in fact within a residential neighborhood before the hours of 7:00 a.m. and after the hours of 10:00 p.m. *Id.* at 13, 12:22 (citing *Ashton* 92 Idaho at 576, 577.) Edwards argues that this case contains a similar fact pattern to the case at hand, where Edwards’ claim of nuisance from “obnoxious activities at night that disturb residential neighbors can be found to be a nuisance in fact and restricted.” *Id.* at 13:1-

² *Payne*, 127 Idaho at 343, 900 P.2d at 1354., *Corp. of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Ashton*, 92 Idaho 571, 573, 448 P.2d 185, 188 (1968)., and *Larsen*, 88 Idaho at 67, 73, 396 P.2d. 785, 786-87 (1973).

3. Edwards goes on to argue that the Halls' conduct is not reasonable, and "[t]he Halls and their tenants use of their property interferes with the comfortable enjoyment of Edwards' property." *Id.* at 15:7-8. To support this argument, Edwards states that he has "documented four specific incidents wherein the Halls' tenants have caused excessive noise at the Halls vacation rental keeping him from comfortably enjoying his property." *Id.* at 15:9-16 (citing Edwards Decl. 9, 10, 12, 13). Edwards also asserts that the noise from Halls tenants is continuous and persistent. *Id.* at (citing Edwards Decl., 13:7-8; 14:16-17).

Finally, Edwards argues that "... the Halls have no intention of stopping the conduct, and in fact, the more attempts Edwards has made to resolve the issue, the more the Halls encourage their tenants to ignore Edwards and do as they like." *Id.* at 16 (citing Edwards' Decl. 6:12-16; 9:19-23; 14:22-33; 15:1-5). Edwards concludes that, "... taking all of the facts set forth in Edwards and Sato's declarations as true, as the Court must do in a summary judgement proceeding, the Halls have not proven there are no genuine issues of material fact as to Edwards' nuisance claim." *Id.* at 16.

This Court finds the Halls' Motion for Summary Judgement on the claim of nuisance must be denied because a genuine issue of material fact exists.

Edwards agrees with the Halls' first claim and does not argue a nuisance per se. Edwards disagrees with the Halls' second claim and argues that persistent disturbances from the Halls' tenants represent a nuisance in fact. Edwards and Halls clearly disagree upon the issue of fact as to the level of behavior, noise, and disruption caused by the Halls, their temporary renters, and the hot tub itself. The disturbances alleged by Edwards are based on his personal recollection of events and lack corroborating evidence, but even circumstantial evidence can create a genuine issue of material fact.

In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. The Court finds that if all reasonable inferences are construed in the light most favorable to Edwards' allegations of persistent disturbances from tenants, a reasonable trier of fact could find that the tenants' behavior as described by Edwards amounts to a nuisance in fact. Even viewing the facts in the light most favorable to Edwards, the actions by Halls and their guests pale in comparison to the facts set forth in *McNichols, Payne, Ashton, and Larsen*. The offending action is nowhere near what was found by this Court in *Citizens Against Range Expansion v. Idaho Fish and Game Dept.*, 153 Idaho 630, 289 P.3d 32 (2012). However, just because the Halls' actions are less egregious than the conduct in those cases, the Court is unable to find any case setting forth the minimum amount of loss of quiet enjoyment of one's property which, as a matter of law, would result in summary judgment in favor of the offending party. The Idaho Supreme Court in *Lewiston Pistol Club, Inc. v. Board of County Commissioners of Nez Perce County*, 96 Idaho 137, 525 P.2d 332 (1974), and its predecessor, *Lewiston Pistol Club, Inc. v. Imthum*, 94 Idaho 264, 486 P.2d 275 (1971), certainly make clear that granting summary judgment in a nuisance case would in all likelihood not withstand appellate review. Accordingly, the Motion for Summary Judgment on the claim of nuisance is denied.

B. Trespass Claim

Trespass is defined as, "Any person who enters or remains upon the real property of another person without permission commits a civil trespass." I.C. § 6-202(2)(a). Acts that constitute a civil trespass with damages are:

A person commits a civil trespass with damage when he enters or remains on the real property of another without permission, knowing or with reason to know that his presence is not permitted, and causes damage to real or

personal property in excess of one thousand dollars (\$1,000). A person has reason to know that his presence is not permitted on real property that meets any of the following descriptions:

- (i) The property is reasonably associated with a residence or place of business;
- (ii) The property is cultivated;
- (iii) The property is fenced or otherwise enclosed in a manner that a reasonable person would recognize as delineating a private property boundary. Provided, however, if the property adjoins or is contained within public lands, the fence line adjacent to public land is posted with conspicuous "no trespassing" signs or bright orange or fluorescent paint at the corners of the fence adjoining public land and at all navigable streams, roads, gates and rights-of-way entering the private land from the public land, and is posted in a manner that a reasonable person would be put on notice that it is private land; or
- (iv) The property is unfenced and uncultivated but is posted with conspicuous "no trespassing" signs or bright orange or fluorescent paint at all property corners and boundaries where the property intersects navigable streams, roads, gates and rights-of-way entering the land, and is posted in a manner that a reasonable person would be put on notice that it is private land.

I.C. § 6-202(2)(b). The definition of "enter" as it pertains to trespass is:

- (d) "Enter" or "enters" means going upon or over real property either in person or by causing any object, substance or force to go upon or over real property.

I.C. § 6-202(2)(1)(d).

The Halls make four arguments for summary judgement on their claim of trespass. First, the Halls allege that "they have not trespassed upon Edwards' property, nor have they caused their renters to trespass upon Edwards' property." Decl. Hall ¶ 4. Second, the Halls allege that the "tenants are not agents of the Halls and the Halls cannot be held liable for tortious conduct allegedly committed by their tenants." Mem. In Supp. of Summ. J. 10. Third, the Halls argue that the hot tub water does not drain onto Edwards property and it is impossible to do so from where it is drained. Decl. Hall ¶ 3, 10. Fourth, the Halls argue that Edwards has not presented evidence regarding damages. Rep. to Mem. in Opp'n to Defs.' Mot. for Summ. J. 7. The Halls assert that a review of the documents of record show that the only evidence of damage provided by

Edwards are photographs found in Edwards' Declaration In Support of the Opposition of Summary Judgement. *Id.*

Edwards makes the following arguments against summary judgement on Halls' claim of trespass: First, Edwards argues that "the Halls vacation rental physically crosses the property line trespassed on his property line between the properties four feet onto Edwards' property exacerbating the noise problem." Mem. in Opp'n to Defs' Mot. for Summ. J. 9 (citing, Edwards Decl., 11:3-6). Second, Edwards argues that "the Hall's tenants frequently physically trespass onto Edwards' property and throw trash onto Edwards' property, and Edwards argues that the Halls have done nothing to prevent their tenants from crossing over onto Edwards' property. *Id.* (citing Edwards Decl. 3:12-23; 5:13-16; 9:3-13. Third, Edwards argues that "[c]hlorine, dirty water... and other chemicals are drained by the Halls or at their direction onto the ground above Edwards' house and allowed to flow downhill onto Edwards' property[,]" and "the hot tub run off has damaged Edwards' wood fence and is killing his trees and landscaping." *Id.* (citing Edwards Decl. 2:19-20; 12:3-4; Decl. 12:4-11). Edwards has stated that his efforts to resolve the noise and trespass issues have been ignored. *Id.* at 10 (citing, Edwards Decl. 15:5-6.)

The Halls Motion for Summary Judgement on the claims of trespass is denied because a genuine issue of material fact exists.

The first argument, that the Halls have not trespassed upon Edwards' property nor have they caused their renters to trespass, is uncontested by Edwards' briefings and requires no further discussion. The court finds the Halls' second argument to be unconvincing, largely because no citations or reasoning have been provided by the Halls as to why a lack of agency relationship between the Halls and their tenants necessarily negates Edwards' claim of trespass of the Halls' tenants onto his property.

The Halls' third argument is rebutted in Edwards' declaration, where he asserts that the property slopes downward from where the hot tub is drained and on into his property. Halls fourth argument is also rebutted in Edwards' declaration, where he asserts that "the privacy fence has been adversely affected by the force of the water pushing gravel and debris against it, causing the wood to warp and split[.]" Edwards' argument pertaining to the encroachment of the Halls' property physically trespassing on Edwards' property was a claim not made in the complaint and therefore will not be considered at this time.

Edwards' evidence pertaining to the trespass of tenants, tenants' trash, and water from the hot tub is based on his personal recollection of events and lacks corroborating evidence, but even circumstantial evidence can create a genuine issue of material fact. In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. If Edwards' assertions are viewed in their most favorable light, then a reasonable trier of fact could come to the conclusion that the hot tub water, tenants, and tenants' trash did trespass on Edwards' property. For these reasons the court denies the motion for summary judgement.

C. Tortious Interference with contract

The Halls have filed a Counterclaim against Edwards which alleges that "Plaintiff/Counter-Defendant has routinely disrupted the Halls and their guests and as a result of Plaintiff/Counter-Defendant's conduct, the Halls have lost rental income from their home." Answer and Countercl. 7. The Halls have the burden of proving each of the following propositions:

- (1) The Halls were a party to an existing contract;
- (2) Edwards knew of the contract;

- (3) Edwards intentionally interfered with the contract, causing a breach;
- (4) The Halls were damaged as a proximate result of Edwards' interference; and
- (5) The nature and extent of damage, and the amount thereof.

Drug Testing Compliance Grp., LLC v. DOT Compliance Serv., 161 Idaho 93, 100, 383 P.3d 1263, 1270 (2016) (quoting *Bybee v. Isaac*, 145 Idaho 251, 259, 178 P.3d 616, 624 (2008)). Once the claimant establishes a prima facie case for tortious interference the burden shifts to the defending party to establish a justification for the conduct. *Barlow v. Int'l Harvester Co.*, 95 Idaho 881, 893, 522 P.2d 1102, 1114 (1974). The "intent" of the "intentional interference" requirement can be inferred by the jury from evidence of "conduct substantially certain to interfere with the [contract]." *Bybee v. Isaac*, 145 Idaho 251, 259, 178 P.3d 616, 624 (quoting *Highland Enters., Inc. v. Barker*, 133 Idaho 330, 340, 986 P.2d 996, 1006 (1999)).

The Halls argue that "The undisputed evidence in this case supports all four elements for a prima facie case of tortious interference of contract." The Halls argument for a prima facie case is as follows. First, contracts exist between the Halls, Vacasa, and each renter. Mem. in Supp. of Defs' Mot. for Summ. J. 11 (citing Decl. Hall ¶ 8,10). Second, it is undisputed that Edwards knew or should have known that contracts exist between the Halls, Vacasa, and tenants. *Id.* at 12 (citing Compl. ¶2.4). Third, "The undisputed evidence establishes that Edwards intentionally engaged in significantly interfering behavior, such as harassing renters at all hours of the day, videotaping renters and the Halls, and shining a spotlight on renters while they relax in Halls' hot tub." *Id.* (citing Decl. Hall at ¶¶ 11-12; Decl. Naylor at ¶¶ 4,7). The Halls go on to claim that, "The undisputed evidence establishes that Edwards' conduct has caused injury to the Halls because renters have requested to be moved to another

rental location, causing a loss of revenue for Halls.” *Id.* (citing Naylor’s Decl. ¶ 5).

Finally, the Halls argue that, “Based upon these undisputed facts, all four elements of tortious interference of contract have been met, and the Halls are entitled to summary judgment as a matter of law on their counterclaim of tortious interference with contract.”

Edwards disputes facts alleged in the Halls’ claim of Tortious Interference with Contract. Mem. In Opp’n to Defs’ Mot. for Summ. J., 20. Edwards’ denies harassing any of Halls’ tenants. *Id.* (citing Edwards Decl., page 6, lines 17-21). Furthermore, Edwards alleges that his...“lights do not act as a spotlight on the Halls’ property nor does he videotape tenants.” *Id.* at 20 (citing Edwards Decl. 7:23; 7:8-9; 8:1-4).

Regarding the videotaping claim by the Halls, Edwards asserts that “[t]he tenants that claimed he was videotaping them and called the Sheriff were shown to be incorrect.”

Id. Finally, Edwards alleges that no evidence of damages have been produced by the Halls. Specifically, “the Halls have failed to provide a copy of the tenant list and revenue and expense ledger in answer to Edwards’ requests for discovery,...and ...the Halls have produced no evidence of tenants transferring to other properties due to Edwards’ alleged harassment other than Kelly Naylor’s conclusory statements in her Declaration.” *Id.* (citing Edwards Decl. 5:5-7; Naylor Decl. ¶ 5). For these reasons Edwards asserts that the Halls are not entitled to summary judgment on their tortious interference with a contract claim. *Id.* at 20.

The Halls’ Motion for Summary Judgement on their claim for tortious interference with contract is denied because a genuine issue of material fact exists.

The Halls have presented a prima facie case for tortious interference with contract. With a prima facie case established, the burden shifts to Edwards to provide specific facts showing there is a genuine issue for trial. Edwards does not contest that

the first and second elements of this claim have been satisfied. Edwards does contest the third element that he intentionally interfered with the contract, causing a breach. To this end, Edwards argues that he has not harassed tenants. Instead he argues in his Declaration that he asks visiting tenants nicely to keep the noise down and explains the close proximity of the hot tub to his property. Edwards also asserts that the spotlights shine on Halls' trees. Finally, Edwards alleges that he does not videotape the use of the hot tub.

These assertions made by Edwards are based on his personal recollection of events and lack corroborating evidence, but even circumstantial evidence can create a genuine issue of material fact. Edwards and the Halls clearly disagree upon the manner in which Edwards interacts with the tenants and the property. In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. If Edwards' assertions are held in their most favorable light, then a reasonable trier of fact could conclude that Edwards' actions did not amount to intent to interfere with contract claims. For these reasons the Motion for Summary Judgement is denied.

IV. CONCLUSION AND ORDER

The Court denies Halls' Motion for Summary Judgment on Edwards' claims of nuisance and trespass. The Court also denies summary judgement of Halls counterclaim of tortious interference with contract. Since summary judgment has not been granted it is inappropriate to rule on the granting of attorney fees at this time.

IT IS HEREBY ORDERED Halls' Motion for Summary Judgment on Edwards' claims of nuisance and Trespass is DENIED.

IT IS FURTHER ORDERED Halls' Motion for Summary Judgment on their counterclaim for tortious interference with contract is DENIED.

Entered this 15th day of October, 2019.


John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of October, 2019 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail or facsimile to:

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By 
Jeanne Clausen, Deputy Clerk