

**PHILADELPHIA COURT OF COMMON PLEAS  
PETITION/MOTION COVER SHEET**

CONTROL NUMBER:  
**080835**  
**(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)**

**FOR COURT USE ONLY**

ASSIGNED TO JUDGE: \_\_\_\_\_ ANSWER/RESPONSE DATE: **9/19**

*Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained on line at <http://courts.phila.gov>*

November 2003  
Month Year  
No. 946

Herbert J. Nevyas, M.D., et al  
vs.  
Dominic Morgan

Name of Filing Party:  
**Dominic J. Morgan, pro se**  
(Check one)  Plaintiff  Defendant  
(Check one)  Movant  Respondent

**INDICATE NATURE OF DOCUMENT FILED:**  
 Petition (Attach Rule to Show Cause)  Motion  
 Answer to Petition  Response to Motion

Has another petition/motion been decided in this case?  Yes  No  
Is another petition/motion pending?  Yes  No  
If the answer to either question is yes, you must identify the judge(s): **Judge Maier**

TYPE OF PETITION/MOTION (see *let on reverse side*) **in forma pauperis** PETITION/MOTION CODE  
**Pro se Defendant Dominic J. Morgan's Motion for Summary Judgment:** **MTSD**

ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):

**I. CASE PROGRAM**  
Is this case in the (answer all questions):

**A. COMMENCE PROGRAM**  
Name of Judicial Team Leader: \_\_\_\_\_  
Applicable Petition/Motion Deadline: \_\_\_\_\_  
Has deadline been previously extended by the Court?  
 Yes  No

**B. DAY FORWARD/MAJOR JURY PROGRAM — Year \_\_\_\_\_**  
Name of Judicial Team Leader: \_\_\_\_\_  
Applicable Petition/Motion Deadline: \_\_\_\_\_  
Has deadline been previously extended by the Court?  
 Yes  No

**C. NON JURY PROGRAM**  
Date Listed: \_\_\_\_\_

**D. ARBITRATION PROGRAM**  
Arbitration Date: \_\_\_\_\_

**E. ARBITRATION APPEAL PROGRAM**  
Date Listed: \_\_\_\_\_

**F. OTHER PROGRAM:** \_\_\_\_\_  
Date Listed: \_\_\_\_\_

**II. PARTIES (required for copy of service)**  
(Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

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**Dominic Morgan**  
**3360 Chichester Avenue M11**  
**Boothwyn, PA 19061**

**FILED**

**AUG 14 2007**

**Civil Administration**

**III. OTHER**

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 205.6, Note to 208.2(g) and 440). Furthermore, moving party certifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

*[Signature]* **8-14-07** **Dominic J. Morgan, pro se**  
(Attorney Signature/Unrepresented Party) (Date) (Print Name) (Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

HERBERT J. NEVYAS, M.D., and	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D., and	:	Philadelphia County
NEVYAS EYE ASSOCIATES, P.C.,	:	NOVEMBER TERM, 2003
Plaintiffs	:	NO. 946
vs.	:	
DOMINIC MORGAN, and	:	
STEVEN A FRIEDMAN	:	
Defendants	:	

PROPOSED ORDER

Whereas, the Superior Court said:

1. "On July 26, 2005, the case proceeded to a non-jury trial limited to count III of the second amended complaint, the count for specific performance."
2. "Morgan agreed to take down the specific libelous wording from his website as posted on July 30, 2003, and that, pursuant to the agreement, those specific libelous statements were to be prohibited thereafter.... Morgan did not agree to waive his right to make, if he so chooses and at his own risk, libelous statements in the future, unrelated to the statements on his website as of July 30, 2003."
3. "The question remains, however, whether the statements that appeared on the website that are the subject of this action are the same as the prohibited postings of July 30, 2003, and, of course, if not, whether they are in fact defamatory. Accordingly, because these issues were not addressed by the trial court, we vacate the order and remand for further findings and proceedings consistent with this Opinion."

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, upon consideration of the Motion for Summary Judgment and any responses thereto, this court finds that even if Nevyases' own pleadings do not prove that the statements posted on Morgan's website, and which are the subject of this lawsuit, are not prohibited postings, the postings are not defamatory because they are true.

BY THE COURT

\_\_\_\_\_  
J.

Dominic J. Morgan, *pro se*  
3360 Chichester Ave. M-11  
Boothwyn, PA 19061-3271  
(610) 364-3367

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HERBERT J. NEVYAS, M.D., and	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D., and	:	Philadelphia County
NEVYAS EYE ASSOCIATES, P.C.,	:	NOVEMBER TERM, 2003
Plaintiffs	:	NO. 946
vs.	:	
DOMINIC MORGAN, and	:	
STEVEN A FRIEDMAN	:	
Defendants	:	

**Pro se Defendant Dominic J. Morgan's 8/13/07 Motion for Summary Judgment:  
Even if Nevyases' own pleadings do not prove that the statements posted on  
Morgan's website, and which are the subject of this lawsuit, are not prohibited  
postings, the postings are not defamatory because they are true.**

1. **History of this case.**

Defendant Morgan created a website which originally did not mention plaintiffs Nevyases' names. Later Morgan posted material mentioning Nevyases' names, which Nevyases alleged was defamatory. When Nevyases threatened to sue, Morgan temporarily changed the website back to the original (no mention of Nevyases' names). Morgan then posted new material with Nevyases' names.

Plaintiffs Nevyases incorrectly asserted that they had an agreement with Morgan wherein Morgan would never use their names, regardless of whether the material was re-posted or new, and sued.

As the Superior Court said, "On July 26, 2005, the case proceeded to a non-jury trial limited to count III of the second amended complaint, the count for specific performance."

The Superior Court, at paragraph 30 (boldface added), held that the agreement was only for Morgan to remove and not re-post specific libelous wording from his website as posted on

July 30, 2003, and that Morgan was free to post new material:

¶ 30 We agree with the trial court that Morgan agreed to take down the specific libelous wording from his website as posted on July 30, 2003, and that, pursuant to the agreement, those specific libelous statements were to be prohibited thereafter. See *id.*, at 68. We cannot agree, however, that Morgan's action of uploading the original website content, which contained no reference to the Nevyases or their medical practice, constituted an agreement on his part to never again mention them, for example, even in a non-defamatory context. Rather, his letter specifically reserved the right to "update" his website "within the legal guidelines as allowed by the law and the First Amendment which grants me freedom of speech." *Id.*, at 68-69. The trial court's interpretation of the agreement in this respect is incongruous given Morgan's August 1, 2003 letter. See *Jenkins v. County of Schuylkill*, 658 A.2d 380, 383 (Pa. Super. 1995), appeal denied, 542 Pa. 647, 666 A.2d 1056 (1995) ("It is black letter law that in order to form an enforceable contract, there must be an offer, acceptance, consideration or mutual meeting of the minds.") (emphasis added). **Likewise, we find that Morgan did not agree to waive his right to make, if he so chooses and at his own risk, libelous statements in the future, unrelated to the statements on his website as of July 30, 2003.**

The Superior Court, at paragraph 31, said that the trial court has to determine whether what plaintiffs Nevyases are suing Morgan for is re-posted or new, before it can begin to determine whether they are in fact defamatory.

¶ 31 The question remains, however, whether the statements that appeared on the website that are the subject of this action are the same as the prohibited postings of July 30, 2003, and, of course, if not, whether they are in fact defamatory. Accordingly, because these issues were not addressed by the trial court, we vacate the order and remand for further findings and proceedings consistent with this Opinion.

**2. Defendant Morgan can prove, from Plaintiffs Nevyases' Complaint and Amended Complaint that Morgan removed and did not re-post allegedly specific libelous wording from his website as posted on July 30, 2003.**

Plaintiffs Nevyases' Complaint and Amended Complaint contain identical allegations about Morgan (permission to amend the complaint was limited to the sole purpose of adding another defendant). The words of Nevyases' attorney document that Morgan removed and did not

re-post (boldface added and original emphasis removed to prevent confusion):

27. Examples of the defamatory statements on the website include:

(a) "I went for my initial consultation at Nevyas Eye Associates in Bala Cynwyd, Pennsylvania. I thought they were reputable. **This statement has been changed** and now reads: "I went for my initial consultation at Nevyas Eye Associates in Bala Cynwyd, Pennsylvania. They were advertising extensively (for Lasik with a laser unapproved by the FDA for commercial use)."

(b) "With all the patients who have been damaged by lasik surgery losing their cases in court is it possible there is a cover-up?" **This statement has since been removed.**

(c) "The performing surgeons overlooked standards of care, their own, as well as federal guidelines, and have advertised extensively for a non-approved device (not allowed)." **This statement has since been removed.**

(d) "Their history to include their investigational device shows at least 11 cases of medical malpractice. From first hand experience with these people, they are not the people they represent themselves to be. They are ruthless, uncaring, and greedy." **This statement has since been removed.**

(e) "They ruined my vision and they ruined my life. They did this to me! I was completely happy prior to and none of this was present prior to the lasik surgery. I TRUSTED these people. They made empty promises to fulfill a now empty life, and I can never forgive nor forget, not that I ever could."  
Emphasis in original

(f) "So again key questions are... Why are the majority of Lasik lawsuits being lost? And, why is nothing done about it? Seems like a cover-up... YES, it really does!" Emphasis in original. **This statement has since been removed.**

(g) "If the procedure is going to be done "experimentally," more than likely the surgeon is using a device not yet approved by the Food and Drug Administration (FDA). Since other devices are already approved, this is rarely to your advantage."

(h) "I was NOT told that a change in prescription gave me better than the 20/50 Best Corrected Visual Acuity (BCVA) I ever had, and that instead of Lasik, the new prescription would have worked just as well if not better than what I was seeing (refracted to 20/40-2 according to my records)."

(i) "Although the marketing of LASIK focuses on quality of life, informed, consent does not. Instead, the real risks are hidden in medical jargon that never mentions their true effects.

(j) "Is the use of FDA non-approved lasers such as this one an even greater risk to Lasik patients?" Emphasis in original.

(k) "The following are reports submitted to the FDA by the Nevyas' regarding their "black box" (laser used for investigational surgery). This is information they DO NOT want the public to know..." Emphasis in original.

**This statement has been changed and now reads:**

"Some of the following reports are submitted to the FDA in 1997 regarding their "black box... Federal law also states: 'A sponsor, investigator or any other person... shall not promote or test market an investigational device until FDA has approved the device for commercial distribution.' I could not even begin to tell you how many times I've heard their ADVERTISEMENTS on radio stations for Lasik surgery without mention of their laser being part of an investigational study." Emphasis in original.

(l) "Federal Law requires that every patient who is about to undergo a refractive surgery be given a Patient Information Booklet, published by the manufacturer of the laser used in their surgery. If your surgeon does not give you the patient information booklet, this is a violation of federal law, and your surgeon can be charged with not providing you with full informed consent. Abuse of this FDA mandate is widespread. Most patients have never seen a Patient Information Booklet, because it contains warnings that your surgeon does not want you to see."

(m) "Again, the Nevyas' and their lawyers walk all over the legal system, and seem to be able to do whatever they want, and get away with it." **This statement has since been removed.**

(n) "I do not understand any of this. I'm the one who has been hurt, and this is for the rest of my life. How is it they walk away only to hurt somebody else?" **This statement has since been removed.**

(o) "I have since been told the end result of the arbitration agreement will not be released (what gives them the right not to abide by arbitration agreement) until I sign a release stating the Nevyas' were not at fault. There is NO WAY I will sign that. They took my sight. They will not take the truth!" **This statement has since been removed.**

(p) "I thought the legal system would see through the tactics these people used, and I see now I was grossly mistaken. There is no justice for the average person, so now I have to make do for myself what the legal system could not do. People need to be informed about these doctors, and I damn well will be telling them." Emphasis in original. **This statement has since been removed.**

(q) "It never really was about the money, it's about how they ruined our lives, and how they walk all over the system, just as they did you." **This statement has since been removed.**

(r) "So, my question is, who's covering up for whom, and why? Why was my case ripped apart so badly in the Philadelphia Court System... (Judge Papalini threw out EVERYTHING that had to do with the device being investigational, and anything to do with the FDA)), then I was told arbitration was the more feasible route to go?" Emphasis in original. **This statement has since been removed.**

(s) "Their track record is scary in that I found all of this out after my surgeries." Emphasis in original. **This statement has since been removed.**

(t) "Stupidity or greed on the doctor's part and ignorance on everyone else's, why should I have to suffer living like this?" **This statement has since been removed** A true and correct copy of a printout of the described portions of the website is attached hereto as Exhibit 4.

Thus, plaintiffs Nevyases' own pleadings prove that the statements posted on Morgan's website, and which are the subject of this lawsuit, are not prohibited postings.

**3. Even if Nevyases' own pleadings do not prove that the statements posted on Morgan's website, and which are the subject of this lawsuit, are not prohibited postings, the postings are not defamatory because they are true.**

Even if Nevyases' own pleadings do not prove that the statements posted on Morgan's website, and which are the subject of this lawsuit, are not prohibited postings, the postings are not defamatory because they are true.

During litigation in at least three cases (*Morgan v. Nevyas et al*, Philadelphia County Court of Common Pleas, April 2000 term, number 2621, *Fiorelli v. Nevyas Eye Associates et al*, Philadelphia County Court of Common Pleas, April 1999 term, number 1174, and *Wills et al v. Nevyas et al*, Philadelphia County Court of Common Pleas, July 2001 term, number 2866), Nevyases did not produce documents demonstrating the range of criticism or comments by the FDA (Food and Drug Administration) or the IRB (Institutional Review Board) which was hired by Nevyases. For example, in *Morgan v. Nevyas et al* alone there were over a dozen court filings demanding that such documents be produced - it was known that such documents existed

because Nevyases did produce documents that criticized or commented on the FDA for criticizing

or commenting on Nevyases. In defiance of court orders to produce documents, Nevyases instead produced sworn affidavits that documents demonstrating the range of criticism or comments by the FDA did not exist.

Not until April and May 2005, long after starting the present lawsuit, did Nevyases for the first time produce documents demonstrating the range of criticism or comments by the FDA or IRB, and which demonstrate that Morgan's postings are not defamatory because they are true.

Some of these documents are attached in Exhibits A, B, and C and numbered in the following order:

- A. FDA-2 to FDA-10, FDA-13 to FDA-60, FDA-66 to FDA-78, FDA-83, FDA-167, FDA-170.
- B. 1 to 27, 34 to 91, 94 to 96, 100 to 121.
- C. NYA 4, NYA 49, NYA 74 to 75, NYA 120 to 148, NYA 223 to 230, NYA 357 to 371, NYA 511, NYA 667 to 680, NYA 690 to 694, NYA 717, NYA 733 to 736, NYA 758, NYA 785 to 787, NYA 807 to 808, NYA 872 to 877, NYA 922, NYA 939 to 941, NYA 1355 to 1356, NYA 1448 to 1451, NYA 1036 to 1938, NYA 2144 to 2146, NYA 2266 to 2267.

The handwritten underlining and comments on some of the pages were made by Nevyases.

A partial listing of what is proven by these documents includes:

According to the FDA, the Nevyases violated federal law when they used their Lasik device before August 7, 1997. See pages FDA-4, 6, 13, and 14.

According to the FDA, the Nevyases violated federal law when they promoted and commercialized their Lasik device. See pages FDA-15 and 51.

According to the FDA, the Nevyases violated federal law when they retreated various patients, particularly in their New Jersey facility. See pages FDA- 40, 42, 50, and 52.

According to the FDA, the Nevyases violated federal law when they did not protect human subjects. See pages FDA-49.

According to the FDA, the Nevyases violated FDA regulations, and were delinquent reporting to the FDA.. See pages FDA-167, 168, and 169.

According to the FDA, Nevyases were repeatedly warned of these violations. For example, see pages 19, 20, and 21.

Also in April and May 2005, Nevyases for the first time produced documents that were important for the *Morgan v. Nevyas et al*, *Fiorelli v. Nevyas Eye Associates et al*, and *Wills et al v. Nevyas et al* lawsuits. These included:

1. documents disclosing Nevyases' new centration technique. See pages FDA-59.
2. a report by Herbert Nevyas' brother-in-law, Dr. Barrett, admitting that permanent vision loss from Lasik suction rings occurred in patients other than Morgan, after Nevyases claimed that such was impossible to occur. See page 113.
3. a listing of 30 patients whose vision was damaged by Nevyases' Lasik. See pages NYA 138through 147.
4. documents showing that Nevyases were telling their own IRB that they had no serious adverse events or complaints from doing Lasik. As an example, see page NYA 1937.

The Nevyases, who violate federal law, violate FDA regulations, defy court orders, sign false affidavits, fail to protect human subjects, and are delinquent in reporting to the FDA, are by definition criminals engaged in criminal activity.

Criminals engaged in criminal activity lie, hide the truth, are not reputable, not honest, not caring, and make empty promises. Such criminals are deceitful, ruthless, greedy, and not trustworthy. Such criminals are not the people they represent themselves to be, are disgraces to their profession, manipulate or walk all over the legal system, and sometimes seem to be able to do whatever they want and get away with it. Such criminals try to cover up their illegal activities, cause suffering, and ruin lives. In the end such criminals are stupid, because honesty is the best policy.

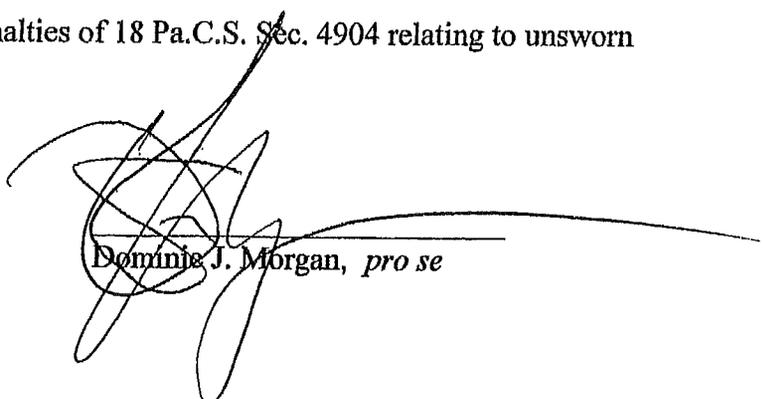
Thus, even if Nevyases' own pleadings do not prove that the statements posted on Morgan's website, and which are the subject of this lawsuit, are not prohibited postings, the postings are not defamatory because they are true.

**4. Conclusion**

For these reasons *pro se* defendant Morgan respectfully asks the court to grant summary judgment and rule that even if Nevyases' own pleadings do not prove that the statements posted on Morgan's website, and which are the subject of this lawsuit, are not prohibited postings, the postings are not defamatory because they are true.

I, Dominic J. Morgan, defendant *pro se* verify these statements to be true, and understand that these statements are made subject to penalties of 18 Pa.C.S. Sec. 4904 relating to unsworn falsification to authorities.

Dated August 13, 2007

  
Dominic J. Morgan, *pro se*

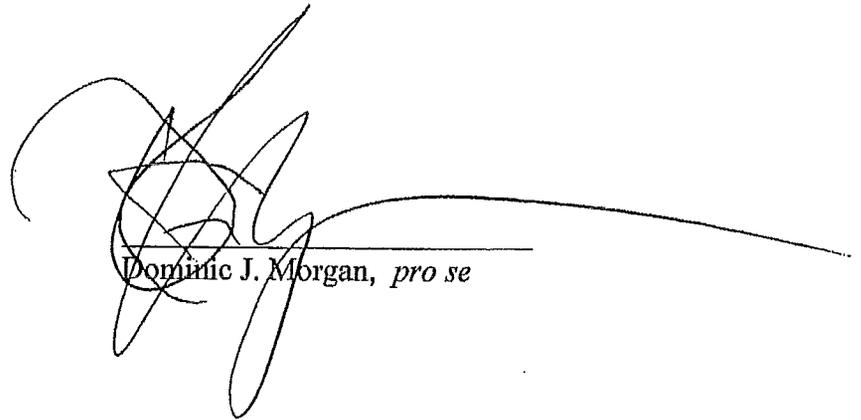
CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion was mailed first class prepaid to the persons listed below on the date listed below.

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Philadelphia, PA 19102

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1818 Market Street, 13<sup>th</sup> Floor  
Philadelphia, PA 19103

Dated August 14, 2007



Dominic J. Morgan, *pro se*