

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WIH MANAGEMENT, INC.	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 99- CV-3002
	:	
ANDREW N. HEINE and	:	
ANDREW N. HEINE, P.C.,	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

September 30, 1999

Presently before the court is Defendants Andrew N. Heine and Andrew N. Heine, P.C.'s Motion to Dismiss Plaintiff's Complaint, Plaintiff's Response thereto, and Defendant's Reply. For the following reasons, Defendants' Motion will be denied.

I. FACTUAL BACKGROUND

From its inception through February 17, 1999, William I. Heine, brother of defendant Andrew N. Heine ("A. Heine"), was the sole shareholder and director of plaintiff WIH Management Inc. ("WIH"), as well as its President and Secretary. WIH manages residential and commercial real estate. A. Heine is an attorney licensed to practice law in the state of New York, and is the sole shareholder of Andrew N. Heine, P.C. ("ANH, PC"). A. Heine served as legal counsel to WIH at all times relevant to the complaint. On February 17, 1999, William I. Heine died, leaving all interest in WIH to his estate.

Within weeks of William I. Heine's death, Defendant A. Heine allegedly instructed the controller of WIH to disburse to A. Heine all management fees due and owing to WIH after February 17, 1999, including fees paid for services rendered prior to that date. Purportedly on behalf of the owners and general managers of the managed properties, A. Heine allegedly entered

into new Management Agreements which provided that ANH, PC would manage the properties in exchange for payment of certain fees. As a result of these actions, plaintiffs contend that they have and are continuing to suffer damages in excess of \$60,000.00 per month.

On June 15, 1999, plaintiff instituted the instant diversity action. In the Complaint, plaintiff asserts claims for breach of fiduciary duty, tortious interference with contract, unjust enrichment, constructive trust and an accounting. Defendants now move to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(4), alleging failure of proper process, Fed. R. Civ. P. 12(b)(5) alleging failure of proper service, and Fed. R. Civ. P. 12(b)(6), alleging that the plaintiffs have failed to state a claim upon which relief may be granted. Defendants also move for a more definite statement pursuant to Fed R. Civ. P. 12(e).

The gravamen of the defendants' motion regarding the failure to state a claim is that at least one of the agreements involved in this action has terminated, and that because that agreement has terminated, the particular claim for relief under that agreement should be dismissed. Defendants aver that the agreement, named the "Chelwyn Agreement" and attached to the complaint as "Exhibit E," terminated by itself as an operation of Paragraph 7 of the agreement which states:

This agreement shall continue in full force and effect until . . . (ii) either William I. Heine or Andrew N. Heine no long[er *sic*] control Agent [WIH, as defined in the agreement] . . .

(Defs.' Br. in Supp. of M. to Dismiss at 9).

Plaintiff responds that this clause is ambiguous, and that "evidence of the interest of the parties at the time they entered into the agreement is likely to reveal that the parties did expect that it would continue after William's death." (Pl.'s Mem. in Opp. to M. to Dismiss at 4-5).

Upon examination, it is clear that the other four attached agreements lack this clause.

II. DISCUSSION

A. Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(4) and 12(b)(5).

In their Reply Brief Defendants admit that they were properly served after the Motion to Dismiss the Complaint was filed. Therefore, defendants withdraw that part of their motion. (Defs.' Reply Br. at 1-2). Accordingly, I will dismiss that portion of the motion as moot.

B. Failure to State a Claim upon which Relief May Be Granted.

When considering a motion to dismiss, all facts must be taken in a light most favorable to the non-moving party. Robb v. City of Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). The motion should not be granted “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim that would entitle [it] to relief.” Id.

1. Count I - Breach of Fiduciary Duty

In Pennsylvania, to state a claim for breach of fiduciary duty a plaintiff must allege: (1) that the defendant acted negligently or intentionally failed to act in good faith and solely for the benefit of the plaintiff in all matters for which he or she was employed; (2) that the plaintiff suffered injury; and (3) that the agent’s failure to act solely for the plaintiff’s benefit . . . was a real factor in bringing about plaintiff’s injuries. McDermott v. Party City Corp., 11 F. Supp.2d 612, 626 n.18 (E.D. Pa. 1998). In Count I of the Complaint, plaintiff brings a claim for Breach of Fiduciary Duty, alleging that the defendants were in a confidential relationship with plaintiff and breached that relationship by engaging in numerous wrongful acts described in the complaint. (Complaint at 4-5).

It is clearly alleged in Count I of the complaint that Defendant intentionally failed to act

solely for the benefit of the Plaintiff, the loss of this income is an injury to Plaintiff, and the Defendants' actions were a real factor in bringing about this injury. These allegations sufficiently satisfy the liberal notice pleading requirements of the Federal Rules of Civil Procedure, in that Plaintiff has alleged the elements necessary to raise a prima facie case of Breach of Fiduciary Duty. Therefore, Defendants' Motion to Dismiss Count I of the Plaintiff's Complaint will be denied.

2. Count II - Tortious Interference with Contract

Under Pennsylvania law, "one who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the third person's failure to perform the contract." Shein v. Myers, 394 Pa. Super. 549, 555, 576 A.2d 985, 988 (1990). In stating a claim for tortious interference with contracts, therefore, a party must allege: (1) intention and improper interference with the performance of a contract; (2) between another and a third person; (3) by inducing or causing a third person not to perform or enter into the contract; (4) resulting in loss to the other from the third person's failure to enter or perform. R.P. Russo Contractors & Engineers, Inc. v. C.J. Pettinato Realty & Development, Inc., 334 Pa. Super. 72, 482 A.2d 1086, 1090 (1984). Therefore, at minimum the Plaintiff in this case must sufficiently plead that an actual contract or a sufficiently definite economic relationship existed between it and the entities with which the Defendants allegedly interfered. In Count II of the Complaint, plaintiff alleges it had existing and ongoing business relationships with the owners of certain properties, and the defendant wrongfully interfered with these relationships by entering into new contracts with the

property owners. (Compl. at 5-6). Defendants contend that dismissal of this claim is warranted because the contracts, forming the foundation of the claims, have expired by their own terms.

Defendant alleges particularly that the “Chelwyn Agreement” involved in this action has terminated, and that because the agreement has terminated, the claims for relief under this agreement should be dismissed. Defendants aver that the agreement terminated by operation of Paragraph 7, which states that the agreement:

[S]hall continue in full force and effect until . . . (ii) either William I. Heine or Andrew N. Heine no long[er *sic*] control Agent [Anbil, as defined in each agreement]

(Compl. Ex. E, Page 8, Paragraph 7).

The contract, of course, must be read as a whole, and the following paragraph in this agreement makes the aforementioned clause arguably ambiguous. That paragraph reads:

. . . Owner may cancel this Agreement upon thirty (30) day’s notice if either William I. Heine or Andrew N. Heine, individually or collectively, do not own a majority of the issued and outstanding stock of the Agent.

(Compl., Ex. E, Page 9, Paragraph 8).

The contract, and the record as it stands, is not clear on how the parties to the contract would handle the death of William Heine: does the contract terminate immediately, or is it necessary for the property Owner to take positive actions under Paragraph 8 to terminate the agreement? “Where . . . the language of the contract is clear and unambiguous, a court is required to give effect to that language.” Madison Construction Company v. Harleysville Mutual Insurance Company, 735 A.2d 100, 106 (Pa. 1999). Here, however, I find that the above cited contract language is unclear and arguably ambiguous.

Therefore, I cannot find, as a matter of law, that the language serves to terminate the “Chelwyn Agreement.” Because I find that the contract is unclear about the parties’ responsibilities upon the death of William Heine, it cannot be unequivocally stated on the record developed to date that the contract in question has terminated.¹

Here, the allegations raised in Count II of the Complaint sufficiently satisfy the liberal notice pleading requirements of the Federal Rules of Civil Procedure, in that the Plaintiff has alleged the elements necessary to raise a prima facie case of tortious interference with contracts. Therefore, Defendants’ Motion to Dismiss Count II of the Plaintiff’s Complaint will be denied.

3. Count III - Unjust Enrichment

The elements necessary to state a claim for unjust enrichment in Pennsylvania are:

1) Benefits conferred on defendant by plaintiff, 2) appreciation of such benefits by defendant, and 3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendants to retain the benefit without payment of value. Schenck v. K.E. David, Ltd., 446 Pa. Super. 94, 97, 666 A.2d 327, 328 (1995). In Count III of the Complaint Plaintiff alleges that after the death of William I. Heine, defendants instructed the controller of the owners of the managed properties to direct all management fees to the defendant, including fees paid for services rendered prior to William I. Heine’s death. Plaintiff further alleges that defendants have entered into new agreements with the owners of the managed properties, even though no notice of termination of the previous agreements had been given to plaintiff. Through

¹ It is noted that the other management agreements involved in this action do not have the disputed language found in the “Chelwyn Agreement,” and there is no argument that they have, by their operation, ceased to operate. Since there is no opposition to those agreements, I need not discuss them at this point in the proceedings.

this device, plaintiff alleges, defendants diverted fees and income which should have been paid to plaintiff.

Taking all facts “in a light most favorable to the non-moving party,” (Robb, at 290), the allegations in the complaint are sufficient to state a claim for unjust enrichment. As such, Defendant’s Motion to Dismiss Count III of the complaint for failure to state a claim upon which relief may be granted will be denied.

C. Motion for a More Definite Statement

A party may move for a more definite statement of a pleading if the pleading is so “vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.” Fed. R. Civ. P. 12(e). The Federal Rules also state that a complaint shall contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “The central purpose of Rule 8(a)(2) is to give the defendant fair notice of the claim being pressed against him so that he can make an adequate response.” Northern Insurance Company of New York v. Nessly, No. CIV.A.95-1618, 1995 WL 649197 at *1 (E.D. Pa. Nov. 2, 1995). And, “a motion for a more definite statement is not a substitute for the discovery process.” Wheeler v. United States Postal Service, 120 F.R.D. 487 (M.D. Pa. 1987).

Plaintiff has attached to the complaint five of the seven agreements that form the subject matter of the complaint. Defendants request that the court compel the plaintiff to attach the remaining two agreements so that the defendants may determine if the associated claims may be dismissed as well.

The complaint as written is clear and unambiguous, with substantial facts alleged which should allow the defendants to form a “responsive pleading.” The central purpose of Rule

8(a)(2) is to provide fair notice to the defendants of the plaintiff's claims, and that purpose has been satisfied. Therefore, the defendants' motion for a more definite statement under Fed. R. Civ. P. 12(e) will be denied.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(4) and 12(b)(5) will be dismissed as moot, Defendants Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) will be denied, and Defendant's Motion for a More Definite Statement pursuant to Fed. R. Civ. P. 12(e) will be denied. An appropriate order follows.

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WIH MANAGEMENT, INC.	:	
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Plaintiff,	:	CIVIL ACTION
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ANDREW N. HEINE and	:	
	:	
ANDREW N. HEINE, P.C.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this ____ Day of September, 1999, **IT IS HEREBY ORDERED** that Defendants Andrew N. Heine and Andrew N. Heine, P.C.’s Motion to Dismiss Plaintiff’s complaint is **DENIED**.

IT IS FURTHER ORDERED that Defendants are ordered to answer the complaint and file it with the Court within 10 Days.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.