

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

GETTY PETROLEUM	:	CIVIL ACTION
MARKETING, INC.,	:	
Plaintiff	:	
	:	
	:	
v.	:	
	:	
	:	
KWANG WOO LEE, <i>et al</i> ,	:	
Defendants	:	NO. 05-998

MEMORANDUM AND OPINION

Gene E.K. Pratter, J.

July 13, 2005

On April 26, 2005, Defendant Kwang Woo Lee filed a Rule 12(b)(6) Motion to Dismiss the claims of Getty Petroleum Marketing, Inc. (“Getty”) against him for failure to state a claim. Mr. Lee has two primary arguments for dismissal of the claims. First, Mr. Lee asserts that Getty has not provided sufficient allegations of “scrivener’s error” or “mistake” to state a claim for reformation of the guaranty that Getty seeks to enforce against him. Second, Mr. Lee argues that Getty has not alleged facts that state a claim against him, individually, as opposed to in his capacity as representative of the corporate defendant, To Go Mart, Inc. (“To Go”).

For the reasons discussed below, the Court denies Mr. Lee’s Motion to Dismiss. While the Court anticipates that many of the arguments presented during the oral argument on the Motion are precursors for hotly contested factual disputes that will no doubt prompt good faith discovery disagreements and possibly other motions in this case, the simple fact of the matter at

this point is that the Complaint, on its face,¹ sufficiently states a claim to place Mr. Lee on notice of the legal theories being pursued against him.

I. SUMMARY OF FACTS

Getty is the franchisor of retail gas stations in the Philadelphia area, as assignee of Conoco, and the licensor of the Mobil trademark, trade name, and trade dress displayed at those stations. According to Getty, To Go was the franchisee at 7300 East Roosevelt Boulevard, Philadelphia until February 16, 2005, selling gas to the public exclusively under the licensed Mobil trademark, trade name, and trade dress. (Pl.'s Compl., at ¶ 7). Plaintiff asserts that, at an unknown time, Mr. Lee and To Go knowingly and intentionally acquired non-Mobil branded gas, which was then sold under the Mobil trademark, trade name, and trade dress. (Pl.'s Compl., at ¶ 8). Plaintiff further contends that one of the sellers of the non-Mobil gas was Defendant Keroscene, Inc., who sold the fuel to Mr. Lee and To Go knowing that it would be sold under the Mobil trademark, trade name, and trade dress. (Pl.'s Compl., at ¶ 9).

Getty asserts five counts: Count One against all defendants for trademark infringement; Count Two against all defendants for unprivileged unfair competition; Count Three against Mr. Lee for reformation of guaranty due to scrivener's error or other mistake in the agreement; Count

¹ Both parties submitted exhibits to support their arguments on the Motion to Dismiss. However, a Rule 12(b)(6) motion is one where the Court is asked to look exclusively to the pleading, in this case the complaint. If the Court were to look to the exhibits as evidence and not exclude the extraneous material, the Court is obligated to treat the motion to dismiss as a motion for summary judgment. FED. R. CIV. PRO. 12(b). The Court finds that, at this preliminary stage prior to discovery, it would be inappropriate to make any evaluation on summary judgment. Therefore, the Court has excluded the affidavit of Dennis Blaschke and the various agreements presented by the parties from consideration of the Motion and has looked exclusively to the Complaint to determine if Getty has stated claims "upon which relief can be granted." FED. R. CIV. PRO. 12(b)(6).

Four against Mr. Lee and To Go for breach of contract; and Count Five against all defendants for tortious interference with business relations.

II. STANDARD OF REVIEW

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988). However, “a court need not credit a complaint's ‘bald assertions’ or ‘legal conclusions’ when deciding a motion to dismiss.” Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

III. DISCUSSION

Mr. Lee asserts that Count Three of the Complaint fails because Getty does not provide any facts supporting its bald conclusion that a “scrivener’s error or other mistake” resulted in Mr. Lee not being listed as the Individual Guaranty of the debts and sums due under the contract between Getty’s predecessor, Conoco Phillips Company (“Conoco”) (which assigned its rights to Getty) and To Go. Mr. Lee further argues that the remaining Counts against Mr. Lee (Count One - misuse of trademark; Count Two - unprivileged unfair competition; Count Four - breach of contract; and Count Five - tortious interference with business relations) should be dismissed because Getty does not allege why the Court should pierce To Go’s corporate veil to expose Mr.

Lee to liability for his actions as a representative of To Go.

Mr. Lee contends that the plain language in the contract between Conoco and To Go clearly shows that To Go was the guaranty and the allegation in the Complaint² regarding scrivener's error or other mistake is "conclusory" and unsupported by any facts. Mr. Lee argues that the lack of any averments in support, or even a clarification of whether Getty is arguing scrivener's error, mutual mistake, or unilateral mistake, makes it impossible for Mr. Lee to know what legal standard applies to Getty's claim. Therefore, Mr. Lee asserts that the failure to state a single fact in the Complaint in support of this claim violates Rule 12(b)(6) because it is too vague.

The issue before the Court is whether Getty's complaint has placed Mr. Lee on notice of the claims being asserted against him by Getty and whether relief could be granted under any set of facts that could be proved by Plaintiff. Focusing on Count Three, Mr. Lee is clearly on notice of three different potential theories of liability, namely scrivener's error, mutual mistake, and/or unilateral mistake. The Court need look no further than the thorough legal analysis of all of these theories Mr. Lee presented in his Motion to conclude that sufficient notice has been given. Mr. Lee's frustration that Getty has not yet "picked a theory" is not grounds for dismissal. A plaintiff is allowed to assert different, even contradictory, legal theories. FED. R. CIV. PRO. 8(e)(2).

As to the question of whether there are a set of facts under which relief could be granted,

² Paragraph 22 and 23 of the Complaint state:

"22. Defendant Lee executed a written Individual Guaranty of the debts and sums due to Getty, as assignee of Conoco Phillips Company, by Defendant To Go Mart.

23. Through a scrivener's error or other mistake, the guaranty was executed in the name of To Go Mart, instead of Lee individually."

the Court finds that there are. While the Court is cognizant of the high bar required by the law to reform a contract and the lack of specific averments in the Complaint delineating what exactly resulted in the allegedly erroneous placement of To Go as guaranty and not Mr. Lee, the Court finds that to require additional averments of Getty at this time would be unfair to Getty and place a higher burden on Getty than required by the Federal Rules of Civil Procedure. The Court will not place Getty in the challenging position of alleging more facts than it can possibly know at this stage, or have a good faith basis in, prior to commencement of discovery. Such a requirement would put Getty and its counsel in the unenviable position of choosing between risking a Rule 11 motion or allowing a potentially viable claim to be dismissed.

Mr. Lee's other argument is that the Complaint does not make out any semblance of a claim justifying piercing To Go's corporate veil and exposing him to individual liability on the other Counts. As the discussion during oral argument clarified, however, Getty is not pursuing a pierce-the-corporate-veil theory. Rather, the claims are that Mr. Lee's principal role in the alleged offending conduct was such that he cannot successfully seek refuge in his status as a corporate officer. See Donsco v. Casper, 587 F.2d 602, 606 (3d Cir. 1978) (holding "corporate officer is individually liable for the torts he personally commits and cannot shield himself behind a corporation when he is an actual participant in the tort"). While the Court would not describe the complaint as fulsome, the allegations pass muster at this juncture for the claims to proceed beyond the Motion to Dismiss.

IV. CONCLUSION

For the foregoing reasons, the Court denies the Defendant's Motion to Dismiss the Complaint. An appropriate Order consistent with this Memorandum follows.

BY THE COURT:

GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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Defendants	:	NO. 05-998

ORDER

Gene E.K. Pratter, J.

July 13, 2005

AND NOW, this 13th day of July, 2005, upon consideration of Defendant Kwang Woo Lee's Motion to Dismiss (Docket No. 8), the responses thereto, and the presentations of counsel during oral argument on July 11, 2005, it is hereby ORDERED that the Motion to Dismiss is DENIED.

BY THE COURT:

GENE E. K. PRATTER
UNITED STATES DISTRICT JUDGE