

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

HALLMARK CARDS, INC. : CIVIL ACTION
 :
 v. :
 :
 MATTHEWS, INC. OF DELAWARE & :
 JAY ROYCE BRINSFIELD : NO. 99-2129

MEMORANDUM AND ORDER

HUTTON, J.

DECEMBER 16, 1999

Currently before the Court are Defendant Jay Royce Brinsfield's ("Defendant") Motion to Dismiss the Complaint Pursuant to Fed. R. Civ. P 12(b)(6)(Docket No. 4), Plaintiff Hallmark Card Inc.'s ("Plaintiff") Memorandum of Law in Opposition to Defendant's Motion (Docket No. 6), Defendant's Reply Memorandum (Docket No. 7) and, Plaintiff's Sur Reply (Docket No. 8). For the reasons stated below, Defendant's Motion is **DENIED**.

I. BACKGROUND

In accepting as true the facts alleged in Plaintiff's Complaint and all reasonable inferences that can be drawn from them, the facts relevant to this suit are as follows. Defendant is the sole executive officer, director, and shareholder of Matthews, Inc. of Delaware ("Matthews"). Matthews is also a defendant in this case. Additionally, Defendant conducted, managed, and controlled the business affairs of Matthews as though it were his

own business, and had used and continues to use Matthews to further his personal interests. Moreover, Defendant dominates the business affairs of Matthews such that Matthews and defendant have no separate existence and Matthews is merely a conduit for Defendant.

This dispute arises out of two transactions which involved the purchase and sale of a chain of retail greeting card and gift shops. The first transaction occurred on August 30, 1991 (the "1991 Transaction"), when Matthews bought fifty-two card and gift shops for approximately \$10,725,000.00 from Sackett's Greeting Card Shops, Inc. and its executive officer, director, and sole shareholder, Herbert Sackett ("Sackett"). Matthews and Sackett also executed a non-compete agreement pursuant where in consideration for 120 monthly payments of \$31,250.00, Sackett agreed not to compete with Matthews, directly or indirectly, for a period of five years. Additionally, Sackett required and received on or about September 26, 1991, Plaintiff's guarantee to make said monthly payments in the event of Matthews' breach. Also, in connection with the 1991 Transaction, on or about September 26, 1991, Matthews and Plaintiff executed a loan agreement (the "Loan Agreement") in which Matthews received financing for the purchase of the fifty-two gift shops. The Loan Agreement provided for Plaintiff to loan Matthews up to \$9,800,000.00 so that Matthews could purchase the card and gift shops, and for Plaintiff to guarantee, inter alia, Matthews' obligation to make monthly

payments to Sackett under the Non-Competition Agreement. In September 1991, Matthews commenced payments to Sackett.

Four years later, Defendant, through Matthews, sold the card and gift shops for \$39,385,000.00. On December 22, 1995 Matthews entered into an asset purchase agreement (the "Asset Purchase Agreement") with Evenson Card Shops, Inc. ("Evenson") to sell to Evenson the card and gift shop business (the "1995 Transaction"). Matthews agreed to retain certain liabilities, including its obligation to make monthly payments to Sackett. Consistent with this liability, Matthews continued to make monthly payments to Sackett through August 1997.

In September 1997, however, Defendant, as the sole executive officer, director, and shareholder of Matthews, caused Matthews to discontinue its monthly payments to Sackett in breach of both the Non-Competition Agreement and its Loan Agreement with Plaintiff. Indeed, Defendant had another one of his companies, Reading China and Glass ("Reading",) make Matthews' monthly payments to Sackett until approximately October 1998. Defendant is also Reading's sole executive officer, director, and shareholder. Since approximately October 1998, Sackett has received no monthly payments from Matthews, Reading, Defendant, or a related entity. Nevertheless, Plaintiff honored its obligation and has made monthly payments of \$31,250.00 to Sackett since November 1998. Defendant refuses to reimburse Plaintiff for its monthly payments to Sackett. Plaintiff

filed its Complaint on or about April 27, 1999. Defendant filed the instant Motion on or about June 17, 1999.

II. DISCUSSION

A. Legal Standard

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),¹ the Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50, 109 S. Ct, 2893, 2906 (1989). A court will only dismiss a complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50, 109 S. Ct. at 2906 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 104 S. Ct. 2229, 2232 (1984)). Nevertheless, a court need not

^{1/} Rule 12(b)(6) provides that:

Every defense in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . .
. (6) failure to state a claim upon which relief can be granted. . . .

Fed. R. Civ. P. 12(b)(6).

credit a plaintiff'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).

B. Piercing Matthews, Inc. of Delaware's Corporate Veil

Defendant seek the dismissal of Plaintiff's Complaint insofar as it states claims against him. Defendant's argument for dismissal is two-pronged: (1) Plaintiff's Complaint fails because it does not use the words "fraud" or "misrepresentation," and, in the alternative (2) Plaintiff's Complaint does not allege that an injustice or other intentional misconduct occurred. Plaintiff counters these arguments by asserting that Defendant misinterprets the controlling law.

1. Plaintiff's Failure to Use the Terms "Fraud" or "Misrepresentation" when drafting Complaint

Plaintiff maintains that Matthews' corporate veil should be pierced because Defendant used Matthews' corporate structure as a vehicle to enrich himself at the Plaintiff's expense. Defendant contends that Plaintiff's pleadings are insufficient to withstand a Rule 12(b)(6) motion because neither "fraud" nor "misrepresentation" appear on the face of the Complaint.² That

^{2/} As a procedural matter, Federal Rule of Civil Procedure 8(a) requires a plaintiff to set forth "a short and plain statement of the claim, showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). The specificity in pleading that Defendant seeks is simply not required by Rule 8(a). Therefore, the Court finds that Plaintiff's Complaint satisfies Rule 8(a)'s "notice pleading" requirement.

is, Defendant contends that Plaintiff's failure to expressly use the term "fraud" and/or "misrepresentation" prevents him from stating a cognizable argument for piercing the corporate veil. (See Def.'s Mem. of Law in Supp. of Motion to Dismiss Compl. Pursuant to Fed. R. Civ. P. 12(b)(6) at 4 ("The words fraud or misrepresentation are noticeably absent from the Complaint.")) This omission, however, is not dispositive of Plaintiff's claim.

As a matter of Delaware law,³ a plaintiff need not expressly plead "fraud" or "misrepresentation" to sustain a cause of action under the piercing the corporate veil doctrine. See United States v. Del Campo Baking Mfg. Co., 345 F. Supp. 1371, 1378 (1972) (stating that a court may disregard the existence of a separate corporate entity to prevent fraud, illegality, or injustice and that in the matter before the court the corporate identity should be ignored on the grounds of preventing injustice and furthering public policy); Equitable Trust Co. v. Gallagher, 99 A.2d 490, 493 (Del. 1953) (stating that "[i]t is a familiar principle that circumstances frequently require courts to look behind the corporate curtain."); Irwin & Leighton, Inc. v. W.M. Anderson Co., 532 A.2d 983, 987 (Del. Ch. 1987) (stating that "conduct short of the active intent to deceive required to establish fraud may . . . occasion the 'piercing of the corporate veil' For example,

^{3/} The Court, for the purpose of deciding the instant Motion, assumes that Delaware law is applicable to Plaintiff's claims.

if those in control of the corporate enterprise have not treated it as a distinct legal entity . . . courts will be less inclined to regard the corporation as an effective limitation on liability.") See also Pauley Petroleum , Inc. v. Continental Oil Co., 239 A.2d 629, 633 (Del. 1968) (stating that corporate veil may be pierced "in the interest of justice, when such matters as fraud, contravention of law or contract, public wrong, or where equitable considerations among members of the corporation require it, are involved."); David v. Mast, No. 1369-K, 1999 WL 135244, at *3 (Del. Ch. March 2, 1999)(holding that plaintiffs may exercise their equitable right to pierce defendant's corporate veil and may do so "without addressing the traditional limiting restraint of common law or equitable fraud."); Harco Nat'l Ins. Co. v. Green Farms, Inc., CIV.A. No. 1131, 1989 WL 110537, at *4 (Del. Ch. Sept. 19, 1989) (stating that "[f]raud has traditionally been sufficient reason to pierce the corporate veil" . . . [but] that "[o]ther grounds also exist.").

Therefore, Plaintiff's cause of action does not fail simply because the terms "fraud" and/or "misrepresentation" are not stated in its Complaint.

2. Plaintiff's Failure to Allege that an Injustice or Other Intentional Misconduct Occurred

Although not expressly stated in its Reply Memorandum, Plaintiff relies on the alter ego theory to disregard the separate

legal existences of Matthews and Defendant. The United State District Court for the District of Delaware adopted the following alter ego analysis in United States v. Golden Acres, Inc., 702 F. Supp. 1097 (D. Del. 1988):

[A]n alter ego analysis must start with an examination of factors which reveal how the corporation operates and the particular defendant's relationship to that operation. These factors include whether the corporation was adequately capitalized for the corporate undertaking; whether the corporation was solvent; whether dividends were paid, corporate records kept, officers and directors functioned properly, and other corporate formalities were observed; whether the dominant shareholder siphoned corporate funds; and whether, in general, the corporation simply functioned as a facade for the dominant shareholder.

Id. at 1104. See also Harper v. Delaware Valley Broad. Inc., 743 F. Supp. 1076, 1085 (D. Del. 1990); Harco Int'l Ins. Co. v. Green Farms, Inc., CIV.A. No. 1131, 1989 WL 110537, at *4 (Del. Ch. Sept. 19, 1989). No single factor can justify a decision to disregard the corporate entity and, therefore, some combination of the elements is required. Golden Acres, Inc., 702 F. Supp. 1104. Additionally, an overall element of injustice or unfairness must be present. Id. Defendant baldly contends that dismissal is appropriate because Plaintiff's does not allege that an injustice or other intentional misconduct occurred.

As stated by the Golden Acres court, an alter ego analysis commences with an examination of factors which expose how the corporation operates and the particular defendant's relationship to that operation. In satisfaction of the non-exclusive list of

factors delineated by the Golden Acres court, Plaintiff alleges the following regarding Matthews' operations and Defendant's relationship thereto: (1) Defendant "is the sole executive officer, director, and shareholder of Matthews;" (2) Defendant is, and has been, conducting, managing, and controlling the affairs of Matthews as though it were his own business, and has used and is using the control of Matthews and Matthews' corporate assets to further his own personal interests;" and (3) Defendant "so dominated Matthews that [the two separate legal entities have] no separate existence" and that Matthews "was and is merely a conduit for" Defendant. (Compl. at ¶¶ 4, 5, 33). Accordingly, Plaintiff's sufficiently avers that Defendant and Matthews operated and continue to operate as a single economic entity such that the legal distinction between them may be disregarded. Satisfaction of the Golden Acres factors does not end an alter ego analysis, however. An overall element of injustice and/or unfairness also must be present.\⁴

The record before the Court indicates that Matthews' failure to make payments to Sackett appears to be unjust and unfair to Plaintiff. Accordingly, the Court, upon accepting as true the facts alleged in Plaintiff's Complaint and all reasonable inferences that can be drawn therefrom, finds that Defendant's Motion provides insufficient grounds for dismissal. Therefore,

^{4/} The Court finds that Plaintiff is not required to allege that injustice and/or unfairness occurred. Instead, an element of injustice and/or unfairness simply "must always be present . . ." See Golden Acres, 702 F. Supp. at 1104. See also Harco Nat'l Ins. Co., 1989 WL 110537, at *5 (quoting Golden Acres).

Defendant's Motion is denied as Defendant fails to demonstrate that Plaintiff can set forth no set of facts in support of its claims.

C. Defendant's Claim that His Actions were Privileged

Plaintiff alleges that Defendant tortiously interfered with Matthews' obligations to Plaintiff. Defendant argues that as the owner and sole officer of Matthews, he had an "absolute privilege" to cause Matthews to breach its obligations to Plaintiff. Defendant therefore argues that Plaintiff's claim should be dismissed under Rule 12(b)(6).\⁵

As a condition precedent to recovery on the theory of tortious interference with contract, the Complaint must demonstrate that three parties are affected: the plaintiff, a third party, and the tortfeasor--the person or entity that intentionally interfered with the plaintiff and third party's contract. The Complaint patently satisfies this requirement.

In order to state a tortious interference with contract cause of action, five elements must be satisfied: (1) the existence of a contract; (2) defendant's knowledge of the contract; (3) that defendant induced or caused the breach of the contract; (4) that the defendant's acts were not justified; and (5) that the plaintiff

^{5/} For the purpose of this analysis, the Court assumes that Missouri law is applicable pursuant to the Governing Law provision of the contract executed by Plaintiff and Matthews. The contract's Governing Law Provision provides that the "agreement and the notes shall be deemed to be contracts under the laws of the State of Missouri and for all purposes shall be governed by and construed and enforced in accordance with the laws of said state." (See Compl., Ex. A at ¶ 9.07, p. 24).

thereby suffered damages. See Preferred Physicians Mut. Management Group, Inc. v. Preferred Physicians Mut. Risk Group, Inc., 961 S.W.2d 100, 107 (Mo. Ct. App. 1998); Gibson v. Adams, 946 S.W.2d 796, 802 (Mo. Ct. App. 1997).

In the instant matter, the first three elements of the tort are not challenged but Plaintiff argues that Defendant's acts were not justified. In response to Plaintiff's Complaint, Defendant invokes the defense of privilege. Therefore, the Court focuses on element four--whether there exists justification for defendant's acts. When determining whether justification exists, Missouri law recognizes that a shareholder or an officer in a corporation is justified in inducing his or corporation to breach. See Gibson, 946 S.W.2d at 802; Nola v. Merollis Chevrolet Kansas City, Inc., 537 S.W.2d 627, 634 (Mo. App. Ct. 1976). The affirmative defense of privilege must be raised by a defendant. See Gibson, 946 S.W.2d at 802; Honiqmann v. Hunter Group, Inc., 733 S.W.2d 799, 806 (Mo. Ct. App. 1987). Case law indicates that the privilege may be invoked where the defendant acts within his or her authority where proper means are utilized, where the act is made in good faith to protect the corporate interest, and the defendant does not act in self-interest. See, e.g., Meyer v. Enoch, 807 S.W.2d 156, 159 (Mo. App. Ct. 1991). Accordingly, the privilege is not absolute.

Plaintiff alleges the following (1) Defendant "is the sole executive officer, director, and shareholder of Matthews;" (2)

Defendant is, and has been, conducting, managing, and controlling the affairs of Matthews as though it were his own business, and has used and is using the control of Matthews and Matthews' corporate assets to further his own personal interests;" (3) Defendant "so dominated Matthews that [the two separate legal entities have] no separate existence" and that Matthews "was and is merely a conduit for" Defendant; and (4) Defendant "had no justification or privilege protecting his deliberate, intentional, and willful interference with the contract between [Plaintiff] and Matthews." (Compl. at ¶¶ 4, 5, 33, 51). The Court finds that in light of pertinent Missouri law, Plaintiff's averments sufficiently state a claim on which relief may be granted. Thus, Plaintiff's tortious interference with contract claim survives Defendant's instant Motion. Accordingly, Defendant's Motion is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 16th day of December, 1999, upon consideration of Defendant Jay Royce Brinsfield's ("Defendant") Motion to Dismiss the Complaint Pursuant to Fed. R. Civ. P 12(b)(6)(Docket No. 4), Plaintiff Hallmark Card Inc.'s ("Plaintiff") Memorandum of Law in Opposition to Defendant's Motion (Docket No. 6), Defendant's Reply Memorandum (Docket No. 7), and Plaintiff's Sur Reply (Docket No. 8), IT IS HEREBY ORDERED that Defendant's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.