

Real Prop. Tech., LLC v Giuliano

2005 NY Slip Op 30559(U)

January 6, 2005

Supreme Court, Albany County

Docket Number: 3771-04

Judge: Louis C. Benza

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

REAL PROPERTY TECHNOLOGIES, LLC,
S.T.S. OF NEW YORK CITY, INC. and
PRIMARY FOIL SERVICES, LLC,

Albany County Clerk
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Plaintiffs,

-against-

DECISION and ORDER
Index No. 3771-04

STEPHEN GIULIANO, JOHN BILYCK
and SUPERIOR DATA SERVICES, INC.,

Defendants.

(Supreme Court, Albany County Special Term, November 12, 2004)

(JUSTICE LOUIS C. BENZA, PRESIDING)

APPEARANCES: Thomas P. McQuade, Esq.
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BENZA, J.:

Defendants move to dismiss the complaint of the plaintiffs pursuant to CPLR 3211(a)(7) for failing to state a cause of action and CPLR 3016(b) for failing to detail the alleged fraudulent conduct of the defendants. Specifically, defendants seek the dismissal of the first, second, third, fourth, sixth, seventh, ninth, tenth and eleventh causes of action. Plaintiffs oppose the motion.

Plaintiffs commenced an action against defendants on June 30, 2004 alleging defendants

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Giuliano and Bilyck as former employees of plaintiffs wrongfully and illegally gained access to plaintiff Primary Foil Services, LLC's computer database and converted information for use by defendants without paying plaintiffs for the data obtained. Plaintiffs further allege that when the defendants ceased their employment with plaintiffs, all of the reference publications utilized in plaintiffs' business disappeared. Plaintiffs allege the defendants diverted business opportunities to themselves and to defendant Superior Data Services, Inc. (Superior). Plaintiffs allege they had a contract with Superior to provide them with real property tax information and Superior agreed not to solicit plaintiffs' employees or customers. Plaintiffs contend the defendants fraudulently converted their information from their computer database and diverted their business opportunities. Plaintiffs allege causes of action for conversion (1st, 2nd, 3rd, 9th), fraud (6th, 10th), breach of fiduciary duty (4th), diversion of business opportunities (7th) and the awarding of punitive damages (11th). Plaintiffs allege the complaint gives sufficient notice to the defendants relating to the alleged conversion of real property tax information and publications by defendants from plaintiffs.

Defendants allege plaintiffs failed to demonstrate a cause of action for conversion. Defendants contend computer database information is an intangible and not recoverable in a conversion claim. Defendants contend they never exercised dominion over the tangible property which is a necessary element of a conversion claim. Defendants contend the causes of action alleging breach of fiduciary duty and fraud must be dismissed as they are not plead with specificity. Defendants claim plaintiff Primary Foil Services, LLC must be dismissed from the action as it did not employ any of the defendants. Defendants contend the cause of action seeking punitive damages must be dismissed as New York law does not recognize an independent claim

for punitive damages.

In response to a motion pursuant to CPLR 3211, the pleadings shall be liberally construed, the facts alleged accepted as true, and every possible favorable inference given to plaintiff (Leon v. Martinez, 84 N.Y.2d 83; Manupella v. Troy City Zoning Board of Appeals, 272 A.D.2d 761). On such a motion, the court is limited to examining the pleading to determine whether it states a cause of action (Guggenheimer v. Ginzburg, 43 N.Y.2d 268). In examining the sufficiency of the pleading, the court must accept the facts alleged as true and interpret them in the light most favorable to the plaintiff (Matter of Board of Education v. State Education Dept., 116 A.D.2d 939). On such a motion, the court's sole inquiry is whether the facts alleged in the complaint fit within any cognizable legal theory, not whether there is evidentiary support for the complaint (Leon v. Martinez, *supra*, 87-88; Pietrosanto v. NYNEX Corp., 195 A.D.2d 843).

After a full review of the record, the Court will deny defendants' motion to dismiss the complaint in all respects except cause of action eleventh which seeks punitive damages. The plaintiffs have presented a cognizable legal theory of recovery by alleging a fraudulent conversion of real property tax documents and publications by defendants. Although a claim for conversion of intangible property is not actionable under New York State law (Rao v. Verde, 222 A.D.2d 569; MBF Clearing Corp. v. Shine, 212 A.D.2d 478), an action involving infringement of property rights by virtue of misappropriating tangible property should be properly considered an action to recover for conversion of that property (Sporn v. MCA Records, Inc., 58 N.Y.2d 482). At this initial stage of litigation, reasonable inferences can be derived to conclude that defendants obtained information from plaintiffs' database in the form of notes, or copies of information either in printed form or on disc of tangible materials belonging to plaintiffs.

Defendants contend the plaintiffs' allegations of fraud are insufficiently detailed to satisfy CPLR 3016(b). The statute requires only that the misconduct complained of be set forth in sufficient detail to clearly inform a defendant with respect to the incidents complained of (Knight Securities L.P. v. Fiduciary Trust Co., 5 A.D.3d 172). CPLR 3016(b) is not to be interpreted so strictly as to prevent an otherwise valid cause of action in situations where it may be "impossible to state in detail the circumstances constituting a fraud" (Lanzi v. Brooks, 43 N.Y.2d 947). Given the nature of the allegations here, it would be impossible for the plaintiffs to state the circumstances in more detail because, if the allegations are true, only the defendants would have knowledge of the details (Grumman Aerospace Corp. v. Rice, 196 A.D.2d 572). The court determines that plaintiffs have articulated a sufficient cause of action for fraud and given defendants appropriate notice of their claims.

The test of the sufficiency of a complaint is whether it gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments (CPLR § 3013; Foley v. D'Agostino, 21 A.D.2d 60); Guggenheimer v. Ginzburg, 43 N.Y. 268). The Court must construe and accept the facts alleged in the complaint as true and that they sufficiently state a cause of action.

Finally, in regard to the eleventh cause of action which seeks punitive damages, the claim must be dismissed as plead as New York State does not recognize such a cause of action (Rocanova v. Equitable Life Assurance Society, 83 N.Y.2d 603). Plaintiffs' complaint does not support their claim for punitive damages.

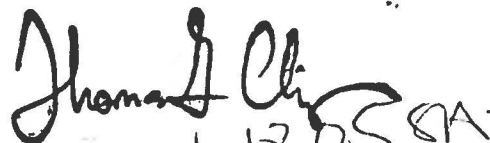
Accordingly, defendants' motion dismissing the complaint is denied with the exception of

the eleventh cause of action.

This memorandum constitutes the Decision and Order of the Court. All papers including this Decision and Order are returned to the attorneys for the plaintiffs. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provision of this rule with regard to filing, entry and Notice of Entry.

Dated: Albany, New York
January 6th, 2005


Louis C. Benza, JSC


1-18-05 BJA

Papers Considered:

1. Notice of Motion dated July 21, 2004;
2. Affirmation of Andrew P. Marks, Esq. dated July 21, 2004 with exhibits annexed;
3. Defendants' Memorandum of Law dated July 21, 2004;
4. Plaintiffs' Memorandum of Law dated September 15, 2004;
5. Defendants' Memorandum of Law dated October 18, 2004 with exhibits annexed.