

<b>Bisley, Inc. v Meadows Off. Suppy Co. Inc.</b>
2020 NY Slip Op 34004(U)
November 30, 2020
Supreme Court, New York County
Docket Number: 654953/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14**

*Justice*

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**INDEX NO. 654953/2020**

BISLEY, INC.,

**MOTION DATE 11/24/2020**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

MEADOWS OFFICE SUPPLY CO., INC., MARISSA ALLEN,  
SHERI DAVID

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for DISMISSAL.

The motion to dismiss by the individual defendants, Allen and David, is granted.

**Background**

Plaintiff is the North American subsidiary of a United Kingdom-based office furniture manufacturer. Plaintiff claims that it has been working with defendant Meadows for over a decade. In the fall of 2019, plaintiff claims that it engaged in discussions about providing office furniture to a large financial institution in America. It argues that Meadows was selected as the dealer for managing this project.

Plaintiff asserts that Meadows ordered, and it delivered, office furniture between February 2020 and August 2020. It insists that Meadows appears to have tried to make a payment of about \$74,000 to a fraudulent bank account; it seems Meadows was the victim of a phishing scam. Plaintiff contends it was not paid by defendants despite it fulfilling its obligations

under the contract. Plaintiff brings three causes of action: for breach of contract against Meadows, account stated against Meadows and against all defendants for conversion.

The individual defendants (“Movants”) move to dismiss the cause of action alleged against them. Movants assert that the conversion claim is a tortured attempt to hold them individually liable for the debts of the corporation. They argue that they were acting in their corporate capacity in connection with the subject transaction. Movants conclude that the conversion action is duplicative of the breach of contract claim and that plaintiff failed to state a claim against them.

In opposition, plaintiff stresses that discovery is necessary to explore the details of payments, and the steps taken by Movants with respect to funds earmarked for plaintiff. It maintains that Movants diverted money that was supposed to be paid to plaintiff and goes beyond a mere failure to pay. Plaintiff argues that the facts relating to the conversion claim are separate and apart from the facts pled with respect to the breach of contract case.

In reply, Movants emphasize that plaintiff cannot allege a possessory interest against Movants. They argue that a promise to pay does not constitute a possessory interest.

### **Discussion**

“On a CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true. Further, on such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff” (*Alden Global Value Recovery Master Fund L.P. v Key Bank Natl. Assoc.*, 159 AD3d 618, 621-622, 74 NYS3d 559 [1st Dept 2018] [internal quotations and citations omitted]).

“A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights” (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50, 827 NYS2d 96 [2006]).

With respect to this claim, plaintiff alleged that all defendants “unlawfully exercised dominion and control over funds earmarked for Bisley. The Defendants received approximately \$500,000 from their institutional client earmarked for Bisley and deliberately diverted the funds by making a payment to a third party” (NYSCEF Doc. No. 1, ¶¶28, 29).

This does not state a claim against Movants and this cause of action is severed and dismissed against them. There are no allegations that *Movants* had a possessory interest in these funds. Instead, the complaint alleges that all defendants, including the corporate defendant, paid a third party instead of plaintiff. That cannot sustain a conversion cause of action against these individual defendants. The fact is that this case concerns a breach of contract—defendant Meadows’ purported failure to pay money owed to plaintiff arising out of a contract. There is no basis to state a claim against individual defendants who were not a party to the contract and where there are no allegations that they did anything other than serve in their capacities as owners of the corporate defendants.

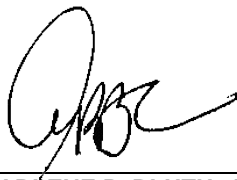
Contrary to plaintiff’s assertion, there is no need to deny the instant motion so that discovery can be conducted. The allegations against Movants do not state a cause of action—that these individuals may have played some role in the alleged conversion is unsurprising (they

are the purported owners of Meadows). But that does not mean plaintiff can pursue a personal liability theory against these defendants.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendants Marissa Allen and Sheri David is granted and the Clerk is directed to enter judgment in favor of these defendants along with costs and disbursements upon presentation of proper papers therefor.

Remote Conference: March 9, 2021.



11/30/2020  
DATE

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ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
				<input type="checkbox"/>