

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PAZUNIAK LAW OFFICE, LLC and)	
GEORGE PAZUNIAK,)	
)	
Plaintiffs,)	
)	C.A. No. N14C-12-259 EMD
v.)	
)	
PI-NET INTERNATIONAL, INC. and)	
LAKSHMI ARUNACHALAM,)	
)	
Defendants.)	

**ORDER DENYING DEFENDANTS MOTION FOR SUMMARY JUDGMENT TO
DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT**

Dr. Lakshmi Arunachalam, Menlo Park, California, *Defendant Pro Se*.

George Pazuniak, Esquire, Pazuniak Law Office LLC, Wilmington, Delaware, *Attorney for
Plaintiffs Pazuniak Law Office, LLC and George Pazuniak*.

DAVIS, J.

Upon consideration of Defendants Motion for Summary Judgment to Dismiss Plaintiff’s First Amended Complaint (“Summary Judgment Motion”) filed by Defendant Lakshmi Arunachalam; Plaintiffs’ Omnibus Answering Brief to (i) Defendant’s Motion to Substitute Parties filed on November 12 and December 1, 2014; (ii) Defendant’s Motion for Transfer of Jurisdiction filed on December 1, 2014; (iii) Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint for Lack of Personal Jurisdiction filed on December 5, 2014; (iv) Defendant’s Motion for Summary Judgment to Dismiss Plaintiff’s First Amended Complaint with Prejudice filed on December 10, 2014; and (v) Defendant’s Motion for Enlargement of Time filed on November 12 and December 10, 2014 (“Omnibus Response”) filed by Plaintiffs Pazuniak Law Office, LLC and George Pazuniak; the First Amended and Supplemental Complaint (the “Complaint”); the arguments of the parties advanced in the Summary Judgment

Motion and the Omnibus Response; the entire record of this civil action; and, the Court having determined no hearing is necessary on the Summary Judgment Motion:

1. This is a civil action that asserts both contractual and tortious causes of action. Plaintiffs Pazuniak Law Office, LLC and George Pazuniak (collectively, “Pazuniak Law”) first filed this matter against Pi-Net International, Inc. (“Pi-Net”) and Dr. Arunachalam in the Court of Common Pleas of the State of Delaware. Pazuniak Law subsequently moved to transfer this action to this Court under 10 *Del. C.* § 1902 (“Section 1902 Motion”). The Court of Common Pleas granted the Section 1902 Motion and entered an order transferring this action on December 19, 2014.

2. Pazuniak Law filed the Complaint on or about December 1, 2014. The Complaint asserts four causes of action against Dr. Arunachalam and Pi-Net: (i) Declaratory Judgment Against Pi-Net Regarding Distribution of Trust Funds and Other Rights and Obligations (“Count I”); (ii) Common Law Libel Against Pi-Net (Count II); (iii) Common Law Libel Against Dr. Arunachalam (Count III); and, (iv) Common Law Tortious Interference with Prospective Business Opportunities Against Dr. Arunachalam and Pi-Net, Jointly and Severally (“Count IV”). Pi-Net and Dr. Arunachalam have not filed answers to the Complaint. By separate order, the Court has set August 31, 2016 as the date by which Pi-Net and Dr. Arunachalam must file answers to the Complaint.¹

3. Dr. Arunachalam filed the Summary Judgment Motion on December 9, 2014 in the Court of Common Pleas. Through the Summary Judgment Motion, Dr. Arunachalam seeks an order either (i) dismissing the Complaint with prejudice or (ii) transferring the civil action to United States District Court for the Northern District of California (the “California District

¹ See Order Granting, in part, Motion for Enlargement of Time to File Answer to the Complaint under Extraordinary Circumstances under FRCP Rule 6(b) entered on July 5, 2016.

Court”). The Summary Judgment Motion argues that dismissal is appropriate because of improper venue, lack of jurisdiction, and the absence of a material fact. Pazuniak Law opposes the Summary Judgment Motion, arguing that the Summary Judgment Motion is directed against the Section 1902 Motion that sought to transfer this civil action from the Court of Common Pleas to this Court. The Omnibus Response also addresses whether Pazuniak Law conceded the venue and jurisdiction points and that summary judgment under Superior Court Civil Rule 56 is not appropriate.

4. The Summary Judgment Motion seeks to have the Court of Common Pleas dismiss this civil action rather than transfer it to this Court. In the alternative, the Summary Judgment Motion argues for transfer of this civil action to the California District Court. The Court holds that the relief sought in the Summary Judgment Motion is now moot. First, the Court of Common Pleas addressed the Section 1902 Motion, and entered an order transferring this action on December 19, 2014. Second, this Court has already decided the issue of whether to transfer this civil action to the California District Court. Pi-Net and Dr. Arunachalam filed the Defendant’s Motion for Transfer of Jurisdiction (the “Motion to Transfer”). The Motion to Transfer similarly sought to transfer this action to the California District Court. This Court denied the Motion to Transfer on June 30, 2016.²

5. The Court has also ruled that the Court: (i) has personal jurisdiction over Pi-Net and Dr. Arunachalam; (ii) is the proper venue for this civil action; and (iii) has subject matter

² See Order Denying Defendant’s Motion for Transfer of Jurisdiction entered on June 30, 2016. For the reasons set forth in the Order Denying Defendant’s Motion for Transfer of Jurisdiction, the Court denies any request in the Summary Judgment Motion to transfer this civil action to the California District Court.

jurisdiction.³ To the extent those arguments are advanced in the Summary Judgment Motion, the Court rejects them for the same reasons set out in detail in the July 7, 2016 Opinion.

6. The Summary Judgment Motion moves to dismiss the Complaint under Superior Court Civil Rule 56. Dr. Arunachalam argues that dismissal is proper because there “is no genuine issue of material fact in dispute.”⁴ Dr. Arunachalam then goes on to detail facts made in the Section 1902 Motion and why those facts are incorrect or in dispute.

7. The standard of review on a motion for summary judgment under Superior Court Civil Rule 56 is well-settled. The Court’s principal function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of material fact exist, “but not to decide such issues.”⁵ Summary judgment will be granted if, after viewing the record in a light most favorable to a non-moving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.⁶ If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment will not be granted.⁷ The moving party bears the initial burden of demonstrating that the undisputed facts support his claims or defenses.⁸ If the motion is properly supported, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the

³ See Opinion, entered on July 7, 2016, denying Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint for Lack of Personal Jurisdiction, Improper Venue and Lack of Subject Matter Jurisdiction, or, in the Alternative to Transfer Venue to the United States District Court for the Northern District of California (the “July 7, 2016 Opinion”).

⁴ Summary Judgment Motion at ¶2.

⁵ *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99-100 (Del. 1992) (internal citations omitted); *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. 1973).

⁶ *Merrill*, 606 A.2d at 99-100; *Dorr-Oliver*, 312 A.2d at 325.

⁷ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962). See also *Cook v. City of Harrington*, 1990 WL 35244, at *3 (Del. Super. Feb. 22, 1990) (citing *Ebersole*, 180 A.2d at 467) (“Summary judgment will not be granted under any circumstances when the record indicates ... that it is desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.”).

⁸ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979) (citing *Ebersole*, 180 A.2d at 470).

ultimate fact-finder.⁹ However, to survive summary judgment, a plaintiff's claim must be based on more than mere speculation. "The Court must decline to draw an inference for the non-moving party if the record is devoid of facts upon which the inference reasonably can be based."

¹⁰ An inference cannot be based on "surmise, speculation, conjecture, or guess, or on imagination or supposition."¹¹

8. Upon review of the Summary Judgment Motion and the entire record of this civil action, the Court finds that the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record. The Summary Judgment Motion addresses facts; however, the Summary Judgment Motion mostly highlights that Dr. Arunachalam disputes the facts alleged by Pazuniak Law in the Complaint and the Section 1902 Motion. Moreover, the Summary Judgment Motion does not argue why Dr. Arunachalam is entitled to judgment as a matter of law beyond the issues relating to venue and jurisdiction – issues the Court has already ruled upon. Summary judgment may be proper at some point in this civil action, but the Court holds that granting relief under Superior Court Civil Rule 56 would be premature at this time.

IT IS HEREBY ORDERED, for the reasons set forth herein, that Defendants Motion for Summary Judgment to Dismiss Plaintiff's First Amended Complaint is **DENIED**.

Dated: July 7, 2016
Wilmington, Delaware

/s/ **Eric M. Davis**

Eric M. Davis, Judge

⁹ See *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

¹⁰ *In re Asbestos Litig.*, C.A. No. N10C-12-011 ASB, 2012 WL 1408982 at *2 (Del. Super. Apr. 2, 2012) (quoting *In re Asbestos Litig.*, CIV.A. 01C-11-239, 2007 WL 1651968 at *16 (Del. Super. May 31, 2007)).

¹¹ *Id.*