IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MacFadyen, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N14C-10-114 CEB
	)	
Scotto's Pastabilities, II, Inc.,	)	
Rossana Carannante, Georgio	)	
Ragnola, and **Hilltop Investment**	)	
Group, LLC,	)	
	)	
Defendants.	)	

Submitted: May 6, 2015
Decided: July 8, 2015

OPINION

Upon Consideration of Scotto's Pastabilities, II, Inc.,
Rossana Carannante and Georgio Ragnola's Motion to Dismiss Plaintiff's
Amended Complaint for Failure to State a Claim.
DENIED.

James E. Owen, Esquire, JAMES W. OWEN, P.A., Wilmington, Delaware. Attorney for Plaintiff MacFadyen, LLC.

Charles J. Brown, Esquire, GELLERT SCALI BUSENKELL & BROWN, LLC, Wilmington, Delaware. Attorney for Defendants' Scotto's Pastabilities, II, Inc., Rossana Carannante and Georgio Ragnola.

BUTLER, J.

This dispute arises out of the sale of a business that was operating in a leased space. As part of the purchase price of the business, the Plaintiff paid $250,000 to the sellers for certain equipment used in the business. A third party, the owner of the building in which the business was operating, has now claimed ownership of most of the equipment. The Plaintiff has sued the sellers of the business asserting theories of breach of contract and fraud because, at the time of the sale, the sellers warranted that they were the sole owners of all of the equipment, furniture, and fixtures inside the business. The sellers have filed a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted.

FACTS

There was a restaurant over on Centerville Road called Lamberti's Cucina ("the Cucina").[1] The principals in the Cucina were Defendants Rosanna Carannante and Georgio Ragnolo, doing business under the name of Defendant Scotto's Pastabilities II, Inc. From the limited record thus far, it seems that the Cucina was doing *non bene* as the rent was deeply in arrears.

And so it came to pass that a buyer was found to take the Cucina off the hands of the incumbents. The buyer was listed as Lisa Ann MacFadyen, but it appears from some of the correspondence that the "real" purchaser was her son, Ian MacFadyen. Regardless, Lisa Ann and her husband William C. MacFadyen

[1] The facts derive from the Plaintiff's Amended Complaint and the seven exhibits attached thereto.

each signed a promissory note as guarantors on a loan taken by Ian as "manager" of "MacFadyan, LLC."

Some terms of the deal made in June 2012 are relevant here. The MacFadyen's would put up $55,000 in cash and execute a promissory note in favor of the sellers for $220,000. The Closing under the Agreement of Sale was held on August 15, 2012. As part of the Closing, the sellers procured an assignment of their lease for the property from the landlord of the shopping center at which the Cucina was located. There was also set out some fairly specific schedules, listing the furnishings and equipment which, according to a Bill of Sale, were owned free and clear by the sellers. Indeed, $250,000 of the total sale price of $275,000 was allocated to the value of the furnishings and equipment. The Closing was contingent upon Plaintiff obtaining an assignment of the existing Lease Agreement with Defendant Hilltop Investment Group LLC, the owner of the premises in which the Cucina was operating.

This whole arrangement ended up in court when the MacFadyen's defaulted on the payments under the promissory note. Scotto's filed for confession of judgment in Superior Court based upon the default on the Note.[2] The MacFadyen's filed a breach of contract action in the Court of Common Pleas, claiming that much of the equipment sold was defective. After some skirmishing,

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[2] Case Number: N14J-03218

the Court of Common Pleas matter was transferred to this court, primarily for ease of handling since the confession of judgment action was already here.

At about the time of the transfer to this Court, the breach of contract action took on a decidedly different tone. For it was on or about January 14, 2015, that Hilltop – the shopping center landlord – informed the MacFadyens that Hilltop was actually the owner of most of the equipment, furniture, and fixtures that Plaintiff "purchased" from Scotto's. The suggestion is that Plaintiff got nothing for its $220,000 promissory note and $30,000 in cash. Plaintiff amended its relatively modest breach of contract action to include new counts of fraudulent inducement, intentional misrepresentation and civil conspiracy. Defendants Scotto's, Carannante, and Ragnola have filed a motion to dismiss the Amended Complaint under Superior Court Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

STANDARD OF REVIEW

"A motion to dismiss for failure to state a claim upon which relief can be granted made pursuant to Superior Court Rule 12(b)(6) will not be granted if the plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."[3] All well-pled allegations in the complaint must be accepted as true.[4]

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[3] *Martin v. Widener Univ. Sch. of Law*, 1992 WL 153540, at *2 (Del. Super. Ct. June 4, 1992).

DISCUSSION

"In order to survive a motion to dismiss for failure to state a breach of contract claim, the plaintiff must demonstrate: first, the existence of the contract, whether express or implied; second, the breach of an obligation imposed by that contract; and third, the resultant damage to the plaintiff."[5] In this case, Plaintiff has attached the Agreement of Sale and the Bill of Sale to the Complaint, both of which warrant title and purport to convey the equipment, furniture, and fixtures inside the Cucina's premises.

The Complaint alleges that Hilltop has recently informed Plaintiff that it owns most of the equipment. The Plaintiffs allege that they have incurred damages because they incurred a $250,000 liability for equipment, but the seller did not have the right to sell the equipment. Therefore, Plaintiff has pled a prima facie case of breach of contract.

Moving Defendants claim that the Plaintiff cannot assert a breach of contract claim because Plaintiff breached the lease between Hilltop and Plaintiff. That the Plaintiff is (or was) in default of the lease is actually quite irrelevant to their action against Scotto's. This action is predicated upon the Agreement of Sale of the business and the associated Bill of Sale of equipment. The state of the lease

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[4] *Id.*

[5] *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

between the Plaintiff and Hilltop is quite a collateral matter and is no basis upon which to toss the Amended Complaint. Counts I and II alleging breach of contract will not be dismissed.

The elements of fraud are: (1) a false representation made by the defendant; (2) the defendant's knowledge or belief that the representation was false, or was made with reckless indifference to the truth; (3) an intent to induce the plaintiff to act; (4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and (5) damages to the plaintiff as a result.[6] The Amended Complaint alleges that the Moving Defendants represented that they were the sole owners of the equipment, furniture, and fixtures that they were selling under the Agreement of Sale and the Bill of Sale. The Amended Complaint further alleges that the Moving Defendants knew that they did not own the equipment, and that they intended to induce Plaintiff to buy the equipment. The parties allocated $250,000 of the purchase price to equipment, furniture, and fixtures based on the Moving Defendants' representations that they actually owned the equipment and had the right to sell it.

Moving Defendants argue that "Plaintiff simply cannot claim with a straight face that it is the least bit justifiable for it to believe that it can rip out all of the

[6] *Gaffin v. Teledyne, Inc.*, 611 A.2d 467, 472 (Del. 1992).

fixtures of a leased premises under a lease that it has breached especially when the Plaintiff was aware of the lease and separately contracted with the landlord." One supposes that this might hold more sway if the furniture, fixtures and equipment were clearly the property of the landlord under the terms of the agreements executed between the parties, but that is hardly clear in these pleadings. Under the pleadings before the Court, one may well conclude that the tenant, having purchased title to "all of the fixtures" could do as he pleased with them subject, of course, to liability for damage to the demised premises for ripping them out.

We do not mean to suggest here that Plaintiff has set forth a dazzling claim for relief and we are swept away by Plaintiff's rhetoric. Rather, Defendants ask the Court to deny Plaintiff any further proceedings to explain its position. The Court's difficulty is not so much with who should win this dispute or for how much, but rather with the fact that this is a motion to dismiss that asks us to conclude that there is no set of facts or circumstances by which Plaintiff would be entitled to any relief. Mindful of the limited nature of our review, we are unwilling to do so.

As to the one count of civil conspiracy, Plaintiff must show that there was a confederation of two or more persons, that an unlawful act was done in furtherance of the conspiracy, and actual damage.[7] "[A] corporation generally cannot be

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[7] *Nicolet, Inc. v. Nutt*, 525 A.2d 146, 149-50 (Del. 1987).

deemed to have conspired with its officers and agents for purposes of establishing jurisdiction under the conspiracy theory. An exception exists to this general rule, however, when the officer or agent of the corporation steps out of her role as an officer or agent and acts pursuant to personal motives."[8] Further, "corporate officials may be held individually liable for their tortious conduct, even if undertaken while acting in their official capacity. This rule applies to claims of fraud . . . ."[9]

The Plaintiff alleges that Ragnolo and Carannante, in their capacity as shareholders and operators of the Cucina, signed the Agreement of Sale that warranted that Scotto's was the "sole and unconditional Owner of the business, its equipment, furniture and fixtures . . . ." The Complaint also alleges that, as owners and operators of the Cucina, Ragnolo and Carannante knew that they did not own the equipment, but they sold it for $250,000 anyway. These allegations are sufficient to survive a Rule 12(b)(6) motion to dismiss.

Again, we will reiterate that the scope of the Court's duty at this juncture is not to pronounce winners or losers, or to root for one side or the other. Rather, it is plain from the pleadings and the attached exhibits that there is much to be fleshed

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[8] *Amaysing Technologies Corp. v. Cyberair Commc'ns, Inc.*, 2005 WL 578972, at *7 (Del. Ch. Mar. 3, 2005).

[9] *Duffield Associates, Inc. v. Meridian Architects & Engineers, LLC*, 2010 WL 2802409, at *4 (Del. Super. Ct. July 12, 2010) (citing *Donsco, Inc. v. Casper Corp.,* 587 F.2d 602, 606 (3rd Cir.1978)).

out here before the case will be appropriate for disposition, be it through trial or otherwise.

For the foregoing reasons, Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

/s/ Charles E. Butler
Charles E. Butler, Judge