

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

E. I. FAN COMPANY, L.P., Plaintiff,	: APRIL TERM, 2003
	: No. 0327
v.	
ANGELO LIGHTING COMPANY, SEA GULL LIGHTING PRODUCTS, INC., WESTINGHOUSE LIGHTING CORPORATION, : ENCON ELECTRIC, L.P., STANLEY ANGELO, RAYMOND ANGELO, JOHN ANGELO, : MICHAEL HIRSH, ALAN HIRSH, SUSAN SOLOMON AUERBACH, and : EDWIN N. SOLOMON	: Commerce Program
Defendants.	: Control No. 061530

ORDER

AND NOW, this 18th day of August 2003, upon consideration of defendants' (Angelo Lighting Company, Sea Gull Lighting Products, Inc., Westinghouse Lighting Corporation, Encon Electric L.P., Stanley Angelo, Raymond Angelo, John Angelo, Michael Hirsch, Alan Hirsch, Susan Solomon Auerbach and Edwin N. Solomon) Preliminary Objections, plaintiff's response in opposition, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion being filed of record, it is hereby **ORDERED** that the Preliminary Objections are **Overruled, in part**, and **Sustained, in part** as follows:

1. Defendants' Preliminary Objection pursuant to Pa. R. C. P. 1509 is **Overruled**;
2. Defendants' Preliminary Objection to Count III is **Overruled**;
3. Defendants' Preliminary Objection to Count V is **Sustained**; and
4. Defendants Preliminary Objection regarding punitive damages is **Overruled**.

Plaintiff may amend the Complaint within twenty-two (22) days from the date of this Order with respect to Count V.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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E. I. FAN COMPANY, L.P.,	: APRIL TERM, 2003
Plaintiff,	
	: No. 0327
v.	
ANGELO LIGHTING COMPANY,	: Commerce Program
SEA GULL LIGHTING PRODUCTS, INC.,	
WESTINGHOUSE LIGHTING CORPORATION,	:
ENCON ELECTRIC, L.P., STANLEY ANGELO,	
RAYMOND ANGELO, JOHN ANGELO,	:
MICHAEL HIRSH, ALAN HIRSH,	
SUSAN SOLOMON AUERBACH, and	:
EDWIN N. SOLOMON	
Defendants.	: Control No. 061530

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O P I N I O N

Albert W. Sheppard, Jr., J. August 18, 2003

Before this court are the Preliminary Objections of defendants, Angelo Lighting Company, Sea Gull Lighting Products, Inc., Westinghouse Lighting Corporation, Encon Electric L. P., Stanley Angelo, Raymond Angelo, John Angelo, Michael Hirsch, Alan Hirsch, Susan Solomon Auerbach and Edwin N. Solomon (Defendants). For the reasons discussed, this court is issuing a contemporaneous Order overruling, in part, and sustaining, in part, the Preliminary Objections.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff alleges that Encon Electric and E.I. Fan Company, L.P. (E. I. Fan) entered into an Asset Purchase Agreement pursuant to which Encon Electric was to acquire the assets and some liabilities of E.I. Fan. (Complaint ¶ 21). Disputes concerning this asset purchase agreement arose resulting in Encon Electric's demand for arbitration. Following hearings and written submissions, the arbitrator awarded E.I. Fan \$1,380,815.80, plus interest. (Complaint ¶ 22). In May 2002, this court granted E.I. Fan's petition to confirm the arbitrator's award against Encon Electric.

While the arbitration was pending, in September 2000, Encon Electric entered into two Asset Purchase Agreements, divesting itself of substantially all of its assets. One of the Agreements was with Angelo Lighting Company ("ALCO") and the other was with Sea Gull. (Complaint ¶ 25). The principals of Alco and Sea Gull also controlled Encon Electric. (Complaint ¶ 14, 16-20, 32). After the asset transfers, ALCO and Sea Gull used the assets, goodwill, business opportunities and many of the employees of Encon Electric to engage in the business which had been conducted by Encon Electric and dealt with some or all of the same customers and suppliers who had dealt with Encon Electric. (Complaint ¶ 31). E.I. Fan had no knowledge of these transactions.

As a result of the Asset Purchase Agreements with ALCO and Sea Gull, Encon Electric has ceased doing business and does not have sufficient assets to pay the debt owed to E.I. Fan. (Complaint ¶ 33).

On April 8, 2003, plaintiff filed a Five-Count Complaint in equity alleging the following: Count I - Fraudulent Transfer against Angelo Lighting Company, Sea Gull Lighting Company, Encon Electric, L.P. and Westinghouse Lighting Corporation, Count II - Fraudulent Transfer as against Seagull Lighting Company and Encon Electric, L.P., Count III - Conspiracy to Commit Fraudulent Conveyance, Count IV

- Breach of Subordination Agreement and Count V - Breach of Fiduciary Duty.

DISCUSSION

1. Improper Form of Cause of Action¹

Defendants argue that plaintiff's action should be certified to the law side of the court since plaintiff is seeking money damages for all counts in its complaint and therefore has a full, complete and adequate remedy at law. Dfts. Brief pg. 4. In response plaintiff argues that it seeks both legal and equitable remedies in its complaint and that this court may provide both legal and equitable relief. Plts. Brief pg. 6. These Preliminary Objections are overruled.

This court is vested with jurisdiction to sit in equity and in law. Indymac Bank, FSB v. Bey, 2002 WL 31082395, * 2 (Pa. Com. Pl. 2002) (Sheppard) (citing 42 Pa. C.S. § 952). Where the action is in equity and seeks both equitable relief and legal relief (for which an action at law is an adequate remedy), the court will adjudicate all such claims in the equity action in order to do complete justice and avoid piecemeal litigation. Com. v. Kitchen Appliances Distributors, Inc., 27 Pa. D. & C. 3d 91, 95 (1 Pa.Com. Pl. 1981). "Equity has jurisdiction to do complete justice between the parties.....equity will itself proceed to round out the whole circle of controversy, by deciding every other contention connected with the subject matter of the suit, including the amount of damages to which plaintiff is entitled because of injuries sustained." Id. (quoting *Wortex* 11, 13, citations omitted). "The equity side of court shall always be open." Indymac Bank, supra. Id.; (quoting Pa. R.Civ. P. 1502).

¹Defendants in their brief apply Pennsylvania law. The plaintiff does not dispute the application of Pennsylvania law.

Here, plaintiff seeks equitable relief in Counts I and II (Fraudulent Conveyance) and legal remedies in Counts I through V. Counts I and II purport to allege causes of action under the Uniform Fraudulent Transfer Act. (UFTA) The UFTA places no statutory limitations on the procedure to be used to enforce its provisions. Koffman v. Smith, 453 Pa. Super. 15, 682 A.2d 1282, 1288 (Pa. Super. 1996) (quoting Greater Val. Terminal Corp. v. Goodman, 415 Pa. 1, 4, 202 A.2d 89, 92 (Pa. 1964)). Since, the UFTA does not specify a particular procedure and since this court is vested with the full jurisdiction of the whole court, this Preliminary Objection is overruled.²

2. Insufficiency Specificity Count III

Defendants contend that the Complaint fails to allege or show sufficient facts to support its conspiracy claim, arguing that plaintiff fails to allege sufficiently that defendants **intended** to harm plaintiff when they entered into the Asset Purchase Agreements. Dft. Brief pgs. 5-6.

To state a cause of action for civil conspiracy, a plaintiff must allege: “(1) a combination of two or more persons acting with a common purpose to do an unlawful act by unlawful means or for and unlawful purpose; (2) an overt act done in pursuance of the common purpose, and (3) actual legal damage.” Solomon Edwards Group, L.L.C. v. Voicenet Corp., 2001 WL 1807886 * 3 (Pa. Com. Pl. 2001) (Sheppard) (quoting McKeeman v. Corestates Bank, N.A., 751 A.2d 655, 660 (Pa. Super. Ct. 2000)). Malice and intent are required elements of this cause of action, however, they may be averred generally. Koch v. First Union Corporation, 2002 WL 372939, * 9 (Pa. Com. Pl. 2002) (Herron). A complaint for

²The court acknowledges that equitable relief should be denied when an adequate remedy at law exists. However, at this juncture, the court is unable to make such a determination.

conspiracy must either allege facts that are direct evidence of the combination and intent, or circumstantial evidence that, if proven, will support an inference of the combination and intent. Id.

Here, the plaintiff has sufficiently alleged a claim for conspiracy. Plaintiff alleges that defendants knew the Asset Purchase Agreements would render Encon insolvent. (¶ 50). The plaintiff further alleges that each of the defendants knew that the asset transfers would hinder and delay E.I. Fan in the collection of amounts owed to it by Encon. (¶ 52). Accordingly, this Preliminary Objection to Count III is overruled.

3. Count V Breach of Fiduciary Duty

Defendant Edwin N. Solomon asserts that the claim against him for breach of fiduciary duty in Count V of the complaint is legally insufficient. The court agrees.

In Basile v. H & R Block, Inc., 777 A.2d 95, 101 (Pa. Super. 2001), our Superior Court repeated the general concepts for finding a confidential relationship and the resulting fiduciary duty. Pennsylvania Chiropractic Ass'n. v. Independence Blue Cross, 2001WL 1807781 *9 (Pa. Com. Pl. 2001) (Herron). “The essence of [a confidential] relationship is trust and reliance on the one side, and a corresponding opportunity to abuse that trust for personal gain on the other.” Id. at *4 (quoting In re Scott's Estate, 455 Pa. 429, 434, 316 A.2d 883, 885 (Pa. 1974)). A confidential relationship thus exists where the parties do not deal on equal terms, “but, on the one side there is an overmastering influence, or on the other, weakness, dependence or trust, justifiably reposed.” Id. (quoting Basile at 4-5). “The party in whom the trust and confidence are reposed must act with scrupulous fairness and good faith in his dealings with the other and refrain from using his position to the other’s detriment and his own advantage.” Id. (quoting Basile). A confidential relationship and the resulting fiduciary duty may attach ‘wherever one occupies toward another

such a position of advisor or counselor as reasonably to inspire confidence that he will act in good faith for the other's interest.' Id. Such a relationship may be found as between trustee and cestui que trust, guardian and ward, attorney and client, or principal and agent, or where the facts and circumstances so indicate and are apparent on the record. Id.

Here, the complaint fails to allege sufficient facts to establish a confidential relationship between Edwin N. Solomon and plaintiff. Although the plaintiff alleges that Solomon has an indirect equity interest in Encon, absent is any allegation qualifying Solomon's indirect equity interest. As a result Solomon's Preliminary Objection is sustained. Plaintiff is granted leave to amend the complaint with respect to Count V.

4. Punitive Damages

Defendants have also moved to strike plaintiff's demand for punitive damages. Defendants assert that punitive damages are barred in a suit in equity and that plaintiff has failed to state with specificity its basis for punitive damages. This court disagrees.

In Pennsylvania, where the essentials for an award of punitive damages are established, a court in equity may award punitive damages. Com. v. Kitchen Appliances Distributors, Inc., 27 Pa. D. & C. 3d 91, 91 (Pa. Com. Pl.1981); see also Lomberk v. Lenox, 19 Phila. Co. Rptr. 562, 583-585 (1989) (A court of equity should not be precluded from awarding punitive damages where the facts warrant such a recovery.).

Pennsylvania has adopted Section 908(2) of the Restatement (Second) of Torts regarding the imposition of punitive damages and permits punitive damages only for conduct that is "outrageous because

of the defendant’s evil motives or his reckless indifference to the rights of others.” Arbor Associates, Inc. v. Aetna U.S. Healthcare, 2003 WL 1847497, *2 (Pa. Com. Pl. 2003) (Jones) (quoting Restatement (Second) of Torts § 908(2)). A court may award punitive damages only if the described conduct was “malicious, wanton, reckless, willful, or oppressive.” Id. (Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355, 358 (Pa. 1963)). The proper focus is “on the act itself together with all the circumstances including the motive of the wrongdoer and the relations between the parties . . .” Id.

Based on the averments in Count III and giving plaintiff all reasonable inferences deducible from the Complaint, this court cannot, at this juncture, conclude that the claim for punitive damages must fail. Accordingly, the Preliminary Objection regarding punitive damages is overruled.

CONCLUSION

For these reasons, defendants’ Preliminary Objections are overruled, in part, and sustained, in part:

1. Defendants’ Preliminary Objection pursuant to Pa. R. C. P. 1509 is overruled;
2. Defendants’ Preliminary Objection to Count III is overruled;
3. Defendants’ Preliminary Objection to Count V is sustained; and
4. Defendants Preliminary Objection regarding punitive damages is overruled.

Plaintiff is granted leave to amend the Complaint within twenty-two (22) days from the date of this Order as it pertains to Count V of the Complaint.

This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.