

Shaw v. Shaw, 2014 NCBC Order 2.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

BLADEN COUNTY

14 CVS 264

SHERRY L. SHAW,

Plaintiff,

v.

MICHAEL H. SHAW, JOHNNY W.
SHAW, RUBY KATHRYN SHAW f/k/a
Ruby Kathy Nutley, and a/k/a Kathi Shaw,
MKJS CORPORATION, and HOME &
INDUSTRIAL, INC.,

Defendants.

ORDER

THIS MATTER is before the Court upon Defendant Michael H. Shaw’s (“Defendant M. Shaw”) Motion to Dismiss Sixth Claim (“Motion I”) and Motion for More Definite Statement (“Motion II”) in the above-captioned case. This Court held a hearing on the Motions on August 21, 2014, at which Plaintiff Sherry L. Shaw (“Plaintiff”), Defendant M. Shaw, and Defendant Johnny W. Shaw (“Defendant J. Shaw”) were represented by counsel. Based on the Motions, briefs, and arguments of counsel at the hearing, the Court **DENIES** the Motions.

I.

MOTION I

1. On a motion to dismiss under N.C.R.C.P. Rule 12(b)(6), the Court considers “whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not.” *Harris v. NCNB Nat’l Bank*, 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987) (citing *Stanback v. Stanback*, 297 N.C. 181, 254 S.E.2d 611 (1979)). Although “the well-pleaded material allegations of the complaint are taken as admitted, . . . conclusions of law or

unwarranted deductions of fact are not admitted.” *Sutton v. Duke*, 277 N.C. 94, 98, 176 S.E.2d 161, 163 (1970) (citation omitted) (internal quotation marks omitted).

2. In her Sixth Claim for Relief for alleged embezzlement, Plaintiff alleges that Defendant M. Shaw engaged in actions “in violation of North Carolina’s criminal laws, including, but not limited to N.C.G.S. § 14-90 and/or § 14-100,” and that Plaintiff and MKJS are entitled to recover damages and reasonable attorney’s fees pursuant to N.C.G.S. § 1-538.2. (Compl. ¶¶ 61–62.) Defendant argues that Plaintiff’s Sixth Claim should be dismissed under Rule 12(b)(6) because Plaintiff has not alleged “any specific acts or intent by any particular defendant” in the claim and Defendant M. Shaw cannot ascertain which criminal statute Plaintiff claims he has violated. (Def.’s Br. Supp. Mot. I, p. 3.)

3. Under North Carolina’s general rules of pleading,

[a]bsent a specific pleading requirement such as those outlined in Rule 9 of the North Carolina Rules of Civil Procedure, all that is required is “[a] short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief.

Barbarino v. Cappucine, Inc., 722 S.E.2d 211 (N.C. Ct. App. 2012) (citing N.C.G.S. § 1A-1, Rule 8) (unpublished).

4. Furthermore, “[p]leadings comply with our present concept of notice pleading if the allegations in the complaint . . . give [the opposing party] sufficient notice of the nature and basis of [the] claim to file an answer, and the face of the complaint . . . shows no insurmountable bar to recovery.” *Gatlin v. Bray*, 81 N.C. App. 639, 644, 344 S.E.2d 814, 817 (1986) (citation omitted). Intent and other conditions of the mind may be averred generally. N.C.G.S. § 1A-1, Rule 9(b) (2014).

5. Section 1-538.2 of the North Carolina General Statutes make anyone who commits an act punishable as larceny, shoplifting, theft by employee, embezzlement, or obtaining property by false pretense liable for civil damages to the owner of the property. N.C.G.S. § 1-538.2 (2014). Although Defendant M. Shaw contends that he cannot ascertain which criminal statute Plaintiff claims he has violated, Plaintiff specifically alleges two statutes Defendant M. Shaw has violated: “N.C.G.S. § 14-90 and/or § 14-100.” Section 14-90 imposes criminal liability for embezzlement of property received by virtue of office or employment and Section 14-100 imposes criminal liability for obtaining property by false pretenses. *See* N.C.G.S. §§ 14-90, 14-100 (2014).

6. To state a claim for civil liability based on Defendant M. Shaw’s criminal liability for embezzlement under Section 14-90, Plaintiff must allege Defendant M. Shaw lawfully acquired MKJS’s property pursuant to a trust relationship and then wrongfully converted it. *See State v. Mumford*, 364 N.C. 394, 400–401, 699 S.E.2d 911, 916 (2010). Defendant M. Shaw contends Plaintiff has not alleged any specific acts or intent by a Defendant. The Complaint, however, shows otherwise.

7. In particular, Plaintiff alleges that Defendant M. Shaw is a fiduciary of MKJS and the owner of H&I; that in the course of managing MKJS, Defendant M. Shaw deposited MKJS’s payments into accounts held by H&I for his and H&I’s benefit; and that Defendant M. Shaw used MKJS’s credit cards to pay personal expenses for himself and other members of his immediate family. (Compl. ¶¶ 5, 16–18, 20, 25, 41–43.) Further, Plaintiff alleges that funds rightly owed to her by MKJS were “wrongfully diverted by and to the other Defendants” and that the conduct described in the Complaint was “willful, wanton, [and] intentional” (Compl. ¶¶ 35, 68.) The Court concludes that, taken together, these allegations give Defendant M. Shaw

“sufficient notice of the nature and basis of the claim to file an answer” and sufficiently aver facts that show “no insurmountable bar to recovery.” *Gaitlin, supra*.

8. In addition, to state a claim for civil liability based on Defendant M. Shaw’s criminal liability for obtaining property by false pretenses under Section 14-100, Plaintiff must allege Defendant M. Shaw, with the intent to cheat or defraud MKJS of its property, knowingly and designedly used false pretense to obtain or in an attempt to obtain MKJS’s property. *State v. Jones*, 758 S.E.2d 345, 351 (N.C. 2014) (citing N.C.G.S. § 14-100). Plaintiff alleges “MKJS repeatedly made false and/or misleading statements to [Plaintiff] regarding [its] financial performance and condition, and other particulars of [its] governance and operations” in addition to the allegations set forth in paragraph 7 above. (Compl. ¶ 25.) The Court again concludes that, taken together, these allegations are sufficient to put Defendant M. Shaw on notice of Plaintiff’s claim for civil liability under N.C.G.S. § 1-538.2 and otherwise comport with the requirements of N.C.R.C.P. 8.

9. Accordingly, the Court concludes that Plaintiff’s Sixth Claim for Relief states a cognizable claim under North Carolina law and, therefore, that Motion I should be **DENIED**.

II.

MOTION II

10. In determining a motion for more definite statement under N.C.R.C.P. Rule 12(e), the Court considers whether “a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.” N.C.G.S. § 1A-1, Rule 12(e) (2014). Motions for more definite statement are not favored by the courts and are “sparingly granted because pleadings may be brief and lacking in factual detail, and because of the extensive discovery devices available to the movant.” *Ross v. Ross*, 33 N.C.

App. 447, 454, 235 S.E.2d 405, 410 (1977) (citation omitted). As long as the pleading meets the standards of N.C.R.C.P. Rule 8 and the opposing party is adequately notified of the nature of the claim, a motion for more definite statement will be denied. *Id.* (citation omitted).

11. Defendant M. Shaw argues that subparagraphs 25(e) and 25(j) of the Complaint contain very broad allegations without specific details and that he “cannot reasonably be required to frame a response to Plaintiff’s allegations.” (Def.’s Br. Supp. Mot. II, p. 2.)

12. The Court has reviewed subparagraphs 25(e) and 25(j) in light of Rule 8’s notice pleading requirements and finds that these subparagraphs fairly notify Defendant M. Shaw of the nature of Plaintiff’s claims against him, particularly in light of Defendant M. Shaw’s executive roles with MKJS and H&I.

13. Accordingly, the Court concludes that Defendant M. Shaw is adequately equipped to frame a responsive pleading to those allegations and, therefore, that Motion II should be **DENIED**.

III.

CONCLUSION

14. **WHEREFORE**, the Court hereby **DENIES** Defendant M. Shaw’s Motion to Dismiss Sixth Claim and Motion for a More Definite Statement.

SO ORDERED, this the 25th day of August, 2014.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Special Superior Court Judge
for Complex Business Cases