

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

SOLOMON EDWARDS GROUP, L.L.C. : JUNE TERM, 2000  
Plaintiff

v. : No. 1822

VOICENET CORPORATION, and :  
LOUIS NORELLI

Defendants : Control No. 120517

**O R D E R**

AND NOW, this 29th day of March 2001, upon consideration of defendants' Preliminary Objections to the Amended Complaint, plaintiff's opposition thereto, the respective memoranda, all matters of record and in accord with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that the Preliminary Objections are **Overruled**.

It is further **ORDERED** that defendants shall file an Answer to the Amended Complaint within twenty-two (22) days of the date of this Order.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**

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**O P I N I O N**

**ALBERT W. SHEPPARD, JR., J. .... March 29, 2001**

Presently before this court are the Preliminary Objections of defendants, Voicenet Corporation (“Voicenet”) and Louis Norelli (“Norelli”) to the Amended Complaint of plaintiff, Solomon Edwards Group, L.L.C. (“SEG”).

For the reasons set forth, the Preliminary Objections are overruled.

## BACKGROUND

The operative facts, as pleaded in the Amended Complaint, are as follows.<sup>1</sup> SEG engages in the business of providing employment staffing and accounting services. Am.Compl. at ¶ 7. On January 14, 2000, SEG offered employment to Norelli to perform various services, and Norelli accepted. *Id.* at ¶ 22. On that date, Norelli signed a employment agreement with SEG, by which Norelli agreed that he would not “accept any permanent employment from any client” to whom SEG assigned him “within six (6) months from and after the termination of the last assignment unless first discussed with SEG.” *Id.* See also, Pl. Resp., Exhibit B. Norelli also agreed to “promptly notify SEG in the event any offer of permanent employment is made by such client.” Pl. Resp., Exhibit B.

In January 2000, Voicenet contacted SEG in connection with Voicenet’s need to generate financial statements for the years ending 1997, 1998 and 1999 for use in an upcoming financial audit by Arthur Anderson accounting firm. Am.Compl. at ¶ 8. In response, SEG submitted a proposal to perform the requested services, at a specified hourly rate for each person that SEG provided, and to prepare the needed work papers. *Id.* at ¶ 10. See also, Pl. Resp., Exhibit A. Voicenet agreed to the terms of SEG’s proposal. *Id.* at ¶ 11.

Thereafter, from January 17 through March 5, 2000, SEG personnel completed the work outlined in SEG’s proposal, by providing services for Voicenet so the accountants could complete their audit and by preparing SEG work papers in connection with those services. *Id.* at ¶¶ 12-15. Upon

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<sup>1</sup>The Amended Complaint is attached as Exhibit D to defendants’ Preliminary Objections, as well as at Exhibit 1 to plaintiff’s Response. References in this Opinion to “Exhibits” are those exhibits attached to the Preliminary Objections and/or plaintiff’s Response.

completion of these accounting services, SEG invoiced Voicenet in the amount of \$95,653.60, of which Voicenet paid only \$50,535.58. Id. at ¶ 17-18. Voicenet purportedly refuses to pay the remaining \$45,118.02. Id. at ¶ 18. SEG also demanded that Voicenet return SEG's work papers and not use or disclose the contents of those work papers to anyone. Id. at ¶ 19. Voicenet has failed to return SEG's work papers and has purportedly disclosed their contents to third parties without SEG's permission. Id. at ¶ 20.

While Norelli and other SEG personnel were providing the requested services for Voicenet, Voicenet discussed with SEG the possibility of Voicenet's permanently hiring certain of the personnel provided by SEG. Id. at ¶ 23. SEG informed Voicenet that it had employment agreements with its personnel and that Voicenet would be required to pay SEG a permanent placement fee if it wished to hire away any of those personnel. Id. Voicenet allegedly agreed to these terms. Id.

Voicenet and Norelli allegedly agreed and conspired to breach their respective agreements with SEG by Norelli's entering into a permanent employment relationship with Voicenet without notifying SEG and without Voicenet paying a permanent placement fee to SEG. Id. at ¶ 24. As alleged, this conspiracy by Voicenet and Norelli to interfere with each other's contract with SEG and to breach their respective contracts "was done willfully, with specific intent to harm SEG and with reckless indifference to SEG's rights under those agreements." Id. at ¶ 25. As a result, Voicenet made an offer of permanent employment to Norelli, who accepted without notifying or discussing it with SEG. Id. at ¶ 26. Pursuant to the alleged conspiracy, Voicenet refused to pay to SEG the permanent placement fee of \$23,850 which SEG demanded of Voicenet for hiring Norelli on a permanent basis. Id. at ¶¶ 27-29.

During this same period, Voicenet had requested SEG to conduct an employee search and recruit a candidate for the position of Chief Financial Officer (“CFO”) at Voicenet. *Id.* at ¶ 30. SEG proposed to conduct such a search in exchange for Voicenet’s payment to SEG of 30% of the cash compensation earned by the hired candidate during the first year of employment with Voicenet. The compensation was to include the estimated amount of bonus monies that would be paid to the hired candidate. *Id.* Voicenet purportedly agreed to this proposal. *Id.* at ¶ 31. Thereafter, SEG identified and presented Mr. Rick Bare as a candidate for the CFO position at Voicenet. *Id.* at ¶ 32. Voicenet offered Mr. Bare the CFO position at an annual salary of \$140,000 and a bonus of approximately \$65,000 for the first year of employment with Voicenet. *Id.* at ¶ 33. Mr. Bare accepted Voicenet’s offer and is currently working as its CFO. *Id.* at ¶ 34. SEG demanded a permanent placement fee of \$65,190 for Voicenet’s hiring Mr. Bare, but Voicenet has refused to pay. *Id.* at ¶¶ 35-36.

With this background, on June 15, 2000, plaintiff filed its Complaint against Voicenet and Norelli. Defendants filed Preliminary Objections, asserting a failure to attach a writing, a lack of specificity and a demurrer. On October 5, 2000, this court sustained those objections and granted SEG leave to file an Amended Complaint within twenty days.

SEG filed its Amended Complaint on October 25, 2000, setting forth counts for breach of contract, tortious interference with existing contractual relations, promissory estoppel and civil conspiracy. Am.Compl. at ¶¶ 37-56. Plaintiff seeks injunctive relief relating to its work papers, as well as compensatory and punitive damages. On November 1, 2000, plaintiff filed a Praeceptum to attach certain exhibits to its Amended Complaint, namely its proposal to Voicenet setting forth the terms of its agreement and Norelli’s employment application.

Defendants have filed Preliminary Objections, asserting (1) that SEG failed to attach a writing on which its breach of contract claim(s) are based; (2) that SEG's conspiracy claim fails as a matter of law on the grounds that SEG failed to allege that it sustained actual damage from defendants' alleged conspiracy; (3) that punitive damages are not appropriate absent a conspiracy claim; and (4) that the claim for the permanent placement fee is premature absent any allegation that the first year has been completed. Prel. Obj. at ¶¶ 8-16.

### DISCUSSION

When reviewing preliminary objections in the form of a demurrer, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa.Super.Ct. 2000). Preliminary objections, whose end result would be the dismissal of a cause of action, should be sustained only where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazara, 746 A.2d 642, 643 (Pa.Super.Ct. 2000)(citation omitted).

Moreover,

[I]t is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa.Super.Ct. 1999). However, the pleaders' conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinions are not considered to be admitted as true. Giordano v. Ridge, 737 A.2d 350, 352 (Pa.Comm. Ct. 1999), aff'd, 559 Pa. 283, 739 A.2d 1052 (1999), cert. denied, 121 S.Ct. 307 (U.S. 2000).

**I. Defendants' Objection For Failure To Attach A Writing Is Overruled.**

Defendants first contend that the Amended Complaint is legally deficient in regard to the breach of contract claim against Norelli because “[a]side from referencing an ‘employment application’ which purportedly ‘memorializes the SEG/Norelli Agreement,’ no other documents were attached or identified.” Defs. Mem. of Law, at 2. The court finds no merit in this objection.

The record shows that approximately six days after filing its Amended Complaint, plaintiff filed a Praecipe to Attach Exhibits. Pl. Resp., Exhibit 2. One of these exhibits -- Norelli’s signed employment application -- included the contract language prohibiting Norelli from accepting permanent employment with an SEG client without first notifying and discussing such an offer with SEG. *Id.*, Exhibit B. Further, SEG’s proposal to Voicenet, which detailed the terms for providing accounting services to Voicenet, was also attached as one of these exhibits. *Id.*, Exhibit A. Though Rule 1019(i) of the Pennsylvania Rules of Civil Procedure [“Pa.R.C.P.”]<sup>2</sup> requires a plaintiff to attach to its complaint, at the

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<sup>2</sup>Subdivision (h) of Rule 1019 formerly governed the attachment of writings to pleadings. The explanatory comment to the present version of Rule 1019 provides, in pertinent part:

The Supreme Court of Pennsylvania has amended Rule 1019 governing the pleading of agreements and writings generally when claims or defenses are based upon them.

Present subdivision (h) of Rule 1019 governs the pleading of writings. It is revised to apply specifically to agreements. The pleading must state if an agreement is oral or written. A note advises that a written agreement must be attached to the pleading as provided by subdivision (i).

New subdivision (i) has been added to govern writings generally. The new subdivision is derived from present subdivision (h) and provides that a writing or the material part thereof be attached to the pleading. Written agreements are ‘writings’ and thus subject to the rule.

Expl. Cmt. - 2000 to Pa.R.C.P. 1019.

time of filing, a copy of the writing forming the basis for a breach of contract claim, a subsequent attachment does not require dismissal of the original claim. See Lewis v. Erie Ins. Exchange, 281 Pa.Super. 193, 199, 421 A.2d 1214, 1217 (1980)(stating that “[t]he Rules of Civil Procedure are designed to achieve the ends of justice and are not to be accorded the status of substantive objectives requiring rigid adherence . . . [c]ourts should not be astute in enforcing technicalities to defeat apparently meritorious claims’.”); Pa.R.C.P. 126 (allowing for liberal construction of the rules to “secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable.”).

For these reasons, the Preliminary Objection regarding a failure to attach a writing is overruled.

## **II. Defendants’ Demurrer to Plaintiff’s Civil Conspiracy Claim Is Overruled Since Plaintiff Need Not Plead A Specific Amount of Damages to Survive Demurrer.**

Defendants argue that plaintiff’s claim for civil conspiracy is legally deficient because plaintiff failed to allege actual damages arising from the conspiracy since the hiring of Norelli by Voicenet is not alleged to be improper, but rather, the damages must be a product of Norelli’s alleged failure to discuss Voicenet’s offer of employment with SEG before accepting it. Defs. Mem. of Law, at 3-4. Defendants also assert that “the nature of these damages is difficult to discern from the pleadings.” Id. at 4. Plaintiff, in turn, argues that the Amended Complaint did allege actual damages arising from defendants’ agreement, i.e., those damages arising from Voicenet’s failure to pay SEG the permanent placement fee for hiring



Norelli. Pl. Mem. of Law, at 6-7.<sup>3</sup>

In order to state a civil action for conspiracy, plaintiff must allege the following: “(1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage.” McKeeman v. Corestates Bank, N.A., 751 A.2d 655 660 (Pa.Super.Ct. 2000)(citations omitted). Further, “absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act.” Id. Additionally, “[w]hile it is true that in a civil conspiracy damages are awarded for the injury done by the conspiracy, . . . it is not necessary that [plaintiff] plead specific amounts of out of pocket losses in order to survive demurrer.” Smith v. Wagner, 403 Pa.Super. 316, 324, 588 A.2d 1308, 1312 (1991)(quoting P.L.E. Conspiracy § 26). Moreover, plaintiff need not aver specifically the time, place or date for a conspiratorial meeting or the precise date on which the conspiracy was entered. Id. at 323, 588 A.2d at 1312 (citations omitted).

Here, plaintiff’s civil conspiracy claim is tied to the tortious interference with existing contractual relations claim (Count III), as well as the separate breach of contract claims against Norelli and Voicenet (Counts I & II). See Am.Compl. at ¶¶ 24-26; 55-56. Defendant does not demur to these counts in their Preliminary Objections. Further, the allegations in the Amended Complaint as a whole,

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<sup>3</sup>Plaintiff also contends that defendants waived these preliminary objections by failing to raise them to the original Complaint, which sets forth the same allegations as the Amended Complaint. Pl. Mem. of Law, at 6. Clearly, there is no merit to the “waiver” argument as the original Complaint and original Preliminary Objections are now moot.

taken as true, do state causes of action for breach of contract<sup>4</sup> and tortious interference with contract.<sup>5</sup> Moreover, plaintiff did explicitly allege that it was damaged, since on account of the alleged conspiracy between defendants, plaintiff was deprived of its permanent placement fee of \$23,850 for Voicenet's hiring of Norelli. *Id.* at 27-29, 55. The Preliminary Objections to Count V are overruled.

### **III. Defendants' Motion To Strike The Demand For Punitive Damages Is Denied.**

Defendants argue that plaintiff's demand for punitive damages must be stricken since it is presumably premised upon the conspiracy claim. This court finds no merit in this argument.

“While it is true that punitive damages are not awarded in breach of contract cases, this rule does not restrict a party from bringing alternative claims in tort and contract where warranted by the facts.” *Hess v. Hess*, 397 Pa.Super. 395, 399, 580 A.2d 357, 358 (1990). As noted, defendants made no explicit objection to the tortious interference claim which remains in the case in any event. Additionally, the

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<sup>4</sup>First, to establish a cause of action for breach of contract, the plaintiff must allege: (1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages. *Williams v. Nationwide Mutual Ins. CO.*, 750 A.2d 881, 884 (Pa.Super.Ct. 2000)(quoting *Corestates Bank, N.A. v. Cutillo*, 723 A.2d 1053, 1058 (Pa.Super.Ct. 1999). Here, plaintiff alleged the existence of contracts with both Voicenet and Norelli, respectively, along with their pertinent terms. Am.Compl. at ¶¶ 9-14; 22. Plaintiff alleged a breach by both defendants of their respective contracts, along with resultant damages. *Id.* at ¶¶ 20; 24-29; 38-41. The allegations, as stated, survive a demurrer.

<sup>5</sup>A cause of action for tortious interference with contractual relations requires plaintiff to allege: (1) the existence of a contractual relation between the complainant and a third party, (2) a defendant's purposeful action specifically intended to harm the existing relation, (3) the absence of privilege or justification on the part of the defendant, and (4) the occasioning of actual legal damage resulting from defendant's conduct. *Shiner v. Moriarty*, 706 A.2d 1228, 1238 (Pa.Super.Ct. 1998) (citation omitted). The Amended Complaint sets forth allegations which, taken as true, would make out a cause of action for tortious interference with contract against both Voicenet and Norelli. Am.Compl. at ¶¶ 24-29; 46-47.

allegations in the Amended Complaint are sufficient to support a civil conspiracy claim. Therefore, the motion to strike the demand for punitive damages is denied.

**IV. Plaintiff's Claim For Permanent Placement Fee For Hiring of CFO Is Not Premature Even Though First Year of Employment Has Not Been Completed Since Plaintiff Had Fulfilled All of its Obligations, as Alleged, and Would Be Entitled to its Fee**

Finally, defendants contend that the Amended Complaint fails to assert that the first year of employment has been completed (which it has not), and that the claim for a permanent placement fee is therefore premature, pursuant to Rule 1019(c), Pa.C.R.P. Prel. Obj. at ¶ 16. Defendants did not address this objection in their brief, and this court finds it meritless.

Rule 1019(c) does allow for a pleading “to aver generally that all conditions precedent have been performed or have occurred.” Pa.R.C.P. 1019(c). However, SEG explicitly alleges that it is entitled to the permanent placement fee of \$65,190 for Voicenet’s hiring of Mr. Bare for its CFO position. Am.Compl. at ¶¶ 35-36. Further, as alleged, in exchange for SEG’s identification of a CFO candidate for Voicenet, SEG would be entitled to 30% of the cash compensation that was earned by the hired candidate during that person’s first year of employment, including estimated bonuses. *Id.* at ¶ 30. SEG also alleges that it fulfilled all of its duties to be entitled to this fee. *Id.* at ¶¶ 32-34. Taking its allegations as true, SEG may very well be entitled to a certain portion, if not the entire portion, of the placement fees with regard to Mr. Bare and/or Mr. Norelli. Therefore, defendants’ Preliminary Objection to this claim is overruled.

## **CONCLUSION**

For the reasons set forth, the Preliminary Objection based on the failure to attach a writing upon which the contract claims are based is overruled. The demurrer to the civil conspiracy claim in Count V is overruled. Further, the Objection based on the prematurity of a claim for the placement fee is also overruled. Lastly, the motion to strike the demand for punitive damages is denied.

Defendants shall file an Answer to plaintiff's Amended Complaint within twenty-two (22) days of the date of entry of this Opinion. An Order consistent with this Opinion will be entered of record.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**