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

WORLDWIDEWEB NETWORX CORP., Plaintiff	:	December Term, 2001
	:	No. 3839
v.	:	
	:	Commerce Case Program
ENTRADE, INC. and MARK SANTACROSE, Defendants	:	Control No. 042192

OPINION

Defendants Entrade, Inc. ("Entrade") and Mark Santacrose ("Santacrose") have filed preliminary objections ("Objections") to the complaint ("Complaint") of Plaintiff Worldwideweb Networx Corp. ("WWWX"). For the reasons set forth in this Opinion, the Objections are sustained in part and overruled in part.

BACKGROUND

On February 23, 1999, WWWX entered into a merger agreement ("Agreement") with Artra Group Incorporated ("Artra"), a corporation whose stock was publicly traded on the New York Stock Exchange ("NYSE"). Under the Agreement, WWWX agreed to sell Artra one of its subsidiaries that would then be merged with Artra. This surviving entity, which is the corporate Defendant in this matter, was to assume the subsidiary's name "Entrade, Inc." and Artra's NYSE listing and symbol.

When the transaction contemplated by the Agreement closed on September 23, 1999 ("Closing Date"), WWWX owned 1.8 million restricted Entrade shares ("WWWX Shares"), equal to approximately 15 percent of Entrade's publicly traded common stock. The Agreement required Entrade to register the WWWX Shares "as promptly as practicable" after the Closing Date. Although

Santacrose, Entrade's President and Chief Executive Officer, filed an initial Form S-1 to register the WWWX Shares, the Defendants failed to consummate the registration by incorporating Entrade's audited financial statements ("Entrade Statements"), which were completed some time prior to March 30, 2000.

WWWX asserts that the Defendants should have completed the registration of the WWWX Shares by February 23, 2000, on which date Entrade's stock was trading at $53.75 per share and the WWWX Shares were worth $97 million. By March 30, 2000, Entrade's stock had dropped to $28.00 per share, and the aggregate value of the WWWX Shares had declined to $50 million. However, because the WWWX Shares were not registered, WWWX could not act on its desire to borrow against them in February and March 2000.[1]

By the time WWWX could use the WWWX Shares as collateral in August 2000, Entrade's stock had plummeted to a meager $2.00 per share, and WWWX had to pledge its assets, including the WWWX Shares, to secure a $3.6 million loan from one of its shareholders. WWWX asserts that the amount of this loan was $74 million less than one that could have been obtained with the WWWX Shares in February 2000.[2]

According to the Complaint, the Defendants never registered the WWWX Shares. On October 21, 2001, the NYSE suspended trading and delisted Entrade's stock for Entrade's failure to

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[1] WWWX contends that it could have borrowed up to 80 percent of the WWWX Shares' value.

[2]WWWX also asserts that a hypothetical February 2000 loan would have included significantly better terms than the August 2000 loan.

comply with NYSE rules. As of late December 2001, Entrade's stock was trading for less than $0.25 per share.

The Complaint presents two counts, neither of which is titled. The first appears to be some sort of negligence claim against both Defendants, while the second could be read alternatively as a breach of contract claim or an intentional interference claim.[3] Both counts seek damages of up to $74 million. In response to the Complaint, the Defendants have filed the Objections, which assert that aspects of the Complaint are legally insufficient and improper and that WWWX lacks the capacity to bring this suit.

DISCUSSION

While the Defendants have taken something of a scattershot approach in the Objections, it is difficult to fault them for this, as the Complaint and WWWX's other filings present a bevy of ever-shifting allegations and claims that resemble the sands of the Gobi Desert more than a legal document. It appears that WWWX may have legitimate claims against the Defendants, but that the manner in which these claims have been pled is confounding and muddled. Accordingly, WWWX is directed to file an amended complaint.

II. It Is Unclear If WWWX Is Authorized to Transact Business in Pennsylvania

Under 15 Pa. C.S. § 4121(a), a foreign business corporation is required to obtain a certificate of authority to transact business in Pennsylvania before it engages in any business in the Commonwealth. As a penalty, foreign corporations that fail to fulfill this obligation "shall not be permitted to maintain any action or proceeding in any court of this Commonwealth until the corporation

[3] Indeed, WWWX argues in its submissions that it is both.

has obtained a certificate of authority." 15 Pa. C.S. § 4141(a). Cf. University of Dominica v. Pennsylvania College of Podiatric Med., 301 Pa. Super. 68, 71 n.2, 446 A.2d 1339, 1340 n.2 (1982) ("[A] foreign business corporation which instituted suit prior to obtaining a Certificate of Authority may nevertheless be permitted to continue such litigation if it becomes properly qualified under the Statute while the case is then still being prosecuted.").

It is unclear at this stage whether WWWX is, in fact, authorized to transact business in Pennsylvania. The Defendants have submitted a certification from the Pennsylvania Department of State showing that no record of a corporation named "Wordwide Web Networx Corp." Prelim. Obj. Ex. B. However, the Court is unsure whether the insertion of a space between "Worldwide" and "Web," which deviates from WWWX's name as the Plaintiff in this matter, renders this document flawed. Moreover, WWWX contends that it has received verbal confirmation from the Pennsylvania Department of State that it is authorized to do business in Pennsylvania and has indicated its intention to produce evidence of its certificate once it has received it.[4] This disagreement creates a disputed issue of material fact.

Disputes such as these must be resolved through interrogatories, depositions or an evidentiary hearing, with depositions or written interrogatories being the preferred method of investigation. See Phila. Civ. R. *206.1(E); American Hous. Trust III v. Jones, 548 Pa. 311, 319-20, 696 A.2d 1181, 1185 (1997) ("The trial court may not reach a determination based upon its view of the controverted facts, but must resolve the dispute by receiving evidence thereon through interrogatories, depositions, or

[4] To date, the Court has not received a copy of this certificate from WWWX.

an evidentiary hearing."); Miltenberg & Samton, Inc. v. Assicurazioni Generali, S.p.A., No. 3633 Jan. Term 2000, 2000 WL 33711043, at *5 (Pa. Com. Pl. Oct. 11, 2000) (citing Luitweiler v. Northchester Corp., 456 Pa. 530, 535, 319 A.2d 899, 902-03 (1974), Ambrose v. Cross Creek Condominiums, 412 Pa. Super. 1, 13-14, 602 A.2d 864, 869 (1991) and Slota v. Moorings, Ltd., 343 Pa. Super. 96, 100, 494 A.2d 1, 2 (1985)). Accordingly, the Parties must engage in fact finding to elicit those facts that either confirm or refute the assertion that WWWX is authorized to transact business in Pennsylvania.[5] This investigation is to be completed within forty-five days of the issuance of this Opinion and in accordance with Pennsylvania Rule of Civil Procedure 4007.1. Once this has been accomplished and within sixty days of the issuance of this Opinion, the Parties are to file briefs addressing the issue of WWWX's authority and referencing any relevant evidence. In the interim, the Objections to WWWX's capacity to sue will be held under advisement.

III. WWWX's First Claim Is Barred by the Economic Loss Doctrine

The purpose of the economic loss doctrine, as adopted in Pennsylvania, is "maintaining the separate spheres of the law of contract and tort." New York State Elec. & Gas Corp. v. Westinghouse Elec. Corp., 387 Pa. Super. 537, 550, 564 A.2d 919, 925 (1989). Pennsylvania's economic loss doctrine has its origins in R.E.M. Coal Co. v. Clark Equipment Co., 386 Pa. Super. 401, 563 A.2d 128 (1989). There, the court considered

> [T]he appropriateness of permitting recovery in tort where a product malfunctions because of an alleged defect in the product, causing damage to the product itself and consequential

[5] The Court sees no need for this investigation to be exceptionally extensive. Indeed, it is likely that a copy of WWWX's certificate would be sufficient to convince the Court, and perhaps the Defendants, of WWWX's authorization.

> damages in the nature of costs of repair or replacement or lost profits, but the malfunction causes no personal injury and no injury to any other property of the plaintiff.

386 Pa. Super. at 403, 563 A.2d at 129. Ultimately, the Court concluded that "negligence and strict liability theories do not apply in an action between commercial enterprises involving a product that malfunctions where the only resulting damage is to the product itself." 386 Pa. Super. at 412-13, 563 A.2d at 134. In its current form, the Commonwealth's version of the doctrine precludes recovery for economic losses in negligence[6] and strict liability actions where the plaintiff has suffered no physical or property damage. See, e.g., Moscatiello v. Pittsburgh Contractors Equip. Co., 407 Pa. Super. 378, 385-86, 595 A.2d 1198, 1201 (1991) ("[P]urely economic losses cannot be recovered where the plaintiff's action sounded solely in negligence or strict liability."); Spivak v. Berks Ridge Corp., 402 Pa. Super. 73, 78, 586 A.2d 402, 405 (1990) ("The general rule of law is that economic losses may not be recovered in tort (negligence) absent physical injury or property damage.").

The economic loss doctrine bars WWWX's first Count. This Count presents itself as a negligence claim, as it focuses on and details how the Defendants "were negligent in failing to finalize the Registration Statement and to complete the registration of Plaintiff's Entrade Shares in a timely manner." Compl. ¶ 29. Because there is no allegation that WWWX suffered anything but economic damage, the Objections properly invoke the economic loss doctrine.

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[6] The economic loss doctrine initially applied solely to strict liability torts but has gradually been extended to negligence claims and, by some courts, to intentional torts as well. See Steven C. Tourek, Thomas H. Boyd & Charles J. Schoenwetter, Bucking the "Trend": The Uniform Commercial Code, The Economic Loss Doctrine and Common Law Causes of Action for Fraud and Misrepresentation, 84 Iowa L. Rev. 875, 885-891 (1999) (tracing the history of the economic loss doctrine nationwide).

WWWX argues that the economic loss doctrine does not apply to intentional tort claims. This is correct. Amico v. Radius Communications, No. 1793, 2001 WL 1807924 (Pa. Com. Pl. Jan. 9, 2001) (holding that economic loss doctrine does not apply to intentional fraud claims); First Republic Bank v. Brand, 50 Pa. D. & C.4th 329 (2000) (holding that the economic loss doctrine does not apply to fraudulent misrepresentation claim). Cf. Teledyne Techs. Inc. v. Freedom Forge Corp., No. 3398, 2002 WL 748898, at *11 n.17 (Pa. Com. Pl. Apr. 19, 2002) (distinguishing Werwinski v. Ford Motor Co., 286 F.3d 661 (3d Cir. 2002)). However, there is no indication anywhere in the Complaint that the Defendants engaged in any behavior that was intentional. WWWX's supplemental allegations of intent in its answer to the Objections does not correct this fundamental and basic flaw.[7] Thus, the Objections asserting the economic loss doctrine in relation to Count I are granted.[8]

IV. Count II Does Not Allege a Claim Against Santacrose

It is difficult to decipher what WWWX intends to allege in Count II, as it appears to present elements of two completely different claims against the Defendants. Because the claim asserted against

[7] In its memorandum, WWWX contends that its claims are based on Santacrose's "tortuous [sic] conduct as CEO of Defendant Entrade" and that Santacrose's conduct was intentional. Pl. Mem. 7, 9.

[8] WWWX also argues that there is an exception to the economic loss rule when the defendant is in the business of providing information. However, this exception is "rigidly applied and narrowly construed to except only claims which explicitly involve suppliers of information for guidance of others in business transactions" and applies only to "those in the business of selling information on which its customers rely upon in taking additional action." Palco Linings, Inc. v. Pavex, Inc., 755 F. Supp. 1269, 1274 (M.D. Pa. 1990). There is no indication here that either of the Defendants was in the business of providing information of any kind. Moreover, WWWX's negligence claim is based not on the Defendants' failure to supply accurate information, but rather on their failure to register the WWWX Shares. Accordingly, this second exception is inapplicable.

Santacrose in Count II is legally insufficient, the Court must treat Count II, in its current form, as excluding him from its scope.

As an initial matter, the Court is at a loss to ascertain exactly what Count II purports to be. On the one hand, it is alleged that Entrade "breached its contract with the plaintiff to register Plaintiffs' Entrade Shares pursuant to the Merger Agreement," laying the foundation for a breach of contract action against Entrade. Compl. 33.[9] See also Pl. Mem. 6 ("Entrade's failure to register plaintiff's shares was a material breach in [sic] the contract which has directly resulted in damages to the plaintiff."). At the same time, Paragraph 34 contends that Santacrose caused Entrade to breach the Agreement, a claim that would support an intentional interference with contractual relations action if intent were alleged. Indeed, it appears that WWWX intended Count II to be an intentional interference claim against Santacrose, at least in part. See also Pl. Mem. 7 n.8 (asserting that Count II is an intentional interference with contract claim against Santacrose), 9 ("When defendant, Santacrose intentionally interfered with plaintiff's contract with defendant, Entrade and caused Entrade not to register plaintiff's shares, Santacrose committed an intentional tort by virtue of his intentional misrepresentations to plaintiff.").

There are two significant problems with treating Count II as the intentional interference claim that WWWX claims to plead. First, as discussed supra, the Complaint is devoid of any allegations of intent, leaving a claim for intentional interference against Santacrose legally insufficient.[10] In addition,

[9] There are two paragraphs numbered "33" in the Complaint. The allegations against Entrade are set forth in the second of these paragraphs.

[10] A successful claim for intentional interference with contractual relations requires proof of four elements:

pleading of multiple causes of action in one count violates the Pennsylvania Rules of Civil Procedure. Pa. R. Civ. P. 1020(a) ("Each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief."). Thus, there is no basis in Count II for a claim against Santacrose, and, to the extent that Count II purports to present an action against him, it is incomplete.[11]

V. WWWX's Failure to Attach a Copy of the Agreement to the Complaint Is Excusable

Pennsylvania Rule of Civil Procedure 1019(i) requires a claimant to attach a copy of any writing on which its claim is based. Pa. R Civ. P. 1019(i). However, as an exception to this rule, a failure to attach a relevant writing is excusable where the court and the defendant are both in possession of the document. See McClellan v. Health Maint. Org. of Pa., 413 Pa. Super. 128, 145 n.10, 604 A.2d 1053, 1061 n.10 (1992) (Objections based on a failure to attach a document were without merit where the complaint alleged that the document was in the possession of the defendants and set forth the substance of the document.). See also Pa. R. Civ. P. 126 (allowing the rules of civil procedure to be "liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable" and allowing a court "to disregard any error or defect of

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> (1) the existence of a contractual, or prospective contractual relation between the complainant and a third party; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct.

Strickland v. University of Scranton, 700 A.2d 979, 985 (Pa. Super. Ct. 1997) (citation omitted).

[11] Given the technical and easily corrected deficiencies in the Complaint, the Court will grant WWWX leave to file an amended complaint. Greater care in preparing an amended complaint is expected. Cf. Harley Davidson Motor Co. v. Hartman, 296 Pa. Super. 37, 42, 442 A.2d 284, 286 (1982) ("Even where a trial court sustains preliminary objections on their merits, it is generally an abuse of discretion to dismiss a complaint without leave to amend.").

procedure which does not affect the substantial rights of the parties"); St. Hill & Assocs., P.C. v. Capital Asset Research Corp., No. 5035, 2000 WL 33711023, at *1 (Pa. Com. Pl. Sept. 2, 2000) (overruling objection based on 1019(i) where plaintiff supplied both the court and the defendant with a copy of the missing document as attachment to its response to objections). This exception is especially apt here, where WWWX has filed a praecipe to attach a copy of the Agreement to the Complaint. Accordingly, the Objection asserting failure to attach the Agreement is overruled.

CONCLUSION

The Objections to Count I are sustained, as are the Objections to Santacrose's liability as a defendant in Count II. Additional factual development is needed before the Court can render a decision as to WWWX's capacity to sue, and the Objections asserting failure to attach the Agreement are overruled.

BY THE COURT:

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JOHN W. HERRON, J.

Date: June 20, 2002

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

WORLDWIDEWEB NETWORX CORP., Plaintiff	:	December Term, 2001
	:	No. 3839
v.	:	
	:	Commerce Case Program
ENTRADE, INC. and MARK SANTACROSE, Defendants	:	Control No. 042192

ORDER

AND NOW, this 20th day of June, 2002, upon consideration of the Preliminary Objections of Defendants Entrade, Inc. and Mark Santacrose to the Complaint of Plaintiff Worldwideweb Networx Corporation and the Plaintiff's response thereto, and in accordance with the Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED as follows:

1. The Preliminary Objections to Count I are SUSTAINED, and Count I is DISMISSED.
2. Defendant Santacrose's Preliminary Objections to Count II are SUSTAINED, and Count II is DISMISSED as to Defendant Santacrose only.
3. The Preliminary Objections asserting the Plaintiff's lack of capacity to sue will be held under advisement for sixty days so that within forty-five days, factual investigations pursuant to Pa. R. Civ. P. 4007.1 may be undertaken to resolve the questions regarding the Plaintiff's capacity to sue. After the forty-fifth day but on or before the sixtieth day, the Parties shall file with this Court briefs offering any further argument and referencing any evidence relevant to the issue of the Plaintiff's capacity to sue.
4. The remaining Preliminary Objections are OVERRULED.

5. The Plaintiff is directed to file an amended complaint within 20 days of the date of entry of this Order.

BY THE COURT:

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JOHN W. HERRON, J.