

VERMONT SUPERIOR COURT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 37-1-12 Wrcv

Cristina Quazzo,
Plaintiff

v.

Ada Chester Corporation, Ugo Quazzo,
Stephen Quazzo, Marco Quazzo, and
Robert Ulbruch,
Defendants.

Decision on Motion to Dismiss

Plaintiff sues Defendants for fraud based on a series of transfers between her family and the Ada Chester Corporation that deprived her of property ownership.¹ Defendants Stephen and Marco Quazzo moved to dismiss for failure to state a claim and for a more definite statement. Judge DiMauro ordered Plaintiff to file a more definite statement for four counts: Securities Fraud (Count III), Fraudulent Conversion (Count IV), Petition to remove the directors or dissolve the corporation (Count VI), and Declaration of validity of the 1994 Warranty Deed (Count VII). Judge DiMauro stayed the motion to dismiss on these counts until Plaintiff filed an amended complaint. Plaintiff filed an amended complaint on October 30, 2012. The Court held a hearing to discuss the motion to dismiss and Defendants argued Plaintiff did not meet the pleading requirements for fraud.

The Court disfavors and rarely grants motions to dismiss. *See Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575. The Court uses motions to dismiss to evaluate the law in a pleading. *Powers v. Office of Child Support*, 173 Vt. 390, 395 (2002). Accordingly, the Court will only grant a motion to dismiss when there are “no facts or circumstances, consistent with the complaint that would entitle Plaintiff to relief.” *Bock*, 2008 VT 81, ¶ 4. “[T]he threshold a Plaintiff must cross in order to meet our notice-pleading standard is ‘exceeding low.’” *Id.* (quoting *Henninger v. Pinellas County*, 7 F. Supp. 2d 1334, 1336 (M.D. Fla. 1998)). For this motion, the Court assumes the truth of all facts offered by the non-moving party. *Id.* at ¶ 4.

Notwithstanding the low bar for pleadings, Vermont has special requirements for pleading fraud. “In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” V.R.C.P. 9(b). “The essential elements of a fraud claim are (1) intentional misrepresentation of a material fact; (2) that was known to be false when made; (3) that was not open to the defrauded party’s knowledge; (4) that the defrauded

¹ The Court provides only a brief summary of the facts and claims in this case. The Court relies on Judge DiMauro’s July 6, 2012 order for a more detailed discussion.

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party acts in reliance on that fact; and (5) is thereby harmed.” *Alden v. Dee*, 2011 VT 64, ¶ 32, 190 Vt. 401. Fraud can consist of either an affirmative act or failure to disclose material information by a person with a duty to disclose. *See Silva v. Stevens*, 156 Vt. 94, 103 (1991).

Count III alleges securities fraud in violation of 9 V.S.A. § 4224a. Section 4224a allowed recovery from a person who employed a device or scheme to defraud a person of rights in securities.² Judge DiMauro instructed Plaintiff to specify what acts the Defendants conducted and how those acts fraudulently deprived Plaintiff of her property rights. The amended complaint indicates that Stephen and Marco employed a scheme to defraud by hiding Cristina’s ownership interest in the company and taking her shares without compensation. They failed to inform her of her rights even though shareholders of close corporations owe each other fiduciary duties. *See P.F. Jurgs & Co. v. O’Brien*, 160 Vt. 294, 304 (1993). Further, Defendants told Plaintiff to sign the warranty deed without informing her of her rights. These actions meet the pleading requirements because they allege failure to disclose material information in violation of a duty and statement of misleading information on which Plaintiff relied. *See Alden v. Dee*, 2011 VT 64, ¶ 32; *Bock*, 2008 VT 81, ¶ 4; *Silva*, 156 Vt. at 103.

Count IV claims conversion of securities through fraud. Conversion is “an overt exercise of dominion over another’s property ‘in exclusion and defiance of the owner’s right to possession although he does nothing more than detain the property against the rightful owner’s demand.”” *Raynes v. Rogers*, 2008 VT 52, ¶ 19 (Burgess, J., dissenting) (quoting *Economou v. Carpenter*, 124 Vt. 451, 454 (1965)). Plaintiff claims Ugo Quazzo caused the forgery her signature on the transfer of document. She further claims Stephen and Marco took her shares knowing she did not transfer her rights and then concealed the transfer. Accepting the shares of another person with the knowledge those shares belonged to that person meets the requirements of conversion because it is inconsistent with the owner’s property rights. *See id.* Assuming Plaintiff can prove Defendants owed her a duty to disclose, the concealment could constitute fraud. *See Silva*, 156 Vt. at 103.

In Count VI, Plaintiff requests the Court remove the directors of the Ada Chester Corporation under 11A V.S.A. § 8.09 or dissolve the corporation under 11A V.S.A. § 14.30. The Court may remove of a director of a corporation if “the director engaged in fraudulent or dishonest conduct relating to the corporation.” 11A V.S.A. § 8.09(a)(1)(A). The Court may dissolve the corporation if “the directors... have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.” 11A V.S.A. § 14.30(2)(B). Again, Plaintiff alleges Stephen and Marco deceived her on consequences of signing the warranty deed. Defendants misrepresented material facts about the warranty deed, Defendants knew of the falsehood when they made the misrepresentation, Plaintiff did not know the facts, Plaintiff relied on Defendant’s statements, and Plaintiff suffered harmed. *See Alden*, 2011 VT 64, ¶ 32. She also indicates they

² Section 4224a(a) read: “In connection with the offer to sell, sale, offer to purchase or purchase of a security, a person may not directly or indirectly: (1) employ a device, scheme, or artifice to defraud; (2) make an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or (3) engage in act, practice, or course of business that operates or would operate as a fraud or deceit upon a person.” In 2006, the Legislature repealed 9 V.S.A. § 4224(a) and replaced it with 9 V.S.A. § 5501.

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both concealed her ownership in the property and accepted her shares in violation of their duties. *See Silva*, 156 Vt. at 103.

Taking Plaintiff's facts as true, the Court could remove the directors or dissolve the corporation for fraudulent activity. *See* 11A V.S.A. §§ 8.09, 14.30; *Bock*, 2008 VT 81, ¶ 4. Plaintiff still provides little detail on why the Court should take these steps, other than to point to the alleged fraud and equities of the situation. Nevertheless, the burden at the pleading stage is low and the amended complaint at least gives Defendants notice of the claims. *See Bock*, 2008 VT 81, ¶ 4.

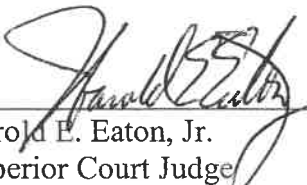
Finally, Plaintiff requests the Court declare the 1994 warranty deed invalid because Defendants obtained it through fraud. The Court may cancel a deed obtained by fraud. *See Bennett v. Bennett*, 93 Vt. 316, 320–22 (1919). Stephen was a trustee of the property and knew of Plaintiff's rights. From Plaintiff's amended complaint, Stephen and Marco instructed Plaintiff to sign the warranty deed with the implication it was in her best interests. As discussed in the previous paragraph, Stephen's actions could be fraud. It is less clear that Marco made fraudulent statements relating to the warranty deed. Nevertheless, the Court could set aside the deed for the misrepresentations. *See id.*

The Court must deny Stephen and Marco Quazzo's motion to dismiss. Judge DiMauro granted the motion for a more definite statement to require the Plaintiff to disclose which Defendants made what statements and how those statements harmed the Plaintiff. The amended complaint meets these demands. *See Bock*, 2008 VT 81, ¶ 4. Moreover, the fraud claims meet the requirements of V.R.C.P. 9 because they give the Defendants notice of the claims and events.

Order

The Court *denies* Stephen and Marco Quazzo's motion to dismiss.

Dated at Woodstock, Vermont on April 17, 2013.


Harold E. Eaton, Jr.
Superior Court Judge

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