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CHEP USA,

Plaintiff,

v.

JUST WOOD PALLETS, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY
LAW DIVISION

DOCKET NO.: PAS L-3171-23

CIVIL ACTION - CBLP

OPINION

Decided June 14, 2024

Richard B. Brosnick, Esq. and Angad Bhai, Esq. of Akerman LLP, attorneys for Plaintiff CHEP USA.

Peter W. Till, Esq. and John V. Salierno, Esq. of Law Offices of Peter W. Till, attorneys for Defendant, Just Wood Pallets, Inc.

Hon. Darren J. Del Sardo, P.J. Cv.

This matter comes before the Court on application of the Defendant, Just Wood Pallets, INC.'s Motion to Dismiss the Plaintiff's Amended Complaint. The Plaintiff, CHEP USA ("CHEP"), filed a First Amended Complaint on February 2, 2024, naming Just Wood Pallets, INC., as the only defendant. The Defendant filed its pending Motion to Dismiss on March 7, 2024. The Plaintiff submitted opposition to the Defendant's Motion on May 16, 2024, and a reply brief was filed on May 24, 2024. Oral argument was heard by the court on June 7, 2024.

This matter arises out of the Defendant's alleged conversion and theft of wooden pallets owned by CHEP. CHEP operates a business that leases blue painted wood shipping pallets,

stamped with “PROPERTY OF CHEP” for identification. Amended Complaint, ¶ 17. Plaintiff leases its pallets to businesses and manufacturers that normally use wooden pallets in the course of the distribution and shipping of products. Id. at ¶ 16. Plaintiff offers leased pallets to customers for their use and maintains the condition of their pallets throughout the course of distribution. Id. at ¶ 10. CHEP customers must return the pallets directly to CHEP upon termination of their lease agreement or to an authorized agent who is permitted to collect and return the pallets to CHEP for repair or at the termination of a lease agreement. Id. at ¶¶ 19, 21.

The Defendant is a pallet dealer located in Paterson, New Jersey, and New Windsor, New York. Plaintiff’s Amended Complaint alleges that the Defendant is not in privity of contract with the Plaintiff and does not maintain any other direct business relationship with the Plaintiff. Furthermore, it is alleged that upon information and belief, the Defendant was improperly storing and selling CHEP pallets. Id. at ¶ 29. Representatives from CHEP allege to have physically inspected the Defendant’s properties in May and August of 2023. Id. at ¶ 26. Plaintiff’s representatives allegedly observed approximately one thousand five hundred to two thousand (1,500-2,000) CHEP pallets at the Defendant's New Windsor, N.Y. facility and approximately one thousand five hundred to two thousand (1,500-2,000) CHEP pallets at the Paterson, N.J. facility. Id. at ¶ 33. Plaintiff further alleges to have contacted the Defendant via mailed letters, phone calls, and site visits throughout the summer of 2023 seeking recovery of their pallets, but the Defendant refused to allow the Plaintiff to recover all of their pallets or to cease further conversion and/or resale of CHEP pallets. Id. at ¶ 32. The Defendant does not dispute that they were in possession of CHEP pallets but asserts that they have previously returned thousands of CHEP pallets back to the Plaintiff. Certification of Maria Natal (“Natal Cert.”), ¶ 12.

Plaintiff's Amended Complaint asserts the following causes of action: Conversion, Unjust Enrichment, Replevin, and Declaratory Judgment.

In the application to dismiss Plaintiff's Amended Complaint, the Defendant argues that the Amended Complaint fails to establish a valid claim for relief. Specifically, the Defendant argues the Amended Complaint fails to identify and does not provide specific facts of the Defendant's conduct that support its theory of liability and fails to establish the essential elements of its claim for conversion. The Defendant further argues that the Amended Complaint fails to detail the contractual obligations of its customers upon which Plaintiff's claims are based, and that this lack of information leaves the Defendant unable to defend itself adequately.

Furthermore, the Defendant argues that the Plaintiff asserts a claim for conversion without identifying any specific converted pallet. The Defendant asserts that they have previously returned over 35,000 CHEP pallets, and the Plaintiff fails to address the many other customers who fail to return CHEP leased pallets, but instead chooses to target the Defendant. Ibid.

Next, the Defendant argues that the Amended Complaint lacks a factual basis to establish the Plaintiff's right to immediate possession of the pallets, which is necessary to support claims of conversion, replevin, and unjust enrichment. The Defendant seeks the court to dismiss the Amended Complaint with prejudice and award costs and counsel fees to the Defendant.

In opposition, the Plaintiff asserts that the required elements of conversion have been set forth as stated in their Amended Complaint. Specifically, the Plaintiff's right to immediate possession of its property and the Defendant's wrongful interference with that right. Plaintiff

asserts that they have provided facts detailing how the Defendant unlawfully possessed and failed to return CHEP's pallets, that forms the basis of its cause of action for conversion and replevin.

Plaintiff further asserts that the Defendant admits to possessing and identifying CHEP pallets, demonstrating that they have knowledge of and that they are aware of the difference between CHEP pallets and common, non-CHEP pallets. Their knowledge of same, it is argued, provides a further basis for the Plaintiff's cause of action for Conversion, Replevin, and Unjust Enrichment. Plaintiff indicates that the Defendant's motion papers admit to retaining CHEP pallets, collecting CHEP pallets, and allegedly acquiring pallets unlawfully from unauthorized sources and/or failing to return them. Plaintiff additionally provides invoices demonstrating the Defendant's business practice of selling CHEP pallets to third parties. Finally, Plaintiff states that they demanded the return of their pallets on multiple occasions, which the Defendant refused to return. Amended Complaint, ¶¶ 24-48. Plaintiff concludes by stating that the Amended Complaint adequately outlines Plaintiff's ownership and its right to immediate possession of the pallets at issue and the Defendant's wrongful interference with that right.

In reply, the Defendant reasserts their position that the Plaintiff has failed to state a cause of action against the Defendant for alleged conversion and replevin of pallets. The Defendant argues that shipping pallets are constantly changing locations and owners and there is no way to determine the rightful owner of pallets once they enter the stream-of-commerce.

Standard

The Court must apply the following familiar standards: "[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Green v. Morgan Properties, 215 N.J. 431, 451-52 (2013) (citations omitted) The essential test is simply "whether a cause of action is 'suggested' by the facts." Ibid. In exercising this important function, "a reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. Moreover, "the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint[.]" rather, "plaintiffs are entitled to every reasonable inference of fact." Ibid. As we have stressed, "[t]he examination of a complaint's allegations of fact required by the aforesaid principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Ibid.

In deciding a motion pursuant to R. 4:6-2(e), "[t]he motion judge must accept as true all factual assertions in the complaint . . . [and] accord to the non-moving party every reasonable inference from those facts." Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008). The judge must examine the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Green, 215 N.J. at 452 (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989)). On a motion to dismiss for failure to state a claim under Rule 4:6-2(e), the court must only consider "the legal sufficiency of the alleged facts apparent on the face of the challenged claim." Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (internal quotation marks omitted). "The court may not consider anything other than whether the complaint states a cognizable cause of action." Ibid.

The court must "accept as true the facts alleged in the complaint," Darakjian v. Hanna, 366 N.J. Super. 238, 242 (App. Div. 2004), and "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary," Printing Mart-Morristown, 116 N.J. at 746 (1989) (internal quotation marks omitted). The party opposing the motion is "entitled to every reasonable inference of fact." Ibid.

The trial court has been instructed by the Supreme Court that motions to dismiss should rarely be granted, and an order granting a motion to dismiss under Rule 4:6-2(e) should usually be without prejudice, so that the plaintiff may have an opportunity to re-plead, if he can do so, to state a viable cause of action. Printing Mart-Morristown, supra., 116 N.J. at 771-72.

Decision

Here, the Plaintiff's Amended Complaint provides sufficient facts to warrant denial of the Defendant's Motion to Dismiss for failure to state a claim. The Amended Complaint specifically outlines an alleged scheme in which the Defendant either collected, re-sold, or held CHEP pallets for their benefit. The Plaintiff has provided photographs, invoices, and other evidence indicating the same.

I. Conversion

To prevail on a claim for conversion, a plaintiff must prove "the wrongful exercise of dominion and control over property owned by another inconsistent with the owner's rights." LaPlace v. Briere, 404 N.J. Super. 585, 595 (App. Div. 2009). "Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of

another to control it that the actor may justly be required to pay the other the full value of the chattel." Chicago Title Ins. Co. v. Ellis, 409 N.J. Super. 444, 454 (App. Div. 2009) (quoting Restatement (Second) of Torts, § 222A (1) (1965)). If the person who committed the theft or conversion "has spent the money to buy goods or services, the victim cannot recover the money from the innocent merchant" Id. at 461.

The Plaintiff's Amended Complaint, as outlined in the aforementioned summary of facts, describes an alleged scheme in which the Defendant knew, or acted with knowledge of a substantial certainty, that they were not the rightful owner of blue painted "CHEP" pallets; deprived the Plaintiff of their right to possession of the same; and either failed to return the CHEP pallets or profited from selling CHEP pallets to third parties. See Amended Complaint ¶¶ 27-30, 32, 33. The Amended Complaint additionally alleges facts indicating that CHEP owns the CHEP pallets and sought to recover possession of them. This alleged scheme provides a basis for a cause of action for conversion, the wrongful exercise of dominion and control over property owned by another inconsistent with the owner's rights. LaPlace, 404 N.J. Super. at 595. Furthermore, discovery will likely provide additional facts and information that will directly relate to the Plaintiff's claim for conversion. Accepting all the facts alleged in the Amended Complaint as true, including the claim that the Defendant is selling or is improperly in possession of pallets owned by CHEP, the Plaintiff's Count I alleging conversion remains a valid cause of action.

II. Replevin

A cause of action for replevin is appropriate when a plaintiff, who claims title to and possession of chattels that are currently held in the possession of another, seeks recovery. See

O’Keeffe v. Snyder, 83 N.J. 478, 509 (1980). In O’Keeffe, an action brought for replevin was held as a proper means for an owner to regain possession of chattels lost through conversion. Ibid. Furthermore, replevin is appropriate if the defendant has unlawfully retained the plaintiff’s chattels, the title to the chattel rests in a third party, and the plaintiff can show a right to possession of the chattels. R. 4:61-2; Video Pipeline, Inc. v. Buena Vista Home Entertainment, Inc., 275 F. Supp. 2d 543 (D.N.J. 2003).

Here, the Plaintiff alleges that the Defendant is improperly collecting, storing, and selling pallets that are rightfully owned by the Plaintiff. These allegations, in conjunction with the facts set forth in their claim for conversion, support the elements required for a cause of action for replevin.

The Defendant argues, citing to Miesels v. Fox Rothschild LLP, 240 N.J. 286, 305 (2020), that the Plaintiff’s Amended Complaint fails to assert the Plaintiff’s right to immediate possession of their pallets because the Plaintiff no longer retains a right to immediate possession of their pallets after they are released into the rental pool and, therefore, a cause of action for replevin cannot be sustained. The Plaintiff asserts that any claim by the Defendant that CHEP did not make a demand for Defendant to return CHEP’s pallets is incorrect, and they always retain ownership over CHEP pallets. The Amended Complaint specifically states that: “On at least three occasions during June 2023, CHEP’s Asset Protection Manager spoke with Garcia [Defendant's owner] about Defendant’s unlawful acquisition, possession, and sales of CHEP’s pallets as part of CHEP’s attempt to negotiate CHEP’s recovery of its pallets without the need for litigation. Garcia refused to allow CHEP’s recovery of its pallets.” Amended Complaint at ¶ 35.

To successfully plead an action for replevin, the Plaintiff must "establish his own title or right to possession." LaBash v. Edelman, 131 N.J.L. 36, 37 (E. & A. 1943). However, "[a] plaintiff seeking replevin generally only needs to show a superior right to that of the defendant." 77 C.J.S. Replevin § 23 (2006); see also Grimbalis v. Linfair, Inc., 126 N.J.L. 82, 84 (Sup. Ct. 1941). Here, CHEP's allegations, as set forth in their Amended Complaint asserts a superior right of CHEP pallets and therefore supports a cause of action for replevin.

III. Unjust Enrichment

The Plaintiff's cause of action for unjust enrichment also remains a sustainable claim. Unjust enrichment is a quasi-contract claim, which only requires a plaintiff to allege that "one party has conferred a benefit on another, and the circumstances are such that to deny recovery would be unjust." Weichert Co. Realtors v. Ryan, 128 N.J. 427, 437 (1992). No contract or other privity is required. "The unjust enrichment doctrine requires that the plaintiff show that it expected remuneration from the defendant at the time it performed or conferred a benefit on the defendant and that the failure of remuneration enriched the defendant beyond its contractual rights." VRG Corp. v. 463 GKN Realty Corp., 135 N.J. 539, 554 (1994). As such, a claim of unjust enrichment requires that the plaintiff allege a sufficient direct relationship with the defendant. Maniscalco v. Brother Int'l Corp. (USA), 627 F. Supp. 2d 494, 505-06 (D.N.J. 2009); see Snyder v. Famam Cos., 792 F. Supp. 2d 712, 724 (D.N.J. 2011) (citations omitted) (finding that "the plaintiff [must] allege a sufficiently direct relationship with the defendant to support the claim [for unjust enrichment]"); see also Callano v. Oakwood Park Homes Corp., 91 N.J. Super. 105, 109 (App. Div. 1966) (finding that "quasi—contract [unjust enrichment] cases involve

either some direct relationship between the parties or a mistake on the part of the person conferring the benefit.").

Here, the parties admit that they did not enter into a contract for the use or sale of pallets. The Plaintiff provides information, including invoices and certifications, indicating that pallets owned by CHEP were allegedly sold by the Defendants for their own benefit and profit; the alleged rightful owner of the pallets did not receive just compensation for the sale of those pallets; and that this alleged enrichment allowed the Defendant to profit at the Plaintiff's expense, without providing remuneration to CHEP. The claim for unjust enrichment is based upon equitable, quasi-contract principles, and the Plaintiff has provided a sufficient basis of the same to maintain a cause of action.

The Defendant did not provide arguments addressing Count IV for declaratory judgment, other than stating that Plaintiff's alleged failure to assert facts to sustain Counts I, II, and III, then Count IV for a declaratory judgment must also fail. As Counts I, II, and III remain valid causes of action, the Plaintiff may also maintain a cause of action for declaratory judgment as adequately plead in Count IV of the Plaintiff's Amended Complaint.

Accordingly, based on the aforementioned reasons, the Defendant's Motion is hereby DENIED.