UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Inspired Capital LLC v. Condé Nast

No. 19-2057-cv (2d Cir. Feb. 12, 2020) (summary order) · No. 19-2057-cv · Decided February 12, 2020

SUMMARY

The United States Court of Appeals for the Second Circuit affirmed judgments dismissing plaintiffs' claims against Condé Nast and FremantleMedia North America, Inc. and denying leave to amend. The court held that the complaint and proposed amended complaint failed to plausibly allege aiding and abetting breach of fiduciary duty, misappropriation of trade secrets, aiding and abetting fraud, or conspiracy to commit fraud. The court also affirmed dismissal of the fraudulent concealment claim on the district court's stated grounds.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Dennis Jacobs; Guido Calabresi; Denny Chin
JURISDICTION	Federal
DECIDED	February 12, 2020
DOCKET	19-2057-cv
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed the district court's dismissal of their complaint under Federal Rule of Civil Procedure 12(b)(6) and denial of their motion for leave to amend on futility grounds.
STANDARD OF REVIEW	De novo review applies to both dismissal under Federal Rule of Civil Procedure 12(b)(6) and denial of leave to amend based on futility. The court accepts factual allegations as true and draws reasonable inferences in plaintiffs' favor, but need not credit conclusory allegations or legal conclusions couched as factual allegations.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Inspired Capital, LLC, Erica Gary, derivatively on behalf of Inspired Food Solutions, LLC v. Condé Nast, an unincorporated division of Advance Magazine Publishers, Inc., FremantleMedia North America, Inc.

TOPICS

appellate procedure | motions to dismiss | motion to amend | misappropriation of trade secrets | civil procedure

PRACTICE AREAS

civil procedure | appellate procedure | commercial litigation | intellectual property | contracts

QUESTIONS PRESENTED

1. Whether the complaint and proposed amended complaint plausibly alleged aiding and abetting a breach of fiduciary duty under New York law.
2. Whether the complaint stated a claim for misappropriation of trade secrets.
3. Whether the complaint and proposed amended complaint pleaded the alleged fraud with the particularity required by Federal Rule of Civil Procedure 9(b), sufficient to support aiding and abetting fraud and conspiracy to commit fraud.
4. Whether the district court properly denied leave to amend on the ground that amendment would be futile.

HOLDINGS

1. The complaint and proposed amended complaint failed to plausibly allege that defendants had actual knowledge of, or knowingly participated in, any breach of fiduciary duty by Harris. Dismissal was therefore proper even though the district court had relied on an alternative statute-of-limitations ground.
2. Dismissal of the misappropriation claim was proper because plaintiffs did not allege that defendants used IFS's intellectual property or trade secrets.
3. The fraud-based claims were properly dismissed because the complaint and proposed amended complaint failed to plead an underlying fraud with the particularity required by Federal Rule of Civil Procedure 9(b).
4. The district court properly denied plaintiffs leave to amend because the proposed amendment would have been futile.

KEY QUOTATIONS

> *“we accept as true all factual allegations and draw from them all reasonable inferences; but we are not required to credit conclusory allegations or legal conclusions couched as factual . . . allegations.”* (4)

> *“Allegations of fraud under Rule 9(b), therefore, must be pled with particularity and "specify the time, place, speaker, and content of the alleged misrepresentations."”* (7-8)

FACTUAL BACKGROUND

Inspired Food Solutions, LLC was a Florida corporation in which plaintiffs held minority interests; Chef Calvin Harris was its majority shareholder and chief executive officer. Defendants licensed their intellectual property to IFS for development and marketing of health food products, but after IFS became unable to pay its debts, Harris formed Benevida Foods, LLC with a new investor, defendants terminated the IFS license, and defendants entered a new license agreement with Benevida. Plaintiffs alleged that defendants aided Harris's fiduciary breaches, misappropriated IFS trade secrets, and participated in fraud.

PROCEDURAL HISTORY

Plaintiffs sued defendants in the Southern District of New York after a Florida court dismissed claims against defendants based on a New York forum-selection clause. The district court dismissed the complaint for failure to state a claim and denied plaintiffs' motion for leave to amend because amendment would be futile. The Second Circuit affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Edwards v. Sequoia Fund, Inc., 938 F.3d 8, 12 (2d Cir. 2019)
- Yamashita v. Scholastic Inc., 936 F.3d 98, 107-08 (2d Cir. 2019) (per curiam)
- Nielsen v. Rabin, 746 F.3d 58, 62 (2d Cir. 2014)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Inspired Capital, LLC v. Condé Nast, No. 18 CIV. 0712 (JFK), 2018 WL 6173712, at *5 (S.D.N.Y. Nov. 26, 2018)
- Dettelis v. Sharbaugh, 919 F.3d 161, 163 (2d Cir. 2019) (per curiam)
- In re Sharp Int'l Corp., 403 F.3d 43, 49-50 (2d Cir. 2005)
- Lerner v. Fleet Bank, N.A., 459 F.3d 273, 294 (2d Cir. 2006)
- Webb v. Goord, 340 F.3d 105, 111 (2d Cir. 2003)
- Integrated Cash Mgmt. Servs., Inc. v. Digital Transactions, Inc., 920 F.2d 171, 173 (2d Cir. 1990)
- ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 99 (2d Cir. 2007)
- Caputo v. Pfizer, Inc., 267 F.3d 181, 191 (2d Cir. 2001)
- Jeffrey Hecht v. Commerce Clearing House, Inc., William Miller, Louis Ceccoli, and Stanley Stephens, Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 26 n.4 (2d Cir. 1990)

OPINION

PER CURIAM.

19-2057-cv Inspired Capital LLC v. Condé Nast UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE

EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION ″SUMMARY ORDER″).

A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of February, two thousand twenty. PRESENT: DENNIS JACOBS, GUIDO CALABRESI, DENNY CHIN, Circuit Judges. -x INSPIRED CAPITAL, LLC, and ERICA GARY, derivatively on behalf of Inspired Food Solutions, LLC, Plaintiffs-Appellants, -v- 19-2057-cv CONDÉ NAST, an unincorporated division of Advance Magazine Publishers, Inc., and FREMANTLEMEDIA NORTH AMERICA, INC., a foreign corporation, Defendants-Appellees. -x FOR PLAINTIFFS-APPELLANTS: Jermaine A. Lee, Hernandez Lee Martinez, LLC, Miami Shores, Florida; Scott Zarin, Zarin & Associates, P.C., New York, New York.

FOR DEFENDANTS-APPELLEES: Cynthia E. Neidl, Greenberg Traurig, LLP, Albany, New York, for Condé Nast. Sean Riley, Glaser Weil Fink Howard Avchen & Shapiro LLP, Los Angeles, California; Judith A. Lockhart, Carter Ledyard & Milburn LLP, New York, New York, for FremantleMedia North America, Inc. Appeal from the United States District Court for the Southern District of New York (Keenan, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgments of the district court are AFFIRMED. Plaintiffs-appellants Inspired Capital, LLC and Erica Gary (″plaintiffs″) appeal from the November 26, 2018 judgment of the district court granting the motion of defendants-appellees Condé Nast and FremantleMedia North America, Inc. (″defendants″) to dismiss the complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and the June 5, 2019 judgment denying plaintiffs′ motion for leave to amend.

We assume the parties′ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal. The following facts are drawn from the complaint and presumed true for purposes of this appeal. Plaintiffs are minority shareholders of a Florida corporation, 2 Inspired Food Solutions, LLC (″IFS″). IFS was created by Chef Calvin Harris, who was its majority shareholder and Chief Executive Officer.

In 2013, defendants entered into a licensing agreement with IFS pursuant to which defendants granted IFS a license to use defendants′ intellectual property to develop and market health food products. In 2014, however, when IFS could no longer pay its debts, Harris left IFS and, with a new investor, created a new entity, Benevida Foods, LLC (″Benevida″). When IFS failed to make a required payment, defendants terminated their license agreement with IFS and entered into a new license agreement with Benevida.

Plaintiffs sued Harris, Benevida, and their investor in Florida and eventually amended their complaint in Florida to add claims against defendants. The Florida court dismissed the claims against defendants based on a New York forum selection clause. Plaintiffs then brought this action below asserting claims against defendants for: (1) breach of contract; (2) aiding and abetting breach of fiduciary duty; (3) fraudulent concealment/omission; (4) aiding and abetting fraud; (5) conspiracy to commit fraud; and (5) misappropriation of trade secrets.

On May 23, 2018, defendants moved to dismiss the complaint. In an Opinion and Order issued November 26, 2018, the district court granted the motion, holding that the complaint failed to allege plausible claims for breach of contract, fraudulent concealment, aiding and abetting fraud, conspiracy to commit fraud, and 3 misappropriation, and that the aiding and abetting breach of fiduciary duty claim was time-barred.

Plaintiffs moved for leave to amend the complaint and submitted a proposed amended complaint (the ″PAC″), which they alleged cured any identified deficiencies. In an Opinion and Order issued May 21, 2019, the district court denied plaintiffs′ motion to amend on the grounds that amendment would be futile. This appeal followed.

The sole issues on this appeal are whether the district court erred in dismissing plaintiffs′ claims for (1) aiding and abetting breach of fiduciary duty, (2) misappropriation of trade secrets, (3) and aiding and abetting and conspiracy to commit fraud.1 DISCUSSION I. Standard of Review We review de novo both the granting of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) and the denial of a motion for leave to amend the complaint premised on futility.

See Edwards v. Sequoia Fund, Inc., 938 F.3d 8, 12 (2d Cir. 2019); Yamashita v. Scholastic Inc., 936 F.3d 98, 107-08 (2d Cir. 2019) (per curiam). In evaluating whether a complaint states a claim, ″we accept as true all factual allegations 1 Although plaintiffs appeal the district court′s dismissal of their ″fraud claims,″ they dispute only the district court′s holding that the fraud claims were not pled with particularity.

Plaintiffs′ fraudulent concealment claim, however, was dismissed for a failure to plead a benefit obtained by defendants, a required element of a cause of action. See Inspired Capital, LLC v. Condé Nast, No. 18 CIV. 0712 (JFK), 2018 WL 6173712, at *5 (S.D.N.Y. Nov. 26, 2018). Plaintiffs do not address this claim in their brief.

To the extent plaintiffs′ appeal also challenges dismissal of their fraudulent concealment claim, we affirm for the reasons set forth by the district court. See id. 4 and draw from them all reasonable inferences; but we are not required to credit conclusory allegations or legal conclusions couched as factual... allegations.″ Nielsen v. Rabin, 746 F.3d 58, 62 (2d Cir.

2014) (internal quotation marks omitted). ″[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.″ Id. (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). II. Aiding and Abetting Breach of Fiduciary Duty Although the district court dismissed plaintiffs′ aiding and abetting breach of fiduciary claim as time-barred, we affirm on the alternative ground that the complaint and PAC failed to allege a plausible claim.2 To state an aiding and abetting breach of fiduciary claim under New York law, a plaintiff must allege (1) a ″breach by a fiduciary of obligations to another″ of which the defendant ″had actual knowledge;″ (2) ″that the defendant knowingly induced or participated in the breach″; and (3) ″that [the] plaintiff suffered damage as a result of the breach.″ See In re Sharp Int′l Corp., 403 F.3d 43, 49-50 (2d Cir.

2005).3 The PAC alleged that Harris violated his fiduciary duty to IFS when he transferred his recipes and food products to Benevida and reinitiated a business relationship with defendants through the new corporate entity. Even assuming Harris breached a fiduciary duty he owed to plaintiffs -- which we do not decide here -- 2 ″We may affirm on any ground that finds support in the record.″ Dettelis v. Sharbaugh, 919 F.3d 161, 163 (2d Cir.

2019) (per curiam). 3 The parties agree that New York law applies to the claims at issue in this appeal. 5 plaintiffs′ claim fails because the facts alleged do not give rise to an inference that defendants knew or should have known of this breach.

The complaint and PAC alleged that defendants dealt exclusively with Harris and that Harris executed all contracts with them on behalf of IFS. Plaintiffs have not identified any plausible reason why defendants would have had reason to know the specifics of Harris′s arrangement with IFS regarding his recipes and products, or that Harris was not authorized to continue doing business with them through Benevida after IFS′s dissolution.4 Amendment would also have been futile.

Plaintiffs′ added allegation that defendants received and reviewed IFS′s internal Limited Liability Company Agreement -- presumably for defendants′ own liability purposes -- before granting a license to IFS in 2013, does not give rise to the inference that defendants knew Harris was breaching his duties under that agreement a year later. See Lerner v. Fleet Bank, N.A., 459 F.3d 273, 294 (2d Cir.

2006) (holding that an aiding and abetting claim under New York law requires ″an allegation that such defendant had actual knowledge of the breach of duty″). 4 Plaintiffs′ allegations that defendants ″knew that IFS developed and owned the food recipes and food products″ and ″knew that Harris developed and owed and was breaching his fiduciary duties,″ App′x at 231-32, are conclusory and cannot save their aiding and abetting breach of a fiduciary duty claim.

See Webb v. Goord, 340 F.3d 105, 111 (2d Cir. 2003) (affirming the dismissal of a claim where ″plaintiffs ha[d] not alleged, except in the most conclusory fashion... any... meeting of the minds occurred among any or all of the defendants.″). 6 III. Misappropriation of Trade Secrets ″A plaintiff claiming misappropriation of a trade secret must prove: (1) it possessed a trade secret, and (2) defendant is using that trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper means.″ Integrated Cash Mgmt.

Servs., Inc. v. Dig. Transactions, Inc., 920 F.2d 171, 173 (2d Cir. 1990) (internal quotation marks omitted). The district court dismissed plaintiffs′ misappropriation of trade secrets claim for a failure to allege the existence of a trade secret and denied leave to amend on the grounds that the claim was time-barred.

We need not decide either issue reached by the district court. Even assuming the claim was timely and a trade secret sufficiently alleged, dismissal was warranted because the complaint did not allege a single instance of defendants -- as opposed to Harris -- ″using″ IFS′s intellectual property. Id. Defendants granted IFS, and subsequently Benevida, the right to use defendants′ intellectual property in connection with the sale of Harris′s food products, not the inverse.

To the extent that defendants continued to authorize use of their own intellectual property in connection with the marketing and sale of the health food products with Benevida after terminating their license agreement with IFS, such conduct would not constitute misappropriation of IFS′s trade secrets. And even if, as plaintiffs allege, defendants provided ″support″ to Benevida in marketing its healthy food line, App′x at 236, that is not misappropriation.

Accordingly, dismissal of plaintiffs′ misappropriation of trade secrets claim is affirmed. 7 IV. Fraud Claims The district court also did not err in dismissing plaintiffs′ aiding and abetting fraud and conspiracy fraud claims because neither the complaint nor the proposed amendments in the PAC satisfied the heightened pleadings standard for fraud claims under Federal Rule of Civil Procedure 9(b).

Plaintiffs first argued a fraudulent omission -- that Harris ″conceal[ed] that he had formed Benevida with an objective directly antagonistic to IFS.″ Dist. Ct. Dkt. No. 31 at 19. In the PAC, plaintiffs altered their theory of fraud to a misstatement, alleging that in March 2013 and ″periodically thereafter,″ Harris told IFS that its investment would be used ″strictly for the benefit of IFS.″ App′x at 219.

This statement was misleading, according to plaintiffs, because it ″fail[ed] to disclose that [Harris′s] efforts would be, and were instead aimed at securing for himself a relationship with [defendants] contrary to the terms of″ their operating contract with IFS. App′x at 219.

We have repeatedly explained that Rule 9(b)′s heightened pleading requirement ″serves to provide a defendant with fair notice of a plaintiff′s claim, safeguard his reputation from improvident charges of wrongdoing, and protect him against strike suits.″ ATSI Commc′ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 99 (2d Cir. 2007). Allegations of fraud under Rule 9(b), therefore, must be pled with particularity and ″specify the time, place, speaker, and content of the alleged misrepresentations.″ Caputo v. Pfizer, Inc., 267 F.3d 181, 191 (2d Cir.

2001). Plaintiffs′ allegation that Harris 8 made an alleged misstatement, at an unidentified location, on an unidentified date in March 2013 and ″periodically thereafter,″ App′x at 219, clearly does not satisfy this standard.

Because the PAC failed to allege fraud, it could not state a claim for either aiding and abetting fraud or fraud conspiracy, as both causes of action require an underlying fraud to be alleged. See Lerner, 459 F.3d at 292 (″To establish liability for aiding and abetting fraud, the plaintiffs must show... the existence of a fraud″ (internal quotation marks omitted)); Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 26 n.4 (2d Cir.

1990) (noting that stating a civil fraud conspiracy claim requires pleading ″underlying acts of fraud″ with particularity). Accordingly, the district court′s dismissal of plaintiffs′ fraud claims and subsequent denial of leave to amend is affirmed. * * * We have considered plaintiffs′ remaining arguments and conclude they are without merit.

For the foregoing reasons, we AFFIRM the judgment of the district court. FOR THE COURT: Catherine O′Hagan Wolfe, Clerk 9