

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 12/21/2022

TIME: 07:33:00 AM

DEPT: C33

JUDICIAL OFFICER PRESIDING: Geoffrey Glass

CLERK: B. Crabtree

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2021-01233224-CU-FR-CJC** CASE INIT.DATE: 11/24/2021

CASE TITLE: **BroadSpring, Inc. vs. Lakhiani**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT ID/DOCUMENT ID: 73911236

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 12/08/2022 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The court DENIES these motions for the reasons stated in the tentative decision. The court further addresses the following issues.

Procedural defects:

1. Summary Judgment is not appropriate because the motion does not eliminate the entire complaint.
2. The notice of motions seeks Summary Adjudication against *both* Deepak *and* Halona under issues 2, 3, 4, 5, 6, and 7 in the notice. The plaintiff must, therefore, prove that both are liable as to each issue. To the extent the moving party does not meet the standard as to both, or only the meets the statutory standard as to one, the court must deny the Motion for Summary Adjudication as noticed.
3. Issues 5 and 7 set out in the Notice of Motion fail to comply with CCP 427c(t).
4. The Separate Statement does not repeat the specific cause of action verbatim in the separate statement of undisputed material facts. CA ST CIVIL RULES Rule 3.1350. The separate statement identifies issues 1, 3, 5, and 7 that are not set out in the Notice of Motion as required by Rule 3.1350. In fact, the moving party, in a footnote, contains cryptic language explaining the purpose of issues 1, 3, 5, and 7 in the separate statement: BroadSpring includes these issues to support and substantiate its right to have judgment on Issues 2, 4, 6, and 8 (which are also not verbatim repeats of the Issues stated in the Notice of Motion. This not in compliance with either Rule 3.1350 or CCP 437c(b) (1).

5. The moving papers do not address whether Hanola is liable on the complaint.

On the merits:

The following facts set out in the Separate Statements are disputed or are not supported by the evidence cited.

1. All the facts that claim that Gurpreet and Deepak acted in concert (Issues 1 through 9, UMF 7, 8 9, 10, and 12, Issue 11 [Statute of Limitations] UMF 17) are disputed. Each of them alleges that the other was the instigating party and both say that they did not act in concert.

2. Issue 15 UMF 39, Issue 16 UMF 39, and Issue 18 UMF 39 cites, as the basis for the claims that Deepak and Halona were jointly liable, Civil Code § 1431 *et seq.* Civil Code § 1431 presumes an obligation to be joint, not several. Civil Code § 1431.1 says that some damages (not applicable here) are several only and not joint. Civil Code § 1432 only addresses contribution among joint or joint and several obligors. Nothing in that citation supports the UMF that Deepak and Halona are jointly and severally liable to their theft from BroadSpring.

3. The UMF related to the amount of damages suffered (Issues 1, 2, 3, 4, 5, 6 7, and 8, UMF 22 and 23) are not supported by the evidence presented, due to the court's ruling on the certain objections to Dr. Friedman's Declaration.

The court's tentative ruling, corrected for an error in transcription and further edited by the court, was:

Plaintiff, BroadSpring, Inc.'s (Plaintiff) Motion for Summary Judgment, or, in the alternative, Summary Adjudication, is DENIED.

Rulings on Objections

Objections to Declaration of Gurpreet Lakhiani

Overruled: 10, 14-18, 28-30, 38-51, 59, 70, 72, 76 and 79

Sustained in Part: 9 and 31

Sustained: Objections 1-8, 11-13, 25-27, 32-35, 37, 52-58, 60-69, 71, 73-74 and 77-78

Objections to Declaration of Ray Friedman

Overruled: 110-113

Sustained: 80-109, 114-120

Objections to Declaration of Ray Musci

Overruled: 122-125, 131-132, 135

Sustained in Part: 134

Sustained: 121, 126-130, 133, 136-139

Objections to Declaration of Allan Legator

Sustained in Part: 141

Sustained: 142-153

Objections to Declaration of Sidharth Suneja

Overruled: 154-161, 163-191

Sustained: 164

Objections to Declaration of Jeffrey Gersh

Overruled: 192-195

Objections to Declaration of Grigory Rchtouni

Overruled: 1-2, 4, 6, 9, 14, 16, 18

Sustained: 3, 5, 7-8, 10-13, 15, 17, 19-21

Objections to Declaration of Kurt Stake

Overruled: 23-27, 28

Sustained in Part: 22

Objections to Separate Statement in Support of Opposition

Objections 29-30: failure to comply with the California Rules of Court. This is not an evidentiary objection. However, Plaintiff is correct that these portions of the opposing separate statement do not comply with California Rules of Court, rule 3.150(f). The opposing separate statement as to UMF 6-25, 29-30, 39-41 does not state why these facts are disputed by instead states "DISPUTED" and cites to evidence. The opposing separate statement as to UMFs 28, 31-38 neither states why these facts are disputed nor cite to any evidence.

Ruling on Request for Judicial Notice

The court GRANTS Defendants' request for judicial notice pursuant to Evidence Code section 452, subdivision (d).

Plaintiff moves for summary judgment, or, in the alternative, summary adjudication as follows:

1. summary judgment/adjudication against Deepak on second cause of action for Aiding and Abetting Breach of Fiduciary Duty, based on said defendant's substantial acts of theft, fraud and concealment
2. summary judgment/adjudication against Deepak and Halona on fourth cause of action or Conspiracy to Commit Fraudulent Misrepresentation based on said defendant's substantial acts of theft, fraud and concealment
3. summary judgment/adjudication against Deepak and Halona on sixth cause of action for conspiracy to commit fraudulent concealment
4. summary judgment/adjudication against Deepak and Halona as to eighth cause of action for

conspiracy to commit conversion

5. summary adjudication against Deepak and Halona on claim for a constructive trust over the real properties located at: (a) 73 Hawking, Irving, CA; (b) 317 Lodestar, Tustin, CA 92782, (c) 319 Lodestar, Tustin, CA 92782, and (d) 22401 Birchcrest, Mission Viejo, CA 92692 to satisfy the judgment against said Defendants

6. summary adjudication as to each of the affirmative defenses alleged by Deepak and Halona in their collective Verified Answer to BroadSpring's Verified Complaint

7. A judgment against Deepak and Halona, jointly and severally, in the following amounts:

a. The principal sum of \$4,728,011.21, plus interest thereon at the legal rate of 10% per annum from and after the date the funds were stolen from BroadSpring

b. The principal sum of \$320,000.00, plus interest thereon at the legal rate of 10% per annum from and after the date the funds were stolen from BroadSpring.

Claims Against Ms. Lakhiani

The court notes that Plaintiff's Motion argues at pages 8-10 that there are no triable issues as to any claims against Ms. Lakhiani. However, Plaintiff's Notice of Motion only seeks summary judgment or summary adjudication against Defendants Mr. Lakhiani and Halona Management, LLC (Halona).

Because the Notice of Motion does indicate that Plaintiff seeks relief against Ms. Lakhiani, the court will not make a ruling as to any causes of action against her.

Second Cause of Action for Aiding and Abetting Breach of Fiduciary Duty

"[T]he elements of a claim for aiding and abetting a breach of fiduciary duty are: (1) a third party's breach of fiduciary duties owed to plaintiff; (2) defendant's actual knowledge of that breach of fiduciary duties; (3) substantial assistance or encouragement by defendant to the third party's breach; and (4) defendant's conduct was a substantial factor in causing harm to plaintiff." (Nasrawi v. Buck Consultants LLC (2014) 231 Cal.App.4th 328, 343.)

"[B]efore a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law." (Hasso v. Hapke (2014) 227 Cal.App.4th 107, 140 (quoting Committee on Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 221).) "A fiduciary duty under common law may arise 'when one person enters into a confidential relationship with another.'" (Id.)

Plaintiff argues that summary adjudication as to the second cause of action is warranted because the submitted evidence establishes that (1) Mr. Lakhiani knew of Ms. Lakhiani's position at Plaintiff, (2) Mr. Lakhiani participated in stealing money from Plaintiff and helped Ms. Lakhiani cover up such stealing. (Motion, 12-14.) Plaintiff points to emails from Mr. Lakhiani to Ms. Lakhiani and Plaintiff in support of this argument.

In opposition, Defendants argue that summary adjudication on second cause of action is not warranted because Ms. Lakhiani denied during her deposition that she embezzled or converted funds from Plaintiff. (Opposition, 9-10; Rchtouni, Decl., ¶ 11, Ex. 2 at 24:14- 25:23.) Further, Defendants assert that Mr. Lakhiani's emails do not demonstrate that he admitted to participating in any embezzlement.

In reply, Plaintiff asserts that Ms. Lakhiani did not contradict her Declaration in Support of Motion through

her 10-24-22 deposition, as the opposition cherry-picks Ms. Lakhiani's testimony while ignoring other testimony in which she unequivocally admits to engaging in embezzlement and concealment of such embezzlement. (Reply, 3-4; Gersh Reply Decl., ¶ 4, Ex. 2, at 31:11-33:23.)

Aiding and abetting breach of fiduciary duty can be established under two theories. One of them tracks with civil conspiracy and requires that the aider and abettor have the same duty as the actor. There is no evidence or Uncontroverted Material Fact from which the court could conclude that Mr. Lakhiani owed a fiduciary duty to BroadSpring. The other way to establish a cause of action for aiding and abetting a breach of duty requires that the aider and abettor provide "substantial assistance" to the party with the fiduciary duty and for the aider and abettor's assistance to be a "substantial factor" in causing harm. (Nasrawi v. Buck Consultants LLC (2014) 231 Cal.App.4th 328, 343.) The evidence upon which the moving replies to show substantial assistance and substantial factor is not contradicted.

Further, the moving party has not shown its undisputed damages.

Therefore, summary adjudication GRANTED as to the second cause of action.

Fourth, Sixth and Eighth Causes of Action: Conspiracy to Commit Fraudulent Misrepresentation, Conspiracy to Commit Fraudulent Concealment, Conspiracy to Commit Conversion

The elements of a fraud cause of action are: (1) misrepresentation (false representation, concealment, or omission); (2) knowledge of falsity; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damage. (Davis v. Southern California Edison Co. (2015) 236 Cal.App.4th 619, 642.)

"Conversion is the wrongful exercise of dominion over the property of another." (Farmers Ins. Exchange v. Zerlin (1997) 53 Cal.App.4th 445, 451.) The elements of a claim for conversion are (1) the plaintiff's ownership or right to possession of the property at the time of the conversion, (2) the defendant's conversion by a wrongful act or disposition of property rights, and (3) damages. (Prakashpalan v. Engstrom, Lipscomb & Lack (2014) 223 Cal.App.4th 1105, 1135.) "It is not necessary that there be a manual taking of the property," only "an assumption of control or ownership over the property, or that the alleged converter has applied the property to his [or her] own use." (Farmers Ins. Exchange, supra, 53 Cal.App.4th at pp. 451-452.)

The elements of a civil conspiracy are: "(1) the formation of a group of two or more persons who agreed to a common plan or design to commit a tortious act; (2) a wrongful act committed pursuant to the agreement; and (3) resulting damages." (City of Industry v. City of Fillmore (2011) 198 Cal.App.4th 191, 212.) "A conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to achieve. [citation] As long as the underlying wrongs are subject to privilege, defendants cannot be held liable for a conspiracy to commit these wrongs. Acting in concert with others does not destroy the immunity of defendants." (McMartin v. Children's Institute International (1989) 212 Cal.App.3d 1393, 1406.)

Plaintiff argues that summary adjudication as to these causes of action is warranted against Mr. Lakhiani for the same reasons stated as to the second cause of action. (Motion, 14.) Having denied summary adjudication against Mr. Lakhiani as to the second cause of action, the court now denies summary adjudication against Mr. Lakhiani as to the fourth, sixth and eighth causes of action for the same reasons stated.

Next, Plaintiff argues that summary adjudication as to the fourth, sixth and eighth causes of action against Halona is also warranted because Mr. Lakhiani is its sole member and manager, Mr. Lakhiani knew of the scheme to defraud because Plaintiff and Halona benefitted because certain funds from Plaintiff were paid to Halona. (Motion, 14-15.)

The court finds that Plaintiff has not met its burden of establishing the fourth, sixth and eighth causes of action against Halona. The only evidence Plaintiff submits in support of summary adjudication against Halona on these causes of action is that Halona's sole member and manager is Mr. Lakhiani, and that certain payments were made to Halona which consisted of Plaintiff's funds. However, Plaintiff does not submit evidence demonstrating that Halona engaged in any actions which constituted fraud, concealment, conversion, or aiding and abetting in fraud, concealment or conversion. Plaintiff also did not cite legal authority for the argument that Halona can be held liable solely based on the fact that its only member and manager is Mr. Lakhiani.

Based on the foregoing, summary adjudication is DENIED as to the fourth, sixth and eighth causes of action against Halona.

Constructive Trust

““One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.” [citation]

“The case law explains that in order to create a constructive trust as defined in section 2224, three conditions must be satisfied: the existence of a res (property or some interest in the property); the plaintiff's right to that res; and the defendant's acquisition of the res by some wrongful act. [Citations.]” [citation] (Optional Capital, Inc. v. DAS Corp. (2014) 222 Cal.App.4th 1388, 1402.)

BroadSpring requests a constructive trust over (a) 73 Hawking, Irving, CA; (b) 317 Lodestar, Tustin, CA 92782, (c) 319 Lodestar, Tustin, CA 92782, and (d) 22401 Birchcrest, Mission Viejo, CA 92692. BroadSpring argues that this is warranted because (1) the properties were purchased with stolen funds, and (2) Gurpreet provided quitclaim deeds to each of the properties. (Motion, 15-17.) (Musci Declaration, Exhibits 9-12.)

On 2-3-22, the court previously issued the following injunction:

“Defendant Deepak Lakhiani shall not sell transfer, disburse, encumber, hypothecate, or dissipate any interest in the following real property:

(1) Real property located at 73 Hawking, Irvine, CA 92618;

(2) Real property located at 317 Lodestar, Tustin, CA 92782; (3) Real property located at 319 Lodestar, Tustin, CA 92782.

Plaintiff BroadSpring, Inc. shall post a bond of \$50,000 in 10 days.”

The court also specifically noted that no injunction regarding the Mission Viejo property was warranted because Plaintiff has not made a showing that such property was purchased or maintained with stolen funds. (2-3-22 Minute Order, p. 5.)

In opposition, Defendants contend that a constructive trust is not warranted because Ms. Lakhiani's quitclaim deeds to Plaintiff were made in violation of the Automatic Temporary Restraining Orders in connection with Mr. and Ms. Lakhiani's dissolution of marriage matter. (Opposition, 11-13.)

Paragraph 6 and 15 of the Suneja Declaration establish that each of the properties subject to the injunction were purchased or maintained with funds from Plaintiff. Defendants have not contradicted this declaration through their opposition but instead, relies on inadmissible evidence from their attorney for the proposition that Ms. Lakhiani's quit claim deeds are invalid. Defendants have also not cited to legal

authority for the proposition that family proceedings have any bearing on a civil court's motion for summary judgment ruling.

The court DENIES Plaintiff's request as to a constructive trust for 22401 Birchcrest, Mission Viejo, CA. Plaintiff's evidence is insufficient to establish that this property was purchased or maintained through stolen funds.

Affirmative Defenses

Plaintiff argues that there is no triable issue as to Mr. Lakhiani and Halona's affirmative defenses for the following reasons:

- There are no triable issues as to the defense of failure to state a cause of action or lack of damages because there are no triable issues as to Plaintiff's causes of action or damages;
- There are no triable issues as to the statute of limitations defense because the statute of limitations for fraud is 3 years and Plaintiff filed this action on 11-24-21 after Mr. Lakhiani alerted Plaintiff of the fraud on 10-6-21;
- There are no triable issues regarding the intervening/superseding act, comparative fault or acts/omissions defense as the court has already determined that Mr. Lakhiani participated in the scheme to steal funds from Plaintiff. Additionally, any contribution/indemnification defense is an issue between the defendants.
- There are no triable issues as to any defense for vicarious liability or lack of duty, as no independent fiduciary duty is required for Plaintiff to assert causes of action against them.

(Motion, 17-18.)

As discussed above, the court sustains Defendants' objections to the Friedman Declaration as it finds that Mr. Friedman has failed to establish foundation for his conclusions regarding the amount of Plaintiff's damages. Therefore, the court finds that Plaintiff has not met its burden on summary adjudication with regard to Defendants' eighth affirmative defense for "No Injury or Damage." (See ROA No. 152, p. 15.)

Additionally, the court previously found Plaintiff's evidence insufficient to meet its burden on summary adjudication as to Halona. Therefore, the court does not grant summary adjudication as to any of Halona's affirmative defenses.

Defendants' opposition does not address Plaintiff's arguments regarding their affirmative defenses. Therefore, Defendants have failed to raise a triable issue regarding Mr. Lakhiani's first through seventh and ninth affirmative defenses.

Based on the foregoing, Plaintiff's Motion is GRANTED as to the first through seventh and ninth affirmative defenses by Mr. Lakhiani. The Motion is DENIED as to the eighth affirmative defense by Mr. Lakhiani and all affirmative defenses by Halona.

Request for Monetary Judgment

Plaintiff requests judgment as follows: (a) The principal sum of \$4,728,011.21, plus interest thereon at the legal rate of 10% per annum from and after the date the funds were stolen from BroadSpring; (b) The principal sum of \$320,000.00, plus interest thereon at the legal rate of 10% per annum from and after the date the funds were stolen from BroadSpring.

Plaintiff relies on the Declaration of Ronald Friedman in support of the requested amounts.

As discussed above, the court sustains Defendants' objections to the Friedman Declaration, as it finds that Mr. Friedman's Declaration lacks foundation for his conclusions regarding the amounts Plaintiff allegedly lost due to Defendants' actions. Therefore, Defendants have not substantiated the requested monetary judgment.

For these reasons, Plaintiff's Motion is DENIED in its entirety.

Court orders Clerk to give notice.