

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

LYNN TANNER, KENNETH ORR, and
TRIUMPH SMALL CAP FUND, INC.,

Plaintiffs,

vs.

iPACESETTERS, LLC; KIDD &
COMPANY; JONATHAN ETRA, ESQ.;
JASON FINE; TRC ACQUISITIONS
CORP.; ABC CORP. 1-10; and JOHN
AND JANE DOES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BERGEN COUNTY

DOCKET No. BER-L-9241-14

CIVIL ACTION

OPINION

Argued: February 20, 2015

Decided: April 9, 2015

Honorable Robert C. Wilson, J.S.C.

Jay Joseph Friedrich, Esq., appearing for the plaintiffs, Lynn Tanner, Kenneth Orr, and Triumph Small Cap Fund, Inc. (Friedrich & Friedrich, LLC).

Mark A. Berman, Esq., appearing for the defendant, Jonathan Etra, Esq. (Hartmann Doherty Rosa Berman & Bulbulia, LLC).

Pamela A. Chamberlin, Esq., admitted pro hac vice and appearing for the defendant, Jonathan Etra, Esq. (Mitrani Rynor Adamsky & Toland, P.A.).

Michael P. Collins, Esq., appearing for the defendants, iPacesetters, LLC and Kidd & Company (Bond, Schoeneck & King, PLLC).

FACTUAL BACKGROUND

This matter arises out of the purchase or attempted purchase of certain corporate ownership interests. TRC Acquisitions Corp. Fund, Inc. (hereinafter "TRC") is a Nevada corporation in the business of acquiring, developing, and selling businesses. At all relevant times, the Plaintiffs, Lynn

Tanner and Kenneth Orr, and Defendant Jason Fine (hereinafter “Fine” or “Mr. Fine”), were purportedly equal owners of the outstanding shares of TRC. Defendant Fine is the CEO of TRC.

TRC, through Fine, negotiated with Defendant iPacesetters, LLC (hereinafter “iPacesetters”) for the sale of TRC’s subsidiary entity known as 1-2-1 Direct Response. In furtherance of these negotiations, Fine retained Defendant Jonathan Etra, Esq. (hereinafter “Etra” or “Attorney Etra”)¹. On May 13, 2010, Fine borrowed \$100,000 from Plaintiff Kenneth Orr (hereinafter “Orr”) and assigned his stock in TRC as collateral for the loan. Orr contends that when the balance of the loan was unpaid, he demanded repayment and/or collateral, but Fine refused, both individually and as CEO of TRC. Fine, with the advice and counsel of Etra, allegedly prepared and submitted documentation to iPacesetters claiming that he was the sole shareholder of TRC, which owned 1-2-1 Direct Response, when in fact Fine only owned 1/3 of the interest in TRC, which ownership interest was encumbered as collateral for Orr’s loan.

Etra received e-mail communications from Barry Witz, the husband of Plaintiff Lynn Tanner (hereinafter “Tanner”) and uncle of Fine, on July 29, 2011 and on August 9, 2011, notifying him that Fine was not the sole shareholder of TRC. Plaintiffs allege that although Kidd & Company (hereinafter “Kidd”) and iPacesetters would or should have been aware of Fine’s lack of complete ownership of TRC, they proceeded to acquire 1-2-1 Direct Response. Plaintiffs further allege that Kidd and iPacesetters made payments to Fine and entered into an employment agreement with Fine to solidify the Asset Purchase Agreement, despite knowing that Fine was not the sole shareholder and that Fine’s shares were pledged collateral for a loan that was in default.

Etra is a Florida litigation attorney who represents Fine in a pending Florida lawsuit against Plaintiffs Orr and Triumph Small Cap Fund, Inc. (“Triumph”). The Florida litigation has been

¹ Mr. Etra certifies that he did not represent Fine or TRC with regard to this transaction. The Court recites the facts as believed and pled by the Plaintiffs at this juncture, prior to considering Mr. Etra’s rebuttals.

pending since August of 2012. Etra contends that his joinder in this action is an attempt by Orr to harass Etra and his clients in order to benefit his prospects in the Florida litigation. Nevertheless, Etra's present motion is to dismiss this Complaint against him for lack of personal jurisdiction, forum non conveniens, and for failure to state a claim upon which relief can be granted. Defendant Kidd moves the Court to dismiss the complaint for lack of personal jurisdiction, failure to plead claims of fraud with specificity, the entire controversy doctrine, and failure to state a claim upon which relief can be granted. iPacesetters moves the Court to dismiss for failure to state a claim, failure to plead claims of fraud with specificity, and the entire controversy doctrine.

RULES OF LAW

I. Personal Jurisdiction

In the instant matter, where a “defendant challenges an action for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that the defendant’s contacts with the forum state are sufficient to confer personal jurisdiction on the court.” Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 454 (App. Div. 1998) (citing Giangola v. Walt Disney World Co., 753 F. Supp. 148, 154 (D.N.J. 1990)). “Once ... defendants have shown that they have no territorial presence in this state, the burden shifts, as it were, to ... plaintiff, who must then demonstrate their amenability, nonetheless, to an exercise of in personam jurisdiction based on minimum contacts.” Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519 (App. Div. 1996). “[I]t is the party asserting the adequacy of defendant’s contacts to support specific jurisdiction who bears the burden of persuasion on that issue.” Id. “The question of in personam jurisdiction ... if timely raised, must be resolved before the matter may proceed.” Id. at 532.

The assertion of personal jurisdiction by a New Jersey Court over a party must be “...consistent with [] due process of law.” Bayway Ref. Co. v. State Utils., Inc., 333 N.J. Super.

420, 428 (App. Div.), certif. denied, 165 N.J. 605, 762 A.2d 219 (2000). A New Jersey court may exercise personal jurisdiction over a non-resident defendant to the “outermost limits permitted by the United States Constitution.” Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971); R. 4:4-4(b)(1). The United States Constitution permits a state to exercise jurisdiction over an out-of-state defendant only where “...the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985).

In assessing the reasonableness of subjecting a non-resident defendant to personal jurisdiction, the Court will look to whether there are minimum contacts with the forum state that are consistent with due process. See International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). “The quality and nature of the [Defendant’s] activity in relation to the fair and orderly administration of the laws must be examined on a case-by-case basis to determine if the minimum contacts standard is satisfied.” Charles Gendler & Co. v. Telecom Equip. Corp., 102 N.J. 460, 470 (1986) (quoting International Shoe, supra, 326 U.S. at 319). Essentially, it must be determined whether the defendant has purposely availed himself (or itself) of jurisdiction in the forum state. Burger King, at 474-75 (1985).

Personal jurisdiction may be exercised under either a general or specific jurisdiction theory. Charles Gendler & Co. v. Telecom Equipment Corp., 102 N.J. 460, 471-72 (1986); Accura Zeisel Machinery Corp. v. Timco, Inc., 305 N.J. Super. 559, 565 (App. Div. 1997); Giangola v. Walt Disney World Co., 753 F.Supp. 148, 154 (D.N.J. 1990). Where a defendant’s contacts are “continuous and systematic,” a court may properly exercise general personal jurisdiction over the defendant, even where the defendant’s presence in the forum bears no relation to plaintiff’s claim against it. Lebel v. Everglades Marina, Inc., 115 N.J. 317, 322 (1989); Helicopteros Nacionales de

Columbia. S.S.A. v. Hall, 466 U.S. 408, 416 (1984).

By contrast, specific personal jurisdiction is established when a defendant's acts within the forum-state give rise to the cause of action. Accura Zeisel, supra, 305 N.J. Super. at 565. Specific jurisdiction requires sufficient minimum contacts for the defendant to have "...reasonably anticipated being haled into court there." World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). Specific jurisdiction focuses on the relationship among "...the defendant, the forum, and the litigation." Level v. Everglades Marinsa, Inc., 115 N.J. 317, 323 (N.J. 1989) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)).

Even where there are "continuous and systematic" contacts, general jurisdiction may be denied if subjecting the defendant to suit in the forum state does not comply with traditional notions of fair play and substantial justice. Maro v. Potash, 220 N.J. Super. 90, 98 (Law Div. 1987). Whether general or specific personal jurisdiction is recognized, personal jurisdiction must comport with "traditional notions of fair play and substantial justice." Burger King, 471 U.S. at 476.

While the controlling principles can be articulated with disarming ease, the difficulty is in their application to concrete disputes. Creative Business Decisions, Inc. v. Magnum Communications, Ltd., 267 N.J. Super. 569, 567 (App. Div. 1993). Plaintiff needs only to make a prima facie demonstration of personal jurisdiction. Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 454 (App. Div. 1998). However, as previously stated, when a defendant asserts lack of personal jurisdiction, "the plaintiff bears the burden of demonstrating that the defendant's contacts with the forum state are sufficient to confer personal jurisdiction on the court." Ibid.

The plaintiff must establish defendant's contacts with the jurisdiction through the use of "sworn affidavits, certifications, or testimony." Catalano v. Lease & Rental Management Corp., 252 N.J. Super. 545, 547-48 (Law Div. 1991) (citations omitted). When a jurisdictional defense

is raised, it is the plaintiff who bears the burden of demonstrating that the defendant's contacts are sufficient for purposes of recognizing a court's personal jurisdiction. Citibank v. Estate of Simpson, 290 N.J. Super. 519, 533 (App. Div. 1996).

II. Rule 4:6-2(e): Dismissal for Failure to State a Claim

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations "to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . ." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Under the New Jersey Court Rules, a Complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The "test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts." Printing Mart, 116 N.J. at 746. However, "a court must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief." Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

Furthermore, Rule 4:5-8(a) requires that any complaint alleging fraud set forth the "particulars of the wrong, with dates and items if necessary, ... insofar as practicable."

DECISION

I. Mr. Etra Does Not Have Sufficient Contacts With New Jersey to Warrant the Application of Personal Jurisdiction.

Plaintiffs have failed to allege or demonstrate sufficient minimum contacts between Attorney Etra and New Jersey so as to allow this Court to exercise jurisdiction over Mr. Etra. In their Complaint, Plaintiffs allege that Mr. Etra “was the attorney retained by Fine to represent his interests pertaining to the sale of the assets of 121 to iPacesetters, LLC.” Plaintiffs’ Complaint, at ¶ 14. They further allege that Mr. Etra “did receive emails from Barry Witz (deceased), the uncle of Fine and the husband of Lynn Tanner to Etra on July 29, 2011 and August 9, 2011 advising him that Fine did not own all of the issued and outstanding shares of stock as the owners of the shares were his wife, Orr and his nephew Fine.” Plaintiffs’ Complaint, at ¶ 17. Plaintiffs further allege that Fine informed Etra that he was in default of his loan obligations to Orr, and that Etra communicated to iPacesetters that Fine was the sole owner of TRC.

The relevant allegations relating to jurisdictional facts in the Complaint are as follows:

There is no allegation of any act in, from, or directed to New Jersey by Attorney Etra. There is no allegation that any of the acts or omissions allegedly giving rise to the claims against Mr. Etra took place in New Jersey. Defendant TRC is a Nevada corporation. Plaintiff Tanner is a resident of California. Although Defendant iPacesetters is alleged to be a New Jersey company, there is no allegation that Defendant Etra ever represented iPacesetters, had any contact with iPacesetters in New Jersey, or that iPacesetters is otherwise an essential party to this litigation.

Mr. Etra has provided an affidavit in support of his Motion establishing that he is a Florida attorney who is licensed to practice law only in Florida and in New York, and who does not and has never practiced law in New Jersey. He is a resident of Florida, and has never resided in New Jersey. Mr. Etra owns no property, has no business, and solicits no clients in New Jersey. Mr. Etra

was served with process in Florida, and not in New Jersey. Mr. Etra is a litigation and trial lawyer, and not a transactional lawyer. Mr. Etra has represented Fine, a Florida resident, and TRC, a Nevada corporation with its principal place of business in Florida, in a number of litigation matters in Florida, and has never represented Fine or TRC in any New Jersey matters. Mr. Etra swears he did not represent Fine or TRC in any of the transactions alleged in the Complaint. Mr. Etra did not negotiate or draft the Asset Purchase Agreement between TRC and iPacesetters referred to in the Complaint. Mr. Etra certifies that he has never represented Orr, Triumph, or Tanner in connection with the transactions alleged in the Complaint, or any other matter whatsoever.

Movant further provides the certification of Attorney David Kagel, Esq., who corroborates Mr. Etra's affidavit testimony. Attorney Kagel certifies that he, and not Mr. Etra, represented Fine and TRC in the transaction in which TRC sold 121's assets to iPacesetters, and that it was Mr. Kagel, and not Mr. Etra, who made representations to iPacesetters regarding the ownership structure of TRC.

The law of personal jurisdiction is abundantly clear and leaves this Court no choice but to dismiss Mr. Etra from this litigation. The facts as pled in the Complaint are insufficient to establish personal jurisdiction over Mr. Etra, as there is no allegation that any act occurred in New Jersey, that any act was solicited or otherwise advertised or performed in New Jersey, or that there was any purposeful availment of the jurisdiction of New Jersey by Mr. Etra. Plaintiffs' contention in opposition to the motion for dismissal, that Mr. Etra's involvement in litigation affecting the rights of a New Jersey corporation was sufficient to bring him within the ambit of New Jersey's jurisdiction, is patently insufficient. Even if the Court accepted as true Plaintiffs' allegation that Mr. Etra was in fact the attorney representing Fine and TRC in the disputed transaction with a New Jersey entity, that fact would itself be insufficient to substantiate personal jurisdiction over Mr.

Etra in this matter. Engagement with a foreign person or corporation does not necessarily make that person subject to the jurisdiction of the courts in the foreign person or corporation's domicile. This idea defies any notion of fair play and substantial justice.

The affidavits provided by Mr. Etra were undisputed by Plaintiffs in their opposition papers. Plaintiffs have not met, or attempted to meet, their burden of demonstrating that personal jurisdiction as to Mr. Etra is appropriate. Indeed, they merely contend that countenancing affidavits or other proofs outside of the pleadings is impermissible – a contention which case law suggests is plainly untenable. As such, all causes of action raised against Mr. Etra are **DISMISSED WITH PREJUDICE**.

The Court notes that Mr. Etra also argued that the matter should be dismissed based on the doctrine of forum non conveniens, and because the particular claims pled failed to state a claim upon which relief can be granted. However, the Court's dismissal of this matter for lack of personal jurisdiction over Mr. Etra is dispositive, and consequently these secondary issues need not be considered.

II. Kidd & Company Must Be Dismissed From the Action for Lack of Personal Jurisdiction.

Kidd & Company (hereinafter "Kidd") is a Connecticut limited liability company with its principal and only office in Connecticut. Kidd claims to have no contacts with New Jersey that are sufficiently continuous or substantial so as to justify the exercise of general jurisdiction in New Jersey. Kidd does not, nor has it ever, had offices or employees located in New Jersey. Kidd further argues that the facts of the instant matter do not meet the threshold for specific personal jurisdiction in this matter.

In support of the assertion of personal jurisdiction over Kidd, Plaintiffs allege that iPacesetters, a New Jersey company, is a fully owned subsidiary of Kidd. Kidd denies this to be

true, but nonetheless argues that “[i]t is well-established that the forum contacts of a subsidiary corporation will not be imputed to a parent corporation for jurisdictional purposes without a showing of something more than mere ownership.” Pfundstein v. Omnicom Group Inc., 285 N.J. Super. 245 (App. Div. 1995). Generally, jurisdiction over a subsidiary corporation will not give rise to jurisdiction over the parent corporation “unless the subsidiary is ‘merely the alter ego or agent’ of the parent and unless the ‘independence of the separate corporate entities was disregarded.’” Id. at 253 (quoting Lucas v. Gulf & Western Industries, Inc., 666 F.2d 800 (3d Cir. 1981)). Plaintiffs’ allegations with regard to Kidd refer only to Kidd’s actions or omissions as the parent company of iPacesetters, LLC. Plaintiffs and Kidd dispute whether iPacesetters is a fully-owned subsidiary, but Plaintiffs’ contention, even if true, would be insufficient to establish personal jurisdiction over Kidd.

Plaintiffs pose the question “[h]ow can Defendant Kidd claim that they did not reasonably anticipate being haled to the State of New Jersey when they are in complete ownership of iPacesetters, a New Jersey corporation? Also, Defendant Kidd failed to exercise due diligence in its subordinate entity’s purchase of 1-2-1 Direct Response, allowing for iPacesetter to undertake an unlawful asset purchase from Jason Fine in which he had a less than full interest, negatively affecting the New Jersey entity’s interest in same, plus fine’s [sic] employment.” Plaintiffs’ Brief in Opposition to Kidd’s Motion to Dismiss, p. 6. Kidd’s mere purported ownership of a New Jersey company is insufficient, by itself, to subject it to general personal jurisdiction in New Jersey. Kidd is incorporated and headquartered in Connecticut, and does no business in New Jersey. Moreover, this Court plainly lacks specific personal jurisdiction over Kidd, since the cause of action alleged by Plaintiffs does not arise out of Kidd’s contacts with, or actions in, New Jersey. Instead, this lawsuit arises directly out of iPacesetters, LLC’s (a separate and distinct legal entity) purchase of

certain assets from TRC and Fine pursuant to a certain Asset Purchase Agreement. Plaintiffs' allegations that Kidd knew or should have known that Fine was not the sole shareholder of TRC and therefore not authorized to make the above-referenced transaction is insufficient. Kidd had nothing to do with the transaction, as it was not a signatory, received no compensation from the agreement, and there is otherwise no nexus between Kidd and the events underlying this litigation. Kidd furthermore claims not to be the parent company of iPacesetters and that there is in fact no corporate relationship between those two entities.

It is undisputed that Plaintiffs have the burden of establishing personal jurisdiction over Kidd in this matter. Merely alleging that they own a New Jersey corporation is insufficient, insofar as there is no allegation that the New Jersey corporation they own is the alter ego of Kidd, or any other allegation sufficient to pierce the veil of corporate personhood. Indeed, beyond naming Kidd as a defendant, Plaintiffs fail to demonstrate a likelihood that even with discovery, they will be able to establish personal jurisdiction. As such, the Court finds that there is no personal jurisdiction over Kidd in this matter, and determines that Defendant Kidd's Motion to Dismiss the Complaint is **GRANTED**, and orders that all claims against Kidd in this matter be **DISMISSED WITH PREJUDICE**.

III. Plaintiffs' Allegations of Fraud and/or Civil Conspiracy Are Inadequate and Require Dismissal.

Defendants Kidd and iPacesetters rely on Rule 4:5-8(a) as a basis for dismissing the present action, insofar as they argue that the claims for fraud and civil conspiracy to defraud are not pled with specificity in the Complaint. This argument flows from Plaintiffs' singular allegation that "[t]he actions of the Defendants asking [sic] in unison did conspire to defraud the shareholders of their rights and interest in the assets being conveyed to iPacesetters."

“In all allegations of misrepresentation, fraud, mistake, breach of trust, willful default or undue influence, particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable. Malice, intent, knowledge, and other conditions of mind of a person may be alleged generally.” R. 4:5-8. To state a claim of common law fraud, the plaintiff must plead five elements: “(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.” Banco Popular N. Am. v. Gandi, 184 N.J. 161 (2005) (citing Gennari v. Weichert Co. Realtors, 148 N.J. 582 (1997)).

In the instant matter, reading Plaintiffs’ Complaint as liberally and generously as possible, it is inescapable that the claim for fraud is merely stated generally, and not specifically in any way. That is, merely stating that the defendants acted in unison so as to defraud, or conspire to defraud, the Plaintiff, is blatantly insufficient. There is no pled allegation as to what, specifically, was misstated or misrepresented to the Plaintiffs so as to defraud them, and there is no allegation as to when these statements were made, by whom they were made, or to whom they were directed. Plaintiffs cannot point to the mere fact that the assets in question were sold and conclude that both parties committed fraud without providing more specific facts in support of that allegation.

These claims cannot be sustained as a matter of law, and allegations of fraud are stricken from the Complaint.

IV. Plaintiffs’ Claims Against iPacesetters Are Facially Insufficient.

Defendant iPacesetters further moves the Court for dismissal on the grounds that it was a bona fide purchaser in the transaction at issue, and that therefore, no claim for relief against it can be sustained on the facts alleged by the Plaintiffs.

In support of its argument that Plaintiffs claims fail to state a claim upon which relief can be granted, iPacesetters contends that in 2011, it:

... entered into negotiations to purchase the assets of Telestar, whose parent corporation is TRC. During the course of those negotiations, co-defendants Fine and TRC (along with their counsel) repeatedly represented, both orally and in writing, that: (1) TRC was the sole record and beneficial owner of Telestar; (2) Fine was the sole record and beneficial owner of all the issued and outstanding shares of TRC; and (3) no other person had any options or other right to acquire any equity interests in either Telestar or TRC. ... iPacesetters, was therefore, plainly led to believe that Fine was the sole shareholder of TRC.

Defendants Kidd and iPacesetters' Brief in Support of Motion to Dismiss, p. 15.

In the Asset Purchase Agreement, the terms of which are not disputed by any of the parties, Fine and TRC expressly represent and warrant as follows:

3. Representations and Warranties of Seller, Parent and Fine. Each of Seller, Parent and Fine jointly and severally represent and warrant that except as set forth on the Seller's Disclosure Schedule herewith delivered to Buyer (the "Disclosure Schedule"):

3.2 Capitalization. Parent is the sole record and beneficial owner of the Seller and no other Person (as hereinafter defined) has any options or other right to acquire any equity interests in the Seller. Fine is the sole record and beneficial owner of all the issued and outstanding stock of the Parent and no other Person has any options or other right to acquire any equity interest.

Id. at 16.

Plaintiffs' Complaint clearly alleges that Fine and his counsel (purported to be Etra) did, in fact, make such representations regarding the ownership of 121 Direct Response to iPacesetters. Plaintiffs' Complaint further alleges that iPacesetters, however, "knew or should have known that Fine was not the sole owner of all the issued and outstanding shares of TRC and its subsidiaries"; that the "actions of the Defendants asking [sic] in unison did conspire to defraud the shareholders

of their rights and interest in the assets being conveyed to iPacesetters”; and that the “actions of the Defendants individually and collectively, by their actions, wrongfully acquired and/or benefited from their wrongful from their wrongful acts resulting in the benefit of the transfer of the assets of 121 Direct Response to the detriment of the Plaintiff herein, as well as any other shareholders of TRC and its subsidiaries.” iPacesetters contends that “[c]learly, however, under the circumstances, iPacesetters was a bona fide purchaser for value.”

Reading Plaintiffs’ Complaint in-depth and with liberality, a cause of action against iPacesetters cannot be gleaned from its face. Noting that no cognizable claims for fraud or conspiracy were pled, the Court notes that accepting all facts as true merely demonstrates that iPacesetters did indeed act as a bona fide purchaser. As stated before, merely alleging that they conspired to defraud the Plaintiff does not obviate the plainly stated facts as already alleged by the Plaintiff. These facts, if accepted by the Court as true, establish a bona fide purchaser defense – not a cause of action for fraud.

For the aforementioned reasons, Defendant iPacesetter, LLC’s Motion to Dismiss the Complaint is **GRANTED**, and the Complaint is **DISMISSED WITH PREJUDICE** as to iPacesetters.

It is so ordered.