

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

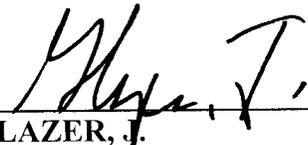
FRANCIS X. GRIMES, : November Term 2011
Plaintiff, :
v. : No. 675
POLYMER DYNAMICS, INC., ET. AL., :
Defendants. : Commerce Program
: Control Numbers 14092675/
: 14091717
:

DOCKETED
NOV 6 - 2014
C. HART
CIVIL ADMINISTRATION

ORDER

AND NOW, this 6th day of November 2014, upon consideration of defendants Donald LaBarre, Jr., Esquire and Gross McGinley, LLP's Supplemental Motion for Summary Judgment and defendant William Peoples' Supplemental Motion for Summary Judgment and plaintiff's responses in opposition, it hereby is **ORDERED** that defendants' Motions are **Granted** and Donald LaBarre, Jr., Gross McGinley, LLP and William Peoples are dismissed as defendants.

BY THE COURT,



GLAZER, J.

Grimes Vs Polymer Dynam-ORDOP



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	:	
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OPINION

Glazer, J.

November 6, 2014

Presently before the court are supplemental motions for summary judgment respectively filed by defendants Donald LaBarre, Jr., Esquire and Gross McGinley, LLP (“LaBarre defendants”) and William Peoples (“Peoples”). For the reasons discussed below, the supplemental motions for summary judgment are granted.

On August 14, 2014, in an order and opinion granting summary judgment in favor of co-defendants PAFCO and Ferentinos, this court found that the attorney charging lien that plaintiff Grimes relied upon to support his claim of superiority over that of PAFCO, a perfected secured creditor, was invalid.¹ Based on this finding, the court granted in part the respective motions for summary judgment filed by moving defendants herein, the LaBarre defendants and Peoples. The court, however, denied summary judgment on the discrete issue of whether distributions made from the verdict proceeds to the LaBarre defendants and Peoples were proper.

In September 2014, the LaBarre defendants and Peoples filed the instant supplemental motions for summary judgment on the limited issue of whether the distributions made to the

¹ The court adopts and incorporates the facts and reasoning set forth in the August 14, 2014 opinion herein.

LaBarre defendants and Peoples were proper. A review of the record evidence clearly demonstrates that all distributions made from the verdict proceeds held in the LaBarre defendants' escrow account, including the distributions made to the LaBarre defendants and Peoples, were made with the consent and authorization of PAFCO.

The proceeds from the lawsuit against Bayer Corporation were \$12,500,261 plus prejudgment interest of \$1,812,504.65 for a total of \$14,312,765.65. These proceeds were held in Gross McGinley, LLP's escrow account. PAFCO had a secured interest position in these verdict proceeds with priority over all others who claimed an interest in these proceeds, including Grimes. Secured creditors with valid UCC-1 filings receive priority distribution from their debtors over unsecured creditors.² The IRS, the Commonwealth of Pennsylvania and the City of Allentown were owed back taxes which were satisfied from the verdict proceeds. Once the tax obligations were satisfied, the balance remaining in the escrow account was insufficient to pay PAFCO in full. As a result, PAFCO agreed to reduce the balance owed it and agreed to accept the remaining amount as payment.³ The verdict proceeds balance in the Gross McGinley, LLP escrow account belonged to PAFCO.

PAFCO agreed to permit Polymer Dynamics, Inc. and Peoples to return principal loaned by other litigation fund lenders from the remainder of the verdict proceeds after specific amounts were paid to PAFCO.⁴ Additionally, PAFCO, who was legally privileged to receive the remaining funds held in escrow, agreed to distribute the proceeds at issue here to the LaBarre defendants and Peoples. Since PAFCO agreed to distribute a portion of the verdict proceeds to

² *U. S. Fidelity & Guar. Co. v. United Penn Bank*, 362 Pa. Super. 440, 445, 524 A.2d 958, 960 (1987).

³ Grimes Exhibit "21" attached to Grimes response to the PAFCO defendants motion for summary judgment - Settlement and Confirmation of Debt Agreement.

⁴ *Id.*

the LaBarre defendants and Peoples, Grimes' claims for conversion, tortious interference with contract, unjust enrichment and civil conspiracy against the LaBarre defendants and Peoples fail as a matter of law. Specifically, the LaBarre defendants and Peoples did not deprive⁵ Grimes of the proceeds or interfere⁶ with his right to possess same since Grimes was not entitled to the proceeds at issue nor was in possession of same.⁷ Moreover, Grimes did not confer a benefit upon the LaBarre defendants and Peoples for which he could claim unjust enrichment.⁸ PAFCO, a perfected secured creditor, had an interest superior to any interest possessed by Grimes which could not be abrogated. As such, PAFCO, not Grimes, had a right to the proceeds distributed to the LaBarre defendants and Peoples.⁹

⁵ See *Stevenson v. Economy Bank of Ambridge*, 413 Pa. 442, 451, 197 A.2d 721, 726 (1964) (“A conversion is the deprivation of another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent *and without lawful justification*.”). A plaintiff has a cause of action in conversion if he or she had actual or constructive possession of a chattel or an immediate right to possession of a chattel at the time of the alleged conversion. *Eisenhauer v. Clock Towers Associates*, 399 Pa.Super. 238, 243, 582 A.2d 33, 36 (1990).

⁶ The necessary elements of a cause of action for interference with existing contractual relations are as follows: (1) the existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant's conduct. *Phillips v. Selig*, 2008 PA Super 244, 959 A.2d 420, 429 (2008), citing Restatement (Second) of Torts § 766 (1979); *Small v. Juniata College*, 452 Pa.Super. 410, 682 A.2d 350, 354 (), *appeal denied*, 689 A.2d 235 (Pa.1997). Here, the LaBarre defendants and Peoples were justified in accepting the distributions from the verdict proceeds since the distribution was made with the consent of the PAFCO.

⁷ See this court's order and opinion dated August 14, 2014.

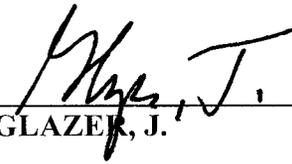
⁸ The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. Moreover, the most significant element of the doctrine is whether the enrichment of the defendant is *unjust*. The doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff. *Stoekinger v. Presidential Fin. Corp. of Delaware Valley*, 2008 PA Super 95, 948 A.2d 828, 833 (2008).

⁹ Further, because Grimes cannot recover for conversion and tortious interference with contract, there can be no claim conspiracy. See, *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655 (Pa.Super.2000).

CONCLUSION

Based on the foregoing, defendants LaBarre and Gross McGinley LLP's Supplemental Motion for Summary Judgment and defendant William Peoples' Supplemental Motion for Summary Judgment is granted and all claims against these defendants are dismissed.

BY THE COURT,



GLAZER, J.