

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

WORLDWIDEBEWEB NETWORKX CORP.,	:	December Term, 2001
	:	
Plaintiff,	:	No. 3839
	:	
v.	:	
	:	Commerce Case Program
ENTRADE, INC. and MARK	:	
SANTACROSE,	:	
	:	
Defendants.	:	Control No. 092505
	:	

ORDER

AND NOW, this 19th day of February 2003, upon consideration of defendant Santacrose's preliminary objections to Count I of the Amended Complaint, plaintiff's response to the preliminary objections, and all matters of record, and in accord with the contemporaneous Memorandum Opinion, it is **ORDERED** that said objections are **SUSTAINED**, and the Amended Complaint as to defendant Santacrose is dismissed with prejudice.

BY THE COURT,

GENE D. COHEN, J.

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	:	

MEMORANDUM OPINION

Before the court are the Preliminary Objections (“Objections”) of Defendant Mark Santacrose (“Santacrose”) to the Amended Complaint of plaintiff WorldWideWeb Networkx Corp. which embodies one count in breach of fiduciary duty against Santacrose and a second count in breach of contract against defendant Entrade, Inc.¹ For the reasons which follow, this court is issuing a contemporaneous Order **Sustaining** the Objections.

FACTUAL AND PROCEDURAL BACKGROUND

The facts alleged in the Amended Complaint are the same as those pled in the original complaint and were stated in this Court’s Opinion dated June, 20, 2002, on the preliminary objections of both defendants to the plaintiff’s first complaint. WorldWideWeb Networkx Corp. v. Entrade, Inc. and Mark Santacrose, 2002 WL 1472336 (Pa. Com. Pl. June 20, 2002). Two notable additions in the Amended Complaint pertaining to defendant Santacrose are the allegation of fiduciary duties towards plaintiff and an allegation that Santacrose intentionally

¹ Defendant Entrade has answered the Amended Complaint.

failed to register plaintiff's shares. Amended Complaint, ¶¶ 15, 19.

Defendant Santacrose filed Preliminary Objections asking this court to dismiss the case against him on grounds of legal insufficiency, under Rule 1028 (a)(4). Pa. R.C.P. 1028 (a)(4). Santacrose argues that both the gist of the action doctrine and the economic loss doctrine bar a tort claim such as breach of fiduciary duty. Santacrose further argues that, as a matter of law, he did not have a fiduciary duty to register plaintiff's shares because he has no duties to an individual shareholder of the corporation of which he is the Chief Executive Officer ("CEO").

Plaintiff attempts to shield its claim by arguing that Santacrose did, in fact, owe plaintiff a fiduciary duty to protect its interests as a minority shareholder. Such duty existed outside of any contract between plaintiff and the corporate defendant, plaintiff further argues, and the violation of that duty was of a tortious nature. Furthermore, the allegations state that this tort was intentional and, thus, not barred by either the gist of the action doctrine or the economic loss doctrine.

DISCUSSION

This court is not familiar with such a claim as intentional breach of fiduciary duty. This lacune of ours, however, does not prejudice plaintiff. As a matter of law, Santacrose did not owe plaintiff any fiduciary duty which included registering its shares with the SEC. Nor do the facts as alleged even plead such duty. Plaintiff merely states a conclusion of law as it claims that Santacrose, as CEO of Entrade, had a fiduciary duty to register plaintiff's shares, absent the merger agreement. Amended Complaint, ¶¶ 14, 16. The expert opinion attached to plaintiff's memorandum of law which purports to establish such duty is not a verified pleading and may not be considered by the court at this stage.

Defendant is right that he had no fiduciary duty towards an individual shareholder. "The

duty of the board of directors, committees of the board and individual directors . . . is solely to the business corporation and may be enforced directly by the corporation or may be enforced by a shareholder, as such, by an action in the right of the corporation, and may not be enforced directly by a shareholder or by any other person or group.” 15 Pa. C.S. §1717.

The cases plaintiff cites to are inapposite because they are either derivative suits where the plaintiffs are suing on behalf of the corporation (In Re Jones & Laughlin Steel Corp., 412 A.2d 1099 (Pa. 1980); Baron v. Baron, 72 A.2d 623 (Pa. Super. 1950)) or cases where a minority shareholder is suing a majority shareholder of a closed corporation (Liss v. Liss, 2002 WL 576510 (Pa. Com. Pl. March 22, 2002)). Stripped of that “independent” duty, plaintiff’s claim is reduced to one of breach of contract against a non-party to a contract.²

CONCLUSION

For the reasons stated, the court sustains defendant Santacrose’s preliminary objections to Count I of the Amended Complaint. A contemporaneous Order consistent with this Opinion will be entered of record..

BY THE COURT,

GENE D. COHEN, J.

Dated: February 19, 2003

² This court had suggested a potential claim for intentional interference with contractual relations against Santacrose. Indeed, the court noted that the allegations in the original complaint were just short of adequate for such a claim and could be corrected in an amended complaint. See WorldWideWeb Networx Corp. v. Entrade, Inc. and Mark Santacrose, 2002 WL 1472336, *4 (Pa. Com. Pl. June 20, 2002). Apparently, however, plaintiff do not wish to pursue that claim and we deem it futile to expend additional judicial resources towards allowing another chance at amending the complaint to that particular end.