UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK M. KEANEY, Plaintiff, V. EASTERN COMPUTER EXCHANGE, INC., BRENDAN LYNCH and BARRY WILLIAMS, Defendants.	:	CASE NO.3:03Cv1893 (RNC)

RULING AND ORDER

Frank M. Keaney brings this diversity action against Eastern Computer Exchange, Inc. ("Eastern"), and its shareholders, Brendan Lynch and Barry Williams, alleging breach of contract, violations of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. § 42-110a et seq., breach of fiduciary duty, and unjust enrichment.[1] Defendants have moved to dismiss the CUTPA claims as to all defendants, and the breach of contact and unjust enrichment claims as to Lynch and Williams, for failure to state a claim on which relief can be granted. [Doc. # 24] For the reasons that follow, the motion is granted as to the CUTPA claims but denied as to the others.

Background

[1] A claim for fraud has been withdrawn.

The complaint alleges the following facts, which are assumed to be true for purposes of this motion. Eastern is a Connecticut corporation engaged in the marketing, sale and distribution of computer equipment. In or around October 1996, plaintiff entered into an agreement with Lynch and Williams whereby he became a one-third owner of Eastern, entitled to receive periodic payments of one-third of its profits, in exchange for his business development knowledge and expertise. Lynch and Williams subsequently held plaintiff out to others as a co-owner of the business and paid him a share of the profits generated by the business. As a one-third owner of Eastern, plaintiff recruited employees, developed compensation plans, reviewed business plans, and built a retail sales force. In August 2003, defendants stopped payment on a $50,000 check issued to plaintiff. Since then, they have refused to acknowledge him as a co-owner of the business and failed to give him a share of the profits.

CUTPA

The complaint alleges that defendants have violated CUTPA by "distributing [Eastern's] profits in an unfair and deceptive manner," "[f]ailing to remit to [plaintiff] one-third of its profits," "[f]ailing to disclose its revenue and profit information to [him]," "[f]alsely representing the amount of its profits to [him]," "[s]topping payment to [him] for amounts due and owing to [him] from its profits," and "[p]ersonally accepting, directly or indirectly,

more than an equal one-third of all of Eastern's profits." (Compl. ¶¶ 56-73.) Defendants move to dismiss these claims on the ground that they involve nothing more than an internal dispute over money, rather than acts or practices in the conduct of trade or commerce, and thus are not within the scope of CUTPA. See Ostrowski v. Avery, 243 Conn. 355, 379 (1997); Quimby v. Kimberly Clark Corp., 28 Conn. App. 660, 670 (1992). Plaintiff responds that, although CUTPA does not apply to purely intracorporate conflicts, it does apply when a partner's actions place him in direct competition with the partnership in violation of CUTPA. (Pl.'s Opp. to Mot. to Dismiss, p. 11.) Such a violation may be found here, he says, because the complaint alleges that defendants "siphoned from the partnership funds amounts [sic] to finance interests running contrary to the partnership, in violation of CUTPA." (Id.)

Defendants' motion to dismiss the CUTPA claims is well-founded. The complaint makes no reference to any siphoning of funds, nor any competing interests, much less a siphoning of funds in order to finance competing interests. In the absence of any such allegations, defendants correctly contend that CUTPA does not apply, for all we have is an internal dispute over disclosure and distribution of profits, which plaintiff concedes is not covered by CUTPA. Accordingly, the CUTPA claims will be dismissed.

Breach of Contract

To state a breach of contract claim, plaintiff must allege "the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." Bouchard v. Sundberg, 80 Conn. App. 180, 189 (2003). Lynch and Williams contend that a breach of contract claim cannot be established as to them because the only contract alleged is one between plaintiff and Eastern. They further contend that, as corporate officers of Eastern, they cannot be held personally liable on the corporation's contract. Plaintiff responds that defendants have misconstrued the complaint. He states that the agreement at issue is not a contract between him and Eastern but an oral partnership agreement between him, Lynch and Williams, whereby he became a one-third co-owner of the business.

In view of plaintiff's response to the motion to dismiss, the issue is whether his complaint can be interpreted to allege breach of such a partnership agreement. Though the complaint refers to an agreement between plaintiff and Eastern, and never uses the terms "partnership" or "partners," it does allege that Lynch and Williams, "acting both on behalf of Eastern and individually," "entered into an agreement with [plaintiff], as a result of which they are "co-owners of a business for profit." (Compl. ¶¶ 8, 9, 12.)[2] The Connecticut Appellate Court has recognized that a corporation's sole shareholders

[2] A partnership generally is defined as "the association of two or more persons to carry on as co-owners of a business for profit . . . ." Conn. Gen. Stat. § 34-314 (a).

may enter into an agreement with a third party that results in a de facto partnership. See Bartomeli v. Bartomeli, 65 Conn. App. 408, 413-14 (2001). It is not clear beyond doubt that plaintiff can prove no set of facts entitling him to relief on this theory. Accordingly, the breach of contract claim is sufficient to withstand the motion to dismiss.[3]

Unjust Enrichment

A claim of unjust enrichment may arise when one confers a benefit on another under a contract, justice requires that compensation be paid for the benefit, and no contract remedy applies. Gagne v. Vaccaro, 255 Conn. 390, 401 (2001). Plaintiff alleges that Lynch and Williams have been unjustly enriched because he has provided services to Eastern as a one-third co-owner and they have failed to pay him one-third of the company's profits. They move to dismiss the claim on the ground that plaintiff's services benefitted Eastern, not them individually.

To plead a viable claim for unjust enrichment, all plaintiff need allege is that the individual defendants have benefitted from his services to Eastern, and unjustly failed to pay him for the benefits, to his detriment. See Hartford Whalers Hockey v. Uniroyal

[3] Since the complaint alleges only one agreement, and plaintiff has explained that what is alleged is an oral partnership agreement between him, Lynch and Williams, the breach of contract claim against Eastern may be subject to dismissal.

Goodrich Tires, 231 Conn. 276, 283 (1994). Plaintiff correctly contends that the allegations of the complaint, liberally construed, are at least marginally sufficient to satisfy these elements. Accordingly, the unjust enrichment claim also survives the motion to dismiss.

Conclusion

For the foregoing reasons, the motion to dismiss is hereby granted in part and denied in part and the CUTPA claims are dismissed.

So Ordered.

Dated at Hartford, Connecticut this 21st day of April 2004.

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Robert N. Chatigny
United States District Judge