

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MASTER-HALCO, INC., :
 :
 Plaintiff, :
 :
 V. : CASE NO. 3:04-CV-131(RNC)
 :
 MICHAEL C. PICARD and :
 MICHAEL C. PICARD, TRUSTEE :
 :
 Defendants. :

RULING AND ORDER

Defendants' amended motion to dismiss all counts of the complaint against Michael C. Picard in his capacity as trustee, and counts three through six against Michael C. Picard individually [doc. # 34] is hereby granted, for substantially the reasons stated in defendants' memorandum of law [doc. # 29].

Claims Against Picard As Trustee

Defendants contend that all counts of the complaint against Picard as trustee must be dismissed for failure to state a claim on which relief can be granted because it alleges no wrongdoing by Picard acting in a trustee capacity. I agree.

Paragraph 4 of the complaint states that "Michael C. Picard, Trustee" means Picard "acting in a trustee capacity." Paragraph 14 alleges that plaintiff and others "placed their trust and/or confidence in Picard and Picard as trustee not to unreasonably dilute or dissipate company assets." No other allegations are advanced

concerning Picard as a trustee. The complaint is therefore insufficient to state a claim against him in his capacity as a trustee.

Claims Against Picard Individually

Defendants contend that counts three through six against Picard individually must be dismissed for failure to plead fraud with particularity. Here again, I agree.

Under Rule 9(b) of the Federal Rules of Civil Procedure, when a complaint contains allegations of fraud, "the circumstances constituting fraud ... shall be stated with particularity." Chill v. Gen. Elec. Co., 101 F.3d 263, 267 (2d Cir. 1996). A complaint making such allegations must "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." Shields v. Citytrust Bancorp, Inc., 25 F.3d 1124, 1128 (2d Cir. 1994) (internal quotation marks omitted).

These requirements apply to plaintiff's claims alleging false representations (count three), negligent misrepresentation (count four) and fraudulent transfers (count six). See Catalano v. Bedford Associates, Inc., 9 F. Supp. 2d 133, 136 (D. Conn. 1998) (intentional and negligent misrepresentation); see also Atlanta Shipping Corp. v. Chemical Bank, 818 F.2d 240, 251 (2d Cir. 1987) (applying particularity requirement to fraudulent transfer claim under New York

law). They also apply to plaintiff's RICO claim (count five), which is predicated on allegations of mail fraud. Mills v. Polar Molecular Corp., 12 F.3d 1170, 1176 (2d Cir. 1993) ("allegations of predicate mail and wire fraud acts should state the contents of the communications, who was involved, where and when they took place, and explain why they were fraudulent").

Plaintiff's allegations are insufficient. The complaint alleges: "During the time of the credit application by Atlas, and thereafter up to the present time, false and misleading statements concerning the financial condition of the companies known as Atlas were made by Picard, his agents, servants or employees . . ."; "These statements . . . were designed to mislead creditors, particularly the Plaintiff"; at some point after 1997, defendant "concealed important and relevant information from creditors"; defendant "provided information to accountants concerning the financial condition of Atlas (or one of the Atlas companies) which information was materially incorrect"; and he "mislead creditors as to the financial condition of himself and the company." Comp. ¶¶ 17, 21, 22. These allegations do not identify specific statements or state when and where false statements were made.

Accordingly, all counts of the complaint against Michael C. Picard, Trustee, and counts three through six against Michael C. Picard individually, are hereby dismissed without prejudice.

Plaintiff may attempt to cure the deficiencies in the present complaint identified above by filing an amended complaint on or before September 20, 2004. If no amended complaint is filed by then, the dismissal of all counts against Picard as trustee and counts three through six against Picard individually will be with prejudice.

So ordered.

Dated at Hartford, Connecticut this 18th day of August 2004.

Robert N. Chatigny
United States District Judge