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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1542**

Aaron Jude Schnagl,
Appellant,

vs.

Elliot Tuccitto Bonngard,
Respondent.

**Filed June 10, 2019
Affirmed
Smith, John, Judge***

Washington County District Court
File No. 82-CV-17-668

Aaron Jude Schnagl, Lino Lakes, Minnesota (pro se appellant)

Paul W. Rogosheske, Ryan J. Grove, Rogosheske, Rogosheske & Atkins, PLLC, South St.
Paul, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and
Smith, John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm the dismissal of appellant's complaint for failure to state a claim for which relief can be granted, because there are no facts alleged in the complaint which would support granting appellant's requested relief.

FACTS

In 2012, appellant Aaron Jude Schnagl filed paperwork to create Good Guys Companies (Good Guys). Schnagl was listed on business filings as the CEO, but respondent Elliot Tuccitto Bonngard (Tuccitto) was listed as a 50% shareholder on 2012 tax documents, and was also listed as a registered agent of the corporation. Schnagl operated Good Guys until December 2012, when he was arrested for charges unrelated to this appeal. In 2013, Schnagl was convicted and incarcerated. At some point in 2013, "Tuccitto assumed Schnagl's position as an officer of Good Guys, but fired all employees and began to run the business." Schnagl alleged that the business relationship between himself and Tuccitto began deteriorating, and that they were unable to reach any resolution regarding the dissolution of the business. Schnagl appointed his mother, Patti Jo Nord, as an authorized representative of Good Guys, and also gave her power of attorney.

In January 2013, Tuccitto started ET Detailing L.L.C. In February 2017, Schnagl sued Tuccitto. Schnagl alleged in his complaint that Tuccitto agreed to help with Good Guys until Schnagl's criminal issues were resolved. In 2018, after some discovery attempts, Tuccitto filed a motion to dismiss the suit pursuant to Minn. R. Civ. P. 12.02(e), for failure to state a claim for which relief can be granted, and in the alternative for

summary judgment. After a motion hearing, Schnagl filed a motion to amend his complaint. The district court granted Schnagl's motion to amend the complaint and denied Tuccitto's motion to dismiss and motion for summary judgment as premature.

Schnagl amended the complaint in June 2018, alleging civil liability for theft, conversion of an instrument, and misrepresentation and fraud. Specifically, Schnagl alleged that Tuccitto "took control of all of Good Guys['] assets" without the authorization of Schnagl, converted property from Good Guys, and "knowingly misrepresented the status of Good Guys and the valuation of the business assets and liabilities and debts," and that Schnagl relied upon the misrepresentation. Schnagl alleged that "as a result of this fraud Tuccitto was able to steal all the assets of Good Guys, depriving [Schnagl] of his right to the company and its assets." Schnagl demanded judgment against Tuccitto "for a reasonable amount greater than \$50,000."

Tuccitto denied all of the counts and again moved to dismiss the case for failure to state a claim for which relief can be granted. The district court dismissed Schnagl's complaint with prejudice. Schnagl requested leave to file a motion to reconsider, but the district court denied his request.

D E C I S I O N

"We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted). "[A] pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist

which would support granting the relief demanded.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted).

Schnagl contends that his complaint sets forth a legally sufficient claim for civil liability for theft. The district court found that Tuccitto “had the power to dispose of the property of the Business” and that accordingly, “his actions cannot constitute theft because he had a claim of right.” The district court concluded that dismissal was proper because “there is no possible way [Schnagl]’s first claim could be proven.”

Minn. Stat. § 604.14, subd. 1 (2018) states that a person who steals personal property from another is civilly liable to the property owner. Theft is defined as intentionally and without claim of right taking, using, transferring, concealing, or retaining possession of property without the owner’s consent and with the intent to permanently deprive the owner of possession. Minn. Stat. § 609.52, subd. 2(a)(1) (2018). But officers of a corporation have the obligation to pay the contractual debts, obligations, and liabilities that are incurred during the wind-up process. Minn. Stat. § 302A.781, subd. 3 (2018). Minn. Stat. § 302A.301 (2018) states that a corporation “shall have one or more natural persons exercising the functions of the offices, however designated, of chief executive officer [CEO] and chief financial officer [CFO].” Corporations must have the required officers to manage the daily operations of the company, and handle the finances and company property. *Id.* Minn. Stat. § 302A.305 (2018) designates the duties of the CEO and CFO. Because Good Guys does not have any bylaws, the duties of the CEO and CFO are as specified by statute. *See id.*, subd. 1.

Minn. Stat. § 302A.341, subd. 3 (2018) states that “in the case of a vacancy in the office of chief executive officer or chief financial officer” shall be filled “in the manner provided in the articles or bylaws . . . or pursuant to section 302A.321.” Schnagl, the CEO and CFO, left a vacancy in both offices due to his incarceration. Because Good Guys did not have bylaws, Minn. Stat. § 302A.321 (2018) controls. Section 302A.321 provides that “[i]n the absence of an election or appointment of officers by the board, the person or persons exercising the principal functions of the chief executive officer or the chief financial officer are deemed to have been elected to those offices”

Here, Tuccitto owned 50% of Good Guys’ shares, had signing authority on the business bank account and, according to the complaint, Tuccitto took “control of the daily operations at Good Guys” after Schnagl’s incarceration. Based on the allegations in the complaint, it appears that Tuccitto was exercising the principal functions of the CEO and CFO. Accordingly, the district court properly concluded that Tuccitto had the power to dispose of business property and pay creditors as an officer of the business and that civil liability for theft could not be proven as Tuccitto’s disposal of business property occurred under a claim of right.

Next, Schnagl argues that his complaint sets forth a legally sufficient claim for conversion. His complaint alleges that Tuccitto “is liable for the conversion of [an] instrument of [Schnagl]’s above listed personal property pursuant to [Minn. Stat.] § 336.3-420.”

Conversion of an instrument occurs when it is taken by a person who is not entitled to enforce the instrument or receive payment. Minn. Stat. § 336.3-420 (2018). Schnagl

argues that Tuccitto converted the property listed on the “Shop Inventory List” included with the complaint. The district court found that “there is no possibility that this claim, as it stands, could be proven.” We agree. As discussed above, Tuccitto had the right to dispose of business property in his capacity as an officer. The “Shop Inventory List” is comprised of business property, and Schnagl does not identify which, if any, property is personal. Thus, even drawing all inferences in Schnagl’s favor, there are no facts consistent with the complaint “which would support granting the relief requested.” *See Walsh*, 851 N.W.2d at 602 (quotation omitted); *Bahr*, 788 N.W.2d at 80 (quotation omitted). The district court properly dismissed Schnagl’s claim for conversion of an instrument.

Finally, Schnagl contends that his complaint sets forth a legally sufficient claim for misrepresentation and fraud “under Minn. Stat. § 325F.69 (2018).” Fraud, misrepresentation, and deceptive practices are defined as the use of a “false promise, . . . misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise.” Minn. Stat. § 325F.69, subd. 1. Minn. R. Civ. P. 9.02 provides that “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.”

Schnagl claimed that Tuccitto represented that “Good Guys would remain open, and he would watch over the business and [Schnagl] would continue to profit from his business.” Based on this representation, Schnagl claims that “Tuccitto stole in excess of \$50,000.00 worth of equipment from Good Guys, among files, accounts and invaluable business records.” Schnagl also claims that Tuccitto misrepresented the valuation of Good Guys and its assets and liabilities.

The district court noted that the bank statements incorporated with the complaint provided by Schnagl show that Good Guys brought in “substantial amounts of money which were also paid out almost immediately to cover debts, showing that the Business was just above breaking even,” and that Schnagl did not list the business debts when listing the valuation of the business equipment. Schnagl included letters between Tuccitto and Nord with his amended complaint. The letters show that Tuccitto told Schnagl and Nord that Good Guys “has no value” and that unless Schnagl wanted to “participate in these expenses I suggest we all part ways.” Based on Schnagl’s complaint, the district court correctly concluded that Schnagl did not show, with any particularity, that Tuccitto falsely represented that Good Guys would remain open or falsely represented the value of the business.

Schnagl’s complaint does not demonstrate a “legally sufficient claim for relief.” *See Walsh*, 851 N.W.2d at 606. Even with all inferences drawn in Schnagl’s favor, there are no facts consistent with the complaint “which would support granting the relief requested.” *Id.*; *Bahr*, 788 N.W.2d at 80. Accordingly, we affirm the district court’s dismissal of Schnagl’s complaint.

Affirmed.