

IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY PENNSYLVANIA

CITATION PUBLISHING, INC.,	:	
Plaintiff	:	
v.	:	No. 05-01,621
	:	CIVIL ACTION
REGSCAN, INC. and DANIEL F.	:	
SCHRANGHAMER, ESQ.,	:	
Defendants	:	

OPINION AND ORDER

Before this Honorable Court, is the Defendants’ Preliminary Objections, filed December 16, 2005 and January 25, 2006¹. The Defendant contends that, the Plaintiff’s Complaint is legally insufficient in that it seeks improper damages, fails to establish all the elements of the Defendants’ alleged illegal acts, fails to establish all the elements of the Defendants’ alleged violation(s) of the Computer Fraud and Abuse Act, fails to sufficiently plead any injuries caused by the Defendants’ alleged illegal acts, and fails to conform to specific rules of the *Pennsylvania Rules of Civil Procedure*. The Court finds as follows with regards to the Defendants’ Objections: the Defendants’ Preliminary Objections A and L are SUSTAINED; the Defendants’ Preliminary Objections B, C, D, E, F, G, H, J, K, and I are OVERRULED.

I. Background

Plaintiff Citation Publishing Inc. is a Delaware Corporation with its principal place of business in Scottsdale, Arizona and Aliso Viejo, California. Defendant RegScan, Inc. is a Pennsylvania corporation with its principal place of business in Williamsport, Pennsylvania. Defendant Daniel F. Schranghamer is an adult individual residing and practicing law in Williamsport, Pennsylvania.

¹ All references throughout this Opinion and Order to specific objections by the Defendants utilize the Defendants’ designation in their December 16, 2005 Preliminary Objections.

The Plaintiff is in the business of compiling and organizing on-line governmental environmental, health, and safety regulations; Defendant RegScan is a competitor of the Plaintiff.

The Plaintiff alleges that, in January 2002, Defendant Schranghamer inquired of the Plaintiff about utilizing its database and, an employee of the Plaintiff issued Defendant Schranghamer a temporary password, which, the Plaintiff alleges, was used to access the Plaintiff's database numerous times from various ISP addresses. The Plaintiff alleges, *inter alia*, that Defendant Schranghamer misrepresented his interest in the Plaintiff's services and misappropriated the fraudulently obtained temporary password to steal the Plaintiff's trade secrets. The Defendants do not address the Plaintiff's allegation but instead allege numerous flaws in the Plaintiff's Complaint.

II. Discussion

A preliminary objection for legal insufficiency of a pleading, or demurrer, is properly sustained, and the pleading dismissed, where "it is clear on the face of the pleading that the law will not permit the recovery sought." *Sayles v. Dept. of Pub. Welfare*, 41 Pa. D. & C.4th 172, 175 (1999) citing, *Morgan v. McPhail*, 449 Pa. Super. 71, 672 A.2d 1359 (1996); *MacGregor v. Media Inc.*, 395 Pa. Super. 221, 576 A.2d 1123 (1990); *County of Allegheny v. Commonwealth*, 507 Pa. 360, 490 A.2d 402 (1985). In reviewing the legal sufficiency of the pleading, the Court must accept as true all well-pleaded, material and relevant facts, and all reasonable inferences derived therefrom. *County of Allegheny*, at 372, 408 citing *Savitz v. Weinstein*, 395 Pa. 173, 149 A.2d 110 (1959) and *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970). If the Court finds that a claim can be maintained under *any* theory of law, it must dismiss/deny the demurrer. *Uniontown Newspapers, Inc. v. Roberts*, 576 Pa. 231, 839 A.2d 185

(2003); *Sutton v. Miller*, 405 Pa. Super. 213 592 A.2d 83 (1991); and *Packler v. State Employers' retirement Board*, 470 Pa. 368, 368 A.2d 673 (1977).

Instantly, the Defendants raise twelve individual preliminary objections in the nature of a demurrer or insufficiency of the pleading; the Court will address each objection in turn.

A. *Demurrer as to the Plaintiff's Request for Attorneys' Fees in its First, Second, Third, Fourth, and Fifth Causes of Action*²

In its Complaint, the Plaintiff, if successful in this litigation, seeks, *inter alia*, recovery of attorneys' fee. The Defendants correctly state that, parties involved in litigation, absent an applicable statutory fee shifting or contract provision to the contrary, are responsible for their own attorneys' fees. *DiGregorio v. Keystone Health Plan E.*, 2003 PA Super 509, P32, 840 A.2d 361, 371 (2003), citing *McCauslin v. Reliance Finance Co.*, 2000 PA Super 134, 751 A.2d 683 (2000); *Gardner v. Clark*, 349 Pa. Super. 297, 503 A.2d 8 (1986).

Here, the Plaintiff has not presented, nor has the Court found, an applicable statutory fee-shifting or contract provision entitling them to seek and recover attorneys' fees; therefore, the Defendants' Demurrer A and L are GRANTED and the Plaintiff's requests for attorneys' fees is hereby DENIED/DISMISSED.

B. *Demurrer as to the Plaintiff's Fifth Cause of Action for Failure to State a Claim for Misappropriation and Theft of Confidential Information/Trade Secrets*

The Plaintiff's Fifth Cause of Action for Misappropriation and Theft of Confidential Information/Trade Secrets alleges that, the Defendants fraudulently acquired a password to Citation's database and then used that password to access their database for improper means (specifically, theft of confidential information and/or trade secrets). The Defendants' Demurrer

² This Objection encompasses the Defendants' Objections A and L.

claims that “access” alone is not sufficient to sustain a cause of action for misappropriation and theft of confidential information and/or trade secrets; the Court disagrees.

Both common and statutory law provide a broader interpretation of what constitutes misappropriation of trade secrets than the Defendants contend in their Preliminary Objections. For example, the Uniform Trade Secrets Act, adopted by the Pennsylvania General Assembly and codified at 12 Pa.C.S.A. § 5301, *et seq.* defines misappropriation as:

acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means or disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it, acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use or before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

The Plaintiff’s Fifth Cause of Action establishes a colorable claim under the Uniform Trade Secrets Act; because this Cause of Action can be maintained under at least one theory of law, the Court hereby DENIES/DISMISSES the Defendants’ Demurrer B.

C. Insufficiency of Pleading as to the Plaintiff’s First, Second, Third, Fourth, and Fifth Causes of Action for Failure to Specifically Aver the Alleged Damages³

Pennsylvania Rule of Civil Procedure Number 1019(a) states that, the material facts on which a cause of action or defense is based shall be stated in a concise and summary form. The rule serves to alert parties as to the nature of the claims asserted against them. The Defendants claim that the Plaintiff’s Complaint does not comport with this rule in that it fails to provide them with enough information regarding the alleged damages and causes of those alleged damages from which to mount a defense; the Court disagrees.

³ This Objection encompasses the Defendants’ Objections C, F, G, H, and I.

General or ordinary damages (those that are the usual and ordinary consequences of the wrong done) can be proven without specifically pleading them. *Hooker v. State Farm Fire & Cas. Co.*, 880 A.2d 70 (Pa. Commw. 2005), citing *Fort Washington Res., Inc. v. Tannen*, 901 F. Supp. 932 (E.D. Pa. 1995) and *Parsons Trading Co. v. Dohan*, 312 Pa. 464, 167 A. 310 (1933). Alternatively, special damages (those that are not the usual and ordinary consequences of the wrong done, but depend on special circumstances), pursuant to Pa.R.C.P. No. 1019(f) must be specifically stated. *Parsons*, 312 Pa. 464, 167 A. 310 (1933).

Instantly, the Plaintiff's Complaint does not claim special damages nor does the Court interpret the damages sought as anything but general damages; i.e. the damages the Plaintiff seeks are the "usual and ordinary consequences" of the Defendants alleged improper actions. Accordingly, the Court hereby DENIES/DISMISSES the Defendants' Demurrers C, F, G, H, and I.

D. Demurrer as to the Plaintiff's Fourth Cause of Action for Failure to State a Claim for Relief Under the Computer Fraud and Abuse Act⁴

The Defendants assert that, the Computer Fraud and Abuse Act (hereinafter "CFAA"), 18 U.S.C. § 1030, does not protect the Plaintiff's database and that, even if it does, the Plaintiff has not established the requisite damages in order to recover for violations of the Act. More specifically, the Defendants claim that the Plaintiff's database does not fall under the Act's definition of "computer" and is consequently not protected by the provisions of the Act and, even if the Plaintiff's database is protected by the Act, the Plaintiff has failed to allege any losses or damages recoverable under the Act; the Court disagrees with both of the Defendants' assertions.

⁴ This Objection encompasses the Defendants' Objections D and E.

The CFAA protects “computers”, defined in section 1030(e)(1) as “an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, *and includes any data storage facility or communications facility directly related to or operating in conjunction with such device . . .*” (emphasis added) from various access and trafficking crimes (e.g. “knowingly and with the intent to defraud traffics in any password or similar information through which a computer may be accessed without authorization, if such trafficking affects interstate or foreign commerce,” 18 U.S.C. § 1030(a)(6)). It is clear to the Court that the Plaintiff’s database is a “data storage facility or communications facility directly related to or operating in conjunction with [a computer]”. Equally clear to the Court, is that the Plaintiff adequately alleges violations of the CFAA necessary to withstand a motion for demurrer. Furthermore, the damages Plaintiff alleges flowed from the Defendants’ alleged violations of the CFAA fall under the Act’s definitions for loss and damages, 18 U.S.C. §1030(e)(8), (11). Accordingly, the Court hereby DENIES/DISMISSSES the Defendants’ Demurrers D and E.

E. Insufficiency of Pleading as to the Plaintiff’s First, Second, and Third Causes of Action for Failure to Plead the Existence of an Agreement⁵

Pa.R.C.P. No. 1019(h) requires that, where a claim is based on a agreement, the pleading must state whether the agreement is oral and written and, if written, Pa.R.C.P. No. 1019(i) requires that said agreement be attached to the pleading. Here, the Plaintiff does not allege a cause of action rooted in an agreement between the parties, nor does the Court interpret the Plaintiff’s allegations as such. Accordingly, the Court hereby DENIES/DISMISSSES the Defendants’ Demurrer J.

⁵ This Objection encompasses the Defendants’ Objection J.

F. Demurrer as to the Plaintiff's Second Cause of Action for Failure to State a Claim for Negligent Misrepresentation⁶

In order to establish a claim for negligent misrepresentation, the plaintiff must prove, “(1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; and (4) which results in injury to a party acting in justifiable reliance on the misrepresentation,” *Bortz v. Noon*, 556 Pa. 489, 500, 729 A.2d 555, 561 (1999) and the Restatement (Second) Torts § 552; also, as with all negligence actions, the plaintiff must prove the existence of a duty owed by one party to another. *Id.* Here, the Defendants allege that the Plaintiff’s claim for negligent misrepresentation must fail for lack of establishing a duty between the parties; the Court disagrees.

The determination of whether a duty exists in a particular case involves the weighing of several discrete factors, which include: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution,” *Althaus v. Cohen*, 562 Pa. 547, 756 A.2d 1166 (2000). Additionally, the law imposes a general duty to not cause harm to others. *Commonwealth v. Aurick*, 342 Pa. 282 19 A.2d 920 (1941). The Plaintiff contends that a duty between the parties existed by virtue of Defendant Schranghamer’s position as an attorney and, the aforementioned general duty to not cause harm; the Court finds these assertions to be a sufficient basis for the Plaintiff to proceed with this particular cause of action. Accordingly, the Court hereby DENIES/DISMISSSES the Defendants’ Demurrer K.

⁶ This Objection encompasses the Defendants’ Objection K.

ORDER

AND NOW, this _____ day of March 2006, the Court hereby **ORDERS** and **DIRECTS** as follows:

1. The Defendants' Preliminary Objections A and L are **SUSTAINED** and the requests for attorneys' fees, as set forth in the Plaintiff's First, Second, Third, Fourth, and Fifth Causes of Action , are hereby **STRICKEN**;
2. The Defendants' Preliminary Objections B, C, D, E, F, G, H, I, J, and K are **OVERRULED**.

By the Court,

Nancy L. Butts, Judge

cc: Jason Gosselin, Esq., c/o Drinker, Biddle & Reath, LLP, One Logan Square, 18th & Cherry Streets, Philadelphia, PA 19103
Michael J. Miller, Esq., c/o Drinker, Biddle & Reath, LLP, One Logan Square, 18th & Cherry Streets, Philadelphia, PA 19103
Daniel F. Schranghmer, Esq.
Hon. Nancy L. Butts
Judges
Gary L. Weber, Esq.
Laura R. Burd, Law Clerk