

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RELATIONAL FUNDING CORPORATION,)
)
 Plaintiff,)
)
 v.) Civil Action No. 01-821-SLR
)
 TCIM SERVICES, INC.,)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

On December 11, 2001, plaintiff Relational Funding Corporation ("RFC") filed this action against defendant TCIM Services, Inc. ("TCIM") alleging that TCIM breached a contract under a lease by failing to provide notice of its intent to terminate the lease and by failing to return the equipment of the lease. Consequently, RFC is seeking return of the equipment, plus damages. Currently before the court is TCIM's motion to dismiss the complaint for failure to state a claim pursuant to Rule 12(b)(6). (D.I. 8) For the reasons stated below, TCIM's motion to dismiss is denied.

II. BACKGROUND

On December 16, 1997, defendant TCIM entered into a Master lease agreement ("Lease"), as lessee, with Varilease Corporation (a non-party), as lessor, for certain computer equipment. (D.I. 1 ¶ 5) On December 18, 1997, Varilease assigned all of its

rights, but none of its obligations, under the Lease to Nationsbanc Leasing Corporation (a non-party) pursuant to a non-recourse note and security agreement. (Id. ¶ 8) Varilease notified TCIM of its assignment to Nationsbanc and directed TCIM to make all remaining payments on the Lease to Nationsbanc.

(Id.) By the agreement between Nationsbanc and Varilease, Varilease retained all of its interest in the lease equipment.

(Id.) On January 1, 1998, Varilease sold all of the equipment in dispute, assigning all of its right, title, and interest in the Lease to plaintiff RFC. (Id. ¶ 9)

Under the terms of the Lease:

A Lease may be terminated as of the last day of the last month of the Base Term [December 2000] by written notice given by either Lessor or Lessee not less than six (6) months prior to the date of the termination of the Base Term. If the Lease is not so terminated at the end of the Base Term, the Base Term shall be automatically extended for successive six (6) month periods until such six (6) month notice is given. The Base Monthly Rental, as hereinafter defined, shall continue to be due and payable by Lessee until the Equipment is redelivered to Lessor upon the termination of the Base Term or any extension term, and throughout any such extension term(s). No notice of termination may be revoked without the written consent of the other party.

(Id. ¶ 11; Ex. A ¶ 2(b)) Also under paragraph 18(c) of the Lease, "[a]ll notices, consents or requests desired or required to be given under the Lease shall be in writing and shall be delivered . . . to the address of the other party . . . or to such other address as such party shall have designated by proper

notice." (Id. Ex. A ¶ 18(c)) The return of the lease equipment is governed by paragraph 6(d) of the Lease, which states:

Lessee shall, at the termination of the Lease, at its expense, de-install, pack and return the Equipment to Lessor at such location within the continental United States as shall be designated by Lessor in the same operating order, repair, condition and appearance as of the Installation Date, reasonable wear and tear excepted, with all current engineering changes prescribed by the manufacturer of the Equipment or a maintenance contractor approved by Lessor (the "Maintenance Organization") incorporated in the Equipment. Until the return of the Equipment to Lessor, Lessee shall be obligated to pay the Base Monthly Rental and all other sums due under the Lease. Upon redelivery to Lessor, Lessee shall arrange and pay for such repairs (if any) as are necessary for the manufacturer of the Equipment to accept the Equipment under a maintenance contract as its then standard rates.

(D.I. 1 ¶ 11; Ex. A ¶ 6(d))

RFC alleges that TCIM defaulted under the terms of the Lease by failing to give the required notice of its intent to terminate the Lease in accordance with Paragraph 2(b) of the Lease. (D.I. 1 ¶ 14) RFC also alleges that TCIM has defaulted under the terms of the Lease because the majority of the equipment under the Lease has not been returned and a substantial portion of the equipment that was returned did not match the equipment that was given out under the Lease.¹ (Id.)

¹Specifically, RFC contends that of the equipment under the Lease, only 244 of 454 desktop computers were returned and only 32 had serial numbers that matched those leased. (D.I. 14 at 4) Out of 276 monitors, 228 were returned but only 29 matched the equipment leased. (Id.) Finally, only five out of nine laptops were returned. (Id.)

Under the terms of the Lease, TCIM claims that it has no obligations to any assignee except "upon receipt of notice of any such transfer or assignment and instructions from Lessor." (D.I. 1, Ex. A ¶ 10(a)) Since RFC has not alleged that any party delivered the required notice of assignment to TCIM, RFC has not fulfilled its contractual obligations. (D.I. 9 at 4) TCIM also claims that because RFC failed to plead the delivery of notice to TCIM of the assignment, RFC does not have standing to assert a claim for breach of contract against TCIM. (Id.) Finally, TCIM claims that the Lease equipment in question was delivered to RFC pursuant to its own instructions.² (Id.)

III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule

²"TCIM is investigating RFC's assertion that not all of the equipment subject to the lease has been returned." (D.I. 15 at 2 n.1)

12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

IV. DISCUSSION

The Lease is governed under Michigan Law. (D.I. 1 Ex. A, ¶ 18(a)) The elements of a breach of contract claim, under Michigan law, are: "(1) a contract existed; (2) plaintiff fulfilled its contractual obligations; (3) defendant breached its contractual obligations; and (4) plaintiff suffered injury as a result of defendant's breach of contract." Great Lakes Exteriors, Inc. v. Dryvit Systems, Inc., No. 99-CV-70449-DT, 2000 WL 1279167, *3 (E.D. Mich. August 16, 2000) (internal citations omitted). TCIM argues that in order to state a claim for breach of contract, RFC must allege that a contract existed and that RFC performed its obligations under the contract. By failing to give notice of assignment, TCIM argues that RFC failed to allege either. RFC contends that it clearly has standing by the assignment from Varilease and, under Rule 12(b)(6), the complaint is sufficient by providing notice of its claim and the right to avail itself of the default provisions of the Lease.

When deciding a motion to dismiss for failure to state a claim, "one must read Fed. R. Civ. P. 12(b)(6) in conjunction

with Fed. R. Civ. P. 8(a), which establishes the requirements for adequately pleading a claim in federal court." Brunetti v. Rubin, 999 F.Supp. 1408, 1409 (D. Col. 1998). See also Biles v. City of Grand Rapids, No. 1:90-CV-269, U.S. Dist. LEXIS 13396, at *2-3 (W.D. Mich. October 9, 1990). Rule 8(a) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Brunetti, 999 F.Supp. at 1409. The statement need not contain detailed facts, but it requires that plaintiff give defendant fair notice of what the claim is and the grounds upon which it rests. See Conley, 355 U.S. at 47. A plaintiff is not required to state precisely each element of the claim. 5 Charles A. Wright and Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1216, at 154-159 (1990). Despite that fact, a plaintiff must "set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." Gooley v. Mobil Oil Corp., 851 F.2d 513, 515 (1st Cir. 1988).

The court does not consider whether the plaintiff will ultimately prevail. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). However, in order to survive a motion to dismiss, the plaintiff must set forth information from which each element of a claim may be inferred. See Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). The defendant bears the burden of establishing that the plaintiff's complaint fails to state a claim upon which relief

can be granted. See Gould Electronics v. United States, 220 F.3d 169, 178 (3d Cir. 2000).

The record demonstrates that the complaint has been pled with sufficient particularity to give defendant TCIM fair notice of what plaintiff RFC claims and the grounds upon which such claim rests. The fact that RFC may not prevail on the merits of its breach of contract claim is not a pleading deficiency subject to dismissal under Fed. R. Civ. P. 12(b)(6). Nor are the facts underlying TCIM's defenses undisputed and, therefore, dismissal on the merits likewise is not justified at this stage of the proceeding.

V. CONCLUSION

Therefore, at Wilmington this 18th day of April, 2002;

IT IS ORDERED that defendant's motion to dismiss (D.I. 8) is denied.

Sue L. Robinson
United States District Judge