

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

COMPAQ COMPUTER CORP., et al.,            )  
  )  
                  Plaintiff,                            )  
  )  
                  V.                                    )        C.A. No. 01-108 GMS  
  )  
INACOM CORP., et al.,                        )  
  )  
                                  Defendants.        )

**MEMORANDUM AND ORDER**

On June 16, 2000 (the “Petition Date”), Inacom Corporation (“Inacom”), and certain of its subsidiaries filed bankruptcy petitions under Chapter 11 of the Bankruptcy Code. In connection with these ongoing bankruptcy proceedings, Compaq Computer Corporation (“Compaq”) and its wholly-owned subsidiary, Custom Edge, Inc. (“CEI”) (collectively, “the plaintiffs”), brought this adversary proceeding against Inacom and its pre-petition lenders (the “Bank Group defendants”) to recover an unspecified amount of funds allegedly collected and then spent by Inacom prior to the Petition Date. In their complaint, which was filed on October 20, 2000, the plaintiffs allege that Inacom received approximately \$100 million belonging to them, wrongfully retained that money, and paid a substantial amount of it to the banks.<sup>1</sup>

Presently before the court is the Bank Group defendants’ motion to dismiss the plaintiffs’ complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. After reviewing the submissions of the parties and hearing the parties’ arguments at oral argument held on May 31, 2001, the court concludes that the plaintiffs have sufficiently stated a claim upon which relief can be granted. Thus, the court will deny the

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<sup>1</sup>The plaintiffs had also previously filed a complaint on September 20, 2000, however, that complaint was never served. By stipulation and order, these adversary proceedings were consolidated.

Bank Group defendants' motion to dismiss.

### **MOTION TO DISMISS STANDARD**

The purpose of a motion to dismiss is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the case. *See Kost v. Kozakiewicz*, 1 F.3d 183 (3d Cir. 1993). Thus, in deciding a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir.1990). In particular, the court looks to "whether sufficient facts are pleaded to determine that the complaint is not frivolous, and to provide defendants with adequate notice to frame an answer." *Colburn v. Upper Darby Tp.*, 838 F.2d 663, 666 (3d Cir.1988). However, the court need not "credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3rd Cir.1997). The court will only dismiss a complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249-50 (1989) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)). Thus, in order to prevail, a moving party must show "beyond doubt that the plaintiff can prove no set of facts in support of his claim [that] would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

### **BACKGROUND**

The following facts are taken from the allegations in the complaint, which the court must accept as true for the purposes of deciding this motion. The plaintiffs, Compaq and CEI, agreed under an Asset Purchase Agreement, dated January, 4, 2000, to purchase for approximately \$370 million and other considerations, Inacom's operations and assets of its custom configuration and distribution business, as well

as other assets, including certain receivables and inventory. D.I. 1, ¶9. At this same time, Inacom was a party to a Credit Agreement, with a group of Lenders, (generally, “the Bank Group defendants”). D.I. 1, ¶10. Deutsche was the administrative agent for the Lenders and dealt directly with Inacom on behalf of the Lenders. *Id.* In order for Inacom to enter into the Asset Purchase Agreement with Compaq, the Lenders had to waive certain covenants of the Credit Agreement. D.I. 1, ¶11. In consideration for granting the waivers, the Lender required amendments to the Credit Agreement, which were set forth in a Third Amendment and Waiver dated January 4, 2000. *Id.* The Credit Agreement was again amended in connection with the transactions contemplated in the Asset Purchase Agreement on February 15, 2000. D.I. 1, ¶12.

On February 16, 2000, the transactions contemplated by the Asset Purchase Agreement closed. D.I. 1, ¶14. At the closing, Compaq transferred about \$370 million in cash, in part to Inacom and in part to the Lenders. *Id.*

As an integral part of the sale, CEI and Inacom entered into several related agreements defining their prospective business relationship, including a Services, Supply, and Sales Agreement. (“SSS Agreement”). D.I. 1, ¶15. The plaintiffs allege that under the SSS Agreement, Inacom agreed to act as agent for CEI in certain transactions in which CEI would sell hardware and related procurement services to Inacom’s service customers. D.I. 1, ¶16. CEI would be responsible for issuing the relevant invoices, and collecting the payments generated from the sales, known as the “New Receivables.” *Id.*

At the time of the closing, there were outstanding invoices due to Inacom for sales made prior to the closing. (“Old Receivables”). D.I. 1, ¶18. The plaintiffs do not dispute that these Old Receivables belong to Inacom.

The plaintiffs allege that “for some time after closing” all of the parties involved knew that payments of New Receivables would likely be mistakenly paid to Inacom rather than to CEI. D.I. 1, ¶19. Thus, the parties recognized that it would be necessary to establish a reconciliation process to identify misdirected payments so that Inacom could then transfer those funds to CEI, which owned the funds. D.I. 1, ¶20. CEI alleges that it took steps to minimize the number of misdirected payments, including sending separate notices to customers of the change in the lockbox to which payments should be made. D.I. 1, ¶19

As anticipated, many customers owing funds to CEI on account of New Receivables mistakenly made payments to Inacom. D.I. 1, ¶21. Beginning in early March 2000, Inacom started receiving a large number of payments for New Receivables in large amounts. *Id.* It is alleged that between March 1 and April 21, 2000, Inacom received about \$310 million, of which about \$99 million belonged to CEI. Inacom senior officers were aware that Inacom had received and continued to receive large sums of New Receivables. *Id.* The complaint alleges that despite this knowledge, Inacom took no action to set aside or reserve funds belonging to CEI and instead paid those funds to others, including the Lenders. D.I. 1, ¶22.

It is also alleged that the Lenders knew, or should have known, that Inacom was receiving a substantial amount of money that belonged to CEI. D.I. 1, ¶23. In particular, the plaintiffs allege that 1) the Lenders “reviewed and were familiar with the Asset Purchase Agreement, the SSS Agreement and other agreements between CEI and Inacom, *id.*; 2) the Lenders received detailed financial information from Inacom, D.I. 1, ¶24; 3) the Lenders should have known that the amounts received by Inacom far exceeded the amounts attributable to Inacom’s remaining business, D.I. 1, ¶25 and 4) Inacom and Deutsche had frequent communication about the cash available to Inacom, and on information and belief, all excess funds

not needed for day to day operation of Inacom were paid to the Lenders, which received substantial amounts of CEI's money. D.I. 1, ¶26.

By April 21, 2000, the initial reconciliation process was completed. D.I. 1, ¶27. CEI determined and advised Inacom of the specific misdirected payments to Inacom totaling \$99 million. *Id.* According to the complaint, Inacom confirmed the accuracy of this amount and agreed to repay the amount owed to CEI, which after offsets, was approximately \$88 million. *Id.* Inacom had available to it under the Credit Agreement sufficient funds to make the payment, and sought to draw the funds. However, the Lenders refused to advance such funds to Inacom. Thus, Inacom has not yet repaid any of the pre-April 21 misdirected payments. D.I. 1, ¶28.

The complaint further alleges that between April 21 and June 15, Inacom continued to receive substantial amounts of misdirected payments. D.I. 1, ¶29. Inacom did pay certain funds to CEI, but CEI alleges that Inacom wrongfully retained approximately \$5 million belong to CEI. *Id.* Furthermore, CEI alleges that since the Petition date, Inacom has received approximately \$10.5 million of CEI's money. D.I. 1, ¶30. These post-petition CEI payments have not been turned over to CEI.

## **DISCUSSION**

### **A. Parties' Arguments**

In their motion to dismiss, the Bank Group defendants argue that the plaintiffs can prove no set of facts in support of their claims that would entitle them to relief. Specifically, the Bank Group defendants claim that the plaintiffs have failed to state a claim for breach of fiduciary duty and for aiding and abetting Inacom's alleged breach of fiduciary duty. In addition, the Bank Group defendants argue that the plaintiffs' equity based claims – 3) unjust enrichment, 4) a constructive trust and 5) equitable subordination, should

also be dismissed because the dispute is governed by a valid contract<sup>2</sup>

In their complaint, the plaintiffs do not set forth any specific legal theories or causes of action. Rather, they allege that they are entitled to relief because the Bank Group defendants have “breached, aided and abetted the breach of fiduciary and other duties . . . , have misappropriated [property], have wrongfully refused to return the property held in trust . . . , and have been unjustly enriched.” D.I. 1, ¶34. Also, in their briefing on the motion to dismiss, the plaintiffs allege that they are entitled to relief because the Bank Group defendants hold the disputed funds in constructive trust.

## **B. Analysis**

At the outset, the court emphasizes that under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a plaintiff need only include a “short and plain statement of the claim showing that the pleader is entitled to relief.” F.R.C.P. 8(a)(2). Rule 8(a)(2) does not require a claimant to set forth any specific legal theory justifying the relief sought on the facts alleged. *See 2 Moore’s Federal Practice*, Section 8.04[3] at 8-26; *Cf. Rose Hall , Ltd v. Chase Manhattan Banking Corp.*, 93 F.R.D. 858, 862 (D. Del. 1982). Thus, the federal rules do not require the plaintiffs to “plead law or match facts to every element of a legal theory.” *Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir.1998)

In light of Rule 8, the court cannot conclude as a matter of law that the plaintiffs are not entitled to relief based upon the facts alleged in the complaint. Although both parties vigorously argue the strengths and weaknesses of the different possible legal theories available to the plaintiffs, the court concludes that

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<sup>2</sup>The Bank Group defendants argue that New York law applies to this case. However, the court agrees with the plaintiffs, and finds that a definitive choice of law determination is inappropriate at the Rule 12 phase of a case. *See Federal Ins. Corp. v. Jefferson Bank and Trust*, 937 F. Supp. 1461, 1466 (D. Colo. 1996).

the principal facts alleged by the plaintiffs sufficiently state a claim against the defendants.

Essentially, the plaintiffs have alleged that Inacom received more than \$100 million dollars which belonged to CEI, that Inacom held CEI's funds in trust for CEI, and failed to set aside or reserve funds belonging to CEI. Instead Inacom paid those funds to others, including the Bank Group defendants. Thus, according to the plaintiffs, the Bank Group defendants received substantial amounts of CEI's money, and the Bank Group defendants knew or should have known that the payments made to them by Inacom included CEI's money.

Under basic trust law principles, “[w]here a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises.” *See Restatement of Restitution* § 160 (1937). When property held in constructive trust is transferred to a third party who is not a bona fide purchaser, “the interest of the beneficiary is not cut off. In such a case he can maintain a suit in equity to recover the property from the third person, at least if his remedies at law are not adequate.” *See id.* cmt. g. *See also Norfolk and Western Railroad Co. v. Central Indus., Inc.*, Civ. A. Nos. 86-2613, 88-4348, and 88-4349, 1989 WL 36958 , at \*6 (E.D. Pa. Apr. 12, 1989) (“[a] trust beneficiary can recover the trust property from the trustee or one holding it with notice of the breach of trust”). In addition, “[w]here a person holding property in which another has a beneficial interest transfers title to the property in violation of his duty to the other, the transferee holds the property subject to the interest of the other, unless he is a bona fide purchaser. *See Norfolk and Western Railroad Company*, 1989 WL 36958, at \*6 (citing *Restatement of Restitution* § 168).

Thus, basic trust law principles support the plaintiffs' argument that they would be allowed to

recover from the Bank Group defendants any funds which were held in constructive by Inacom and transferred to the Bank Group defendants where the Bank Group defendants knew or should have known that the funds belonged to the plaintiffs. In further support of their argument, the plaintiffs cite to *United States v. NBD Bank, N.A.*, 922 F. Supp. 1235 (E.D. Mich. 1996). In *United States v. NBD Bank, N.A.*, 922 F. Supp. 1235 (E.D. Mich. 1996), the government sought to recover funds which were improperly diverted from a federally back mortgage program and paid to the defendant bank in repayment of a loan. *See id.* at 1240-41. The *NBD Bank* court held that the funds at issue were held in constructive trust because it was not disputed that the constructive trustee [another bank] did not have an equitable interest in the funds when it took the disputed funds for its own purposes. *See id.* at 1242. In addition, the court held that where the defendant, to whom the constructive trustee transferred the disputed funds, knew that the disputed funds were being held in trust, they could not be a bona fide purchaser of the funds. *See id.* at 1245.

In light of basic trust law principles and *United States v. NBD Bank, N.A.*, the court cannot determine as a matter of law, at this an early stage in the case, that the plaintiffs would not be entitled to relief under any theory. Thus, the court concludes that the plaintiffs have adequately stated a claim upon which relief can be granted. For these reasons, the court will deny the Bank Group defendants' motion to dismiss.

For these reasons, IT IS HEREBY ORDERED that:

1. The Bank Group Defendants' Motion to Dismiss is DENIED.

Date: July 12, 2001

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE