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DEC 27 2017

22ND JUDICIAL CIRCUIT
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STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**

ST. LOUIS REGIONAL)
CONVENTION AND SPORTS)
COMPLEX AUTHORITY, et al.,)
)
Plaintiffs,)
)
vs.)
)
NATIONAL FOOTBALL LEAGUE,)
et al.,)
)
Defendants.)

No. 1722-CC00976
Division No. 21

ORDER

The Court has before it Defendants' Motion to Dismiss the Petition for Failure to State a Claim. The Court now rules as follows.

Plaintiffs in this matter are the City of St. Louis, St. Louis County, and the St. Louis Regional Convention and Sports Complex Authority ("RSA"), a public entity. Defendants are the National Football League, an unincorporated association; all 32 of its member clubs; and 57 individual owners and managers of the clubs. In January 2016, the NFL member clubs voted to approve the Rams' relocation to Los Angeles.

Plaintiffs brought this action in April 2017, alleging breach of contract, quasi-contract and tort claims based on the NFL's relocation policy.

First, Defendants move to dismiss the breach of contract count for the failure to state a claim, arguing that the NFL's internal relocation policy is not a binding contract that Plaintiffs can enforce. Plaintiffs allege in part the following:

In 1984, the NFL adopted the "Policy and Procedure for Proposed Franchise Relocations" (hereafter the "Relocation Policy" or "Policy"), pursuant to Article 8.5 of the NFL Constitution and Bylaws, which vests the Commissioner with the authority to establish policy and procedure with respect to the provisions of the Constitution and Bylaws and any enforcement thereof. The NFL Constitution and Bylaws, including policies and procedures adopted pursuant to the NFL Constitution and Bylaws, define the contract between NFL team members. By joining the NFL association, team members agree to be bound by the terms of the governing NFL Constitution and Bylaws. To members, outsiders, and beneficiaries, the NFL Constitution and Bylaws bind the NFL association and its team members.

The Relocation Policy establishes the procedure and standards to be followed in requesting and evaluating requests for relocation. Among other things, the Relocation Policy requires any franchise interested in relocating to apply to the League for permission, justify the request based on identified objective factors, and provide notice to designated entities. The relocation must be approved by a three-fourths vote of team owners. The Relocation Policy is mandatory and imposes an "obligation" on teams and the NFL.

The Relocation Policy is intended to control the relocation decision process and circumscribe subjective decision-making and imposes obligations on the member teams and the League. Eric Grubman, Executive Vice

President of the NFL, stated that the Relocation Policy "puts obligations on the club and it puts obligations on the league." Grubman further explained that a club has to receive 24 votes in order to relocate and that, "to get 24 votes, the owners would have to reach the conclusion that the club met the NFL guidelines."

Plaintiffs allege that The Rams, the NFL, its member teams, and their owners did not comply with the Relocation Policy, and thereby breached their contractual obligations of diligence and good faith to the detriment of Plaintiffs, who are third party beneficiaries of the Relocation Policy.¹ Clearly, Plaintiffs allege facts that give rise to a breach of an enforceable contract. Defendants' arguments rely on facts outside the pleadings which are beyond what the Court may consider on a motion to dismiss. The Court finds Plaintiffs have stated a claim for breach of contract.

Next, Defendants move to dismiss the unjust enrichment claim. The elements of a claim of unjust enrichment are: (1) a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of the fact of such benefit; and (3) acceptance and retention by the defendant of that benefit under circumstances in which retention without payment would be inequitable. Mays-Maune

¹ Plaintiffs allege that the Relocation Policy indicates an intention to benefit the RSA, the City, and the County. For example, upon receipt of a club's proposal to transfer, the Relocation Policy provides that "The League will provide copies of the notice to governmental and business representatives of both the incumbent community and the community to which the team proposes to move, as well as the stadium authority (if any) in the incumbent community (the 'interested parties')."

& Assoc., Inc. v. Werner Bros., Inc., 139 S.W.3d 205 (Mo.App. E.D. 2004).

Defendants argue that there was no benefit conferred *by the Plaintiffs*. Unjust enrichment does not require a direct payment from the plaintiff to the defendant as long as the plaintiff has a right to the money. The benefit conferred upon the defendant must simply be "at the expense of the plaintiff." See Petrie v. LeVan, 799 S.W.2d 632, 635 (Mo.App. W.D. 1990). The Court finds that Plaintiffs have adequately pleaded a benefit conferred upon Defendants at the expense of Plaintiffs.

Plaintiffs have also sufficiently alleged that the Defendants' retention of the benefits was unjust, in that Defendants' wrongful conduct, unclean hands, and bad faith contributed to Plaintiffs' disadvantage. The Court finds that Plaintiffs have stated a claim for unjust enrichment.

Next, Defendants argue that Plaintiffs fail to meet the requirements for pleading a fraudulent misrepresentation claim. In Count III, Plaintiffs allege that the Rams and Kroenke made repeated false statements that were intended to induce the Plaintiffs into continuing to support and finance the Dome and to spend money to create a new stadium for the Rams. The petition

goes on to quote with particularity several statements by the Rams and Kroenke that are alleged to be false.

In Count IV, Plaintiffs allege particular false statements made by the NFL. Plaintiffs also allege that the false statements set out in Count III were made "on behalf of the NFL and its member clubs," but the petition fails to attribute any specific misrepresentation to any member club or owner other than the Rams and Kroenke. Rule 55.15 states, in full, as follows:

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge and any other condition of mind of a person may be averred generally.

Although, to comply with Rule 55.15, the pleader need not allege evidentiary facts, the pleader must allege ultimate facts and cannot rely on conclusions. Williams v. Belgrade State Bank, 953 S.W.2d 187, 189 (Mo.App. S.D. 1997). Plaintiffs have failed to allege any representation made by any of the member clubs or owners, other than the Rams and Kroenke.

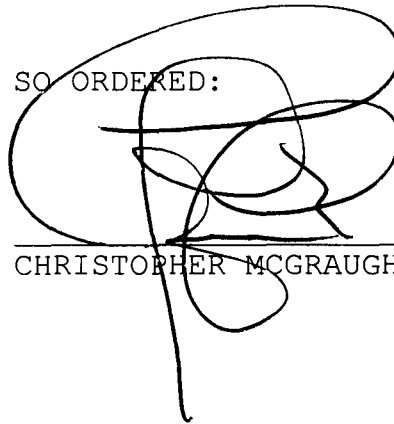
Silence may amount to a representation "a where the law imposes a duty to speak." Oliver v. Ford Motor Credit Co., LLC, 437 S.W.3d 352, 358 (Mo.App. W.D. 2014). In order to recover for nondisclosure, however, the plaintiff must show that the defendant knew or should have known about the underlying factual information that allegedly should have been disclosed. Wengert v.

Thomas L. Meyer, Inc., 152 S.W.3d 379, 382 (Mo.App. E.D. 2004). In Paragraph 92 of their Petition, Plaintiffs allege generally that "the foregoing material misrepresentations and omissions were false, and were known to be false when made by Defendants." However, Plaintiffs have not alleged that the member clubs or owners specifically knew or should have known any factual information that should have been disclosed. Because fraud must be alleged with particularity, the Court believes that Count IV is therefore insufficiently pleaded except as to the NFL, the Rams, and Kroenke.

Finally, Defendants move to dismiss the claim for tortious interference with a business expectancy, arguing that Plaintiffs could not have had a valid business expectancy in the Rams staying in St. Louis. A business expectancy need not be based on an existing contract. Stehno v. Sprint Spectrum, L.P., 186 S.W.3d 247, 251 (Mo. banc 2006). A probable future business relationship that gives rise to a reasonable expectancy of financial benefit is enough. Id. Whether a valid business expectancy exists depends on the facts which, at this point, are in dispute but are adequately pleaded.

THEREFORE, it is Ordered and Decreed that Defendants' Motion to Dismiss the Petition for Failure to State a Claim is GRANTED IN PART. Count IV is dismissed except as to the NFL, Rams, and Kroenke. Plaintiffs are granted thirty (30) days to file an amended petition in order to set forth specific averments of fraud regarding the dismissed parties. In all other respects, the Motion to Dismiss is DENIED.

SO ORDERED:

A large, stylized handwritten signature in black ink, appearing to read 'C. McGraugh', is written over a horizontal line.

CHRISTOPHER MCGRAUGH, Judge

Dated: December 27, 2017

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