

IN THE DISTRICT COURT OF IOWA IN AND FOR POLK COUNTY

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GOLDEN CIRCLE REAL ESTATE	:	
GROUP, LLC., d/b/a KELLER WILLIAMS	:	CASE NO. LACL 125527
REALTY, GREATER DES MOINES,	:	
	:	RULING ON DEFENDANT'S
Plaintiff,	:	MOTION TO DISMISS
	:	
v.	:	
	:	
IOWA REALTY COMPANY,	:	
	:	
Defendant.	:	

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On September 25, 2012 the above-captioned matter came before the Court on defendant's motion to dismiss. Plaintiff appeared by its attorneys, Matthew Whitaker and Kendra Arnold. Defendant appeared by its attorney, Rhyddid Watkins and its corporate representative, Joan Johnson. After hearing the statements and arguments of counsel, reviewing the court file and being fully advised in the premises, the Court now enters the following ruling.

On June 27, 2012 plaintiff filed its petition against defendant claiming entitlement to relief in seven counts: (1) Interference with Contractual Relationship; (2) Interference with Prospective Business/Economic Relationship; (3) Injurious Falsehood; (4) Unfair Competition; (5) Breach of Contract; (6) Slander; and (7) Libel. In response, defendant filed a motion to dismiss the counts for interference with contractual relationship, interference with prospective business/economic relationship, injurious falsehood, unfair competition, and breach of contract. The motion does not allege that the counts for slander and libel fail to state a claim upon which relief could be granted.

In its response to the motion to dismiss, plaintiff correctly cites to the general rules governing the consideration of a motion to dismiss. Specifically, the petition needs

only to allege enough facts to give the defendant “fair notice” of the claim asserted to the defendant can adequately respond. *See Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994). A motion to dismiss may be granted only if the plaintiff’s petition on its face shows no right of recovery under any set of facts. *Nixon v. State*, 704 N.W.2d 643, 644 (Iowa 2005). Generally, the Court cannot consider facts outside the allegations of the petition. *Curtis v. Board of Supervisors of Clinton County*, 270 N.W.2d 447, 448 (Iowa 1978).

The irony of plaintiff’s argument is not lost on the Court. In many instances, defendant calls attention to facts plead in the petition in support of its motion to dismiss—facts which were put into the petition for no apparent purpose other to denigrate defendant. But when defendant called these allegations into question and attempted to use them in support of its motion, plaintiff began backpedaling and asserting that the Court could not utilize the very facts alleged by plaintiff in considering the motion to dismiss. Instead, plaintiff urges that the Court must consider as notice pleading the *theories* plead by plaintiff for purposes of meeting the notice pleading requirement, and not the various “facts” alleged in the petition.

Giving the plaintiff the benefit of every possible doubt, the Court concludes that the motion to dismiss must be overruled on the counts for interference with contractual relationship and interference with prospective business/economic relationship. While plaintiff’s claims on these two counts appear to be tenuous at best, as explained by plaintiff’s counsel at the hearing on the motion to dismiss, the Court cannot conclude as a matter of law that the petition fails to state a claim for relief on these two counts.

A different result obtains as to the counts for injurious falsehood, unfair competition and breach of contract. For the reasons stated in defendant's memorandum in support of its motion to dismiss, plaintiff has failed to state a claim for which relief could be granted under the counts of injurious falsehood and unfair competition. None of the facts plead in the petition state a claim for relief under these two theories.

As to the count for breach of contract, plaintiff's attorneys explained at the hearing on the motion to dismiss that the contract which plaintiff is alleging was breached was an oral contract between Burnett Realty and defendant in 2002 whereby the two would share commissions. Plaintiff alleges that Burnett Realty assigned that oral contract to plaintiff, and that defendant is in breach of that assigned contract because it refuses to share commissions with plaintiff.

Plaintiff contends that the question of whether Burnett Realty's assignment of its oral contract to plaintiff was binding upon Iowa Realty is a question of fact and thus not subject to a motion to dismiss. The Court agrees that whether Burnett Realty did assign its oral contract to plaintiff is a question of fact and, at least as clarified at the oral argument, sufficiently plead in the petition to pass muster. However, the issue of whether such an assignment would be binding upon Iowa Realty is a purely legal question. The answer to that question is no. There is no Iowa case law which would support the notion that such an oral contract would be assignable and binding upon the other party, and there is case law to the contrary. *See Des Moines Blue Ribbon Distributors, Inc. v. Drewrys Ltd., Inc.*, 129 N.W.2d 731, 738 (Iowa 1964). There is no allegation in the petition that Iowa Realty ever agreed to be bound by the assignment from Burnett Realty. For that reason, the claim for breach of contract must fail.

The motion to dismiss is overruled as to the Counts I and II of the petition. The motion to dismiss is granted as to Counts III, IV and V of the petition. The motion did not address Counts VI and VII of the petition.

Dated this 8<sup>th</sup> day of October 2012.

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Robert A. Hutchison, Judge-  
Fifth Judicial District of Iowa

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