

**Systems Support Servs., Ltd. v Cabrini Ctr. for  
Nursing & Rehabilitation**

2011 NY Slip Op 32421(U)

September 7, 2011

Supreme Court, Nassau County

Docket Number: 001545/2011

Judge: Ira B. Warshawsky

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**SHORT FORM ORDER**

**SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT:**

**HON. IRA B. WARSHAWSKY,  
Justice.**

**TRIAL/IAS PART 7**

**SYSTEMS SUPPORT SERVICES, LTD., d/b/b  
HEALTHCARE INFORMATION SOLUTIONS,**

**Plaintiff,**

**-against-**

**INDEX NO.: 001545/2011  
MOTION DATE: 6/28/2011  
SEQUENCE NO.: 01**

**CABRINI CENTER FOR NURSING AND  
REHABILITATION, ST CABRINI NURSING  
HOME, INC., and CABRINI ELDERCARE  
CONSORTIUM, INC.,**

**Defendants.**

The following papers were read on this matter:

- Motion to Dismiss First, Third, Fourth and Fifth Causes of Action 1.
- Memorandum of Law in Support of Motion ..... 2.
- Affirmation and Memorandum in Opposition ..... 3.
- Reply Memorandum of Law ..... 4.

**PRELIMINARY STATEMENT**

Defendant moves to dismiss the First, Third, Fourth and Fifth Causes of Action and the claim for treble damages and legal fees. Plaintiff served an Amended Complaint in response to the motion, but defendant elected to submit the motion against the allegations of the Amended Complaint.

**BACKGROUND**

Plaintiff's complaint involves a series of claims concerning a written or verbal

agreement to install cable at Cabrini, for which it contends it is owed \$68,765.00; an oral 5-year lease of computers, software, and support services for which it claims \$267,510.64; and a claim for conversion in the Second Cause of Action.

Healthcare Information Solutions ("HCIS") identifies itself in the complaint as a highly specialized provider of computer software and hardware to long-term care facilities country wide. It identifies its signature product as MDSEase™, a fully-integrated clinical and financial software suite. They also install cabling and other computer related services, such as training, customization and data integration.

Plaintiff has had a business relationship with defendants for some fifteen years; but alleges that beginning as early as 2005, HCIS entered into a number of agreements for software, hardware and maintenance agreements with Cabrini to lease MDEase™ which, they claim, included maintenance service contracts which plaintiff claims to have continued, in some cases, through 2010, and in other cases through 2011.

According to the complaint, as early 2009, Cabrini entered into contracts with HCIS for the installation of cables for computer, internet, telephone and related communications. A contract for cabling is alleged to have been made in about December 2009. As an alternative to a claim of a formal contract, plaintiff alleges a course of conduct between the parties which manifested an intent of the parties to enter into a contract for leasing the software, hardware, cabling, and related services.

Plaintiff asserts that from time to time, in the course of the contractual relationship, Cabrini issued authorized work orders, and communicated problems or requests for resolution by HCIS which resulted in tickets being issued for work performed. They claim to have installed at least 1,262 cable lines and provided telephone equipment, for which they contend \$68,765.00 is due and owing. They annex invoices as Exh. "A" to the complaint.

The complaint alleges that Cabrini unilaterally terminated the contract for software service and has refused to pay \$267,510.64 for the leasing and maintenance of the

MDSEase™ software and hardware. Some of the contracts for which plaintiff claims damages do not expire until some time in 2011, for which the damages will be greater. Allegedly Cabrini has refused to return the software package, which has a value of \$350,000, as well as a significant amount of hardware belonging to HCIS.

There then follow five causes of action: breach of contract; conversion; money due and owing; account stated; and unjust enrichment.

Plaintiff appends an Amended Complaint to its opposition to the Motion to Dismiss. It also contains five causes of action: breach of contract; implied contract; quasi-contract; money due and owing; and quantum meruit.

The First Cause of Action alleges a February 6, 2007 written agreement whereby HCIS agreed to provide CCNR with maintenance and support services respecting certain hardware and software, including MDSEase™. The contract called for monthly payments of \$4,845.00 subject to CPI Adjustments, and was to terminate on January 1, 2011. CCNR made payments through December 2009, but none thereafter. Plaintiff therefore claims damages in the amount of \$58,140.00.

Plaintiff claims an Implied Contract in the Second Cause of Action. In the event the Court were to determine that there was not a formal contract in 2007, plaintiff asserts that there existed an implied contract between the parties for the services asserted in the First Cause of Action.

In the Third Cause of Action plaintiff alleges quasi-contract. Again, plaintiff asserts that if a Court were to determine that there were no formal contract between the parties in 2007, plaintiff is entitled to recover on the basis of a quasi-contract for the value of the HCIS services for the period January 1, 2010 through December 31, 2010. Defendant CCNR allegedly received a benefit from the services provided by HCIS, and it would be inequitable to permit them to retain the benefit, valued by plaintiff at \$58,140.00.

The Fourth Cause of Action is entitled Money Due and Owing. Plaintiff asserts

that Cabrini requested certain work, labor, computer maintenance services, supplies, and use of software and hardware during the period January 1, 2007 through December 31, 2010<sup>1</sup>. The provision of such services and equipment was in response to requests by Cabrini, and were accepted by them without complaint. Plaintiff contends that this constitutes a claim for money due and owing.

Plaintiff asserts quantum meruit for its Fifth Cause of Action, claiming that HCIS provided the aforementioned equipment and services to CCNR for the period of January 1, 2007 through December 31, 2010, for which it had an expectation for compensation, and CCNR was aware of HCIS' expectation. Plaintiff claims entitlement to \$58,140 plus \$2,224 for each month beginning January 1, 2011.

In the Sixth Cause of Action plaintiff asserts an Account Stated in that HCIS regularly tendered to CCNR monthly statements amounting to \$58,140.00, and that these accounts were accepted without objection.

Plaintiff's Seventh Cause of Action claims Unjust Enrichment, asserting that the receipt of the equipment and services by CCNR without payment to HCIS, unjustly enriched CCNR at the expense of HCIS.

The Eighth Cause of Action deals with the Cabling Contract. It asserts that on or about May 4, 2007 SCNH received a written quotation of the same date from HCIS for the installation of cables to be used for computer, Internet, telephone and related communications, as well as telephone hardware. Defendant began paying for cable installations and the actual number of cables to be installed was increased from the original quoted amount to 1262 cables pursuant to defendant's requests. Defendant allegedly owes plaintiff \$56,210.00 for the cabling work and installations. Plaintiff asserts that the quotation, together with the invoices, constitutes a writing in confirmation of a contract for the sale of goods which satisfies the statute of frauds and the formal

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<sup>1</sup> The Fourth Cause of Action at ¶ 45 alleges services through December 31, 2011, but other causes of action refer to a termination date of December 31, 2010.

requirements for a valid contract under the UCC. The Ninth Cause of Action states that if a court were to determine that there was no formal agreement for the cabling services, the contract should be enforced because an implied contract system between the parties. The 10<sup>th</sup> Cause of Action asserts a quasi-contract with respect to cable and services, while the 11<sup>th</sup> Cause of Action asserts Money Due and Owing, and the Twelfth claims Quantum Meruit; the Fourteenth claims Unjust Enrichment.

The Fifteenth Cause of Action claims a breach of a 2006 Contract. Plaintiff alleges that in or about September 26, 2004 defendant showed plaintiff the document containing the cost which Cabrini was paying for similar services as those quoted by HCIS, for which they were paying an annual amount of \$258,140, or \$21,511.67 per month. The proposal by plaintiff amounted to a monthly total of \$15,500.00 for a period of five years commencing January 2006 and ending December 31, 2010. It also contemplated additional services which Cabrini was not receiving under its current arrangement, which services were valued at \$6000 per month. Plaintiff asserts that the 2004 proposal and/or the 2005 quotation, and/or the payments made by Cabrini, constitute a writing confirmation of the contract for the sale of goods, which satisfies the statute of frauds and all requirements for a valid contract under the UCC and General Obligations Law.

Plaintiff asserts entitlement to \$12,283.22 for a period of 60 months in exchange for providing services pursuant to the contract, which, they claim was admitted and the knowledge by Cabrini in an e-mail dated July 20, 2006. Cabrini paid the monthly payments through December 2009 but refused to make additional payments thereafter, without any basis for doing so and, as a result plaintiff was not paid for the. From January 1, 2010 January 1, 2011. Plaintiff claims entitlement to \$147,398.64 for the 12 months full which Cabrini did not make payments, exclusive of CPI increases and interest.

In the Sixteenth through Twenty-First Causes of Action, dealing with the 2006

contract, Plaintiff asserts implied contract, quasi-contract, money due and owing, quantum meruit, account stated and unjust enrichment.

The Twenty-Second Cause of Action alleges breach of a software contract. Plaintiff claims that as early as January 2006, they were invited by defendant to provide a quote for MDSEase™ for plaintiff's use. Plaintiff then submitted a formal quotation for leasing the computer services in contemplation of entering into a formal contract by way of defendant accepting the quotation and acknowledging it for a total of \$3465.00 for February 1, 2006 through January 31, 2010, with automatic renewals unless notice of termination was provided by plaintiff.

Plaintiff allegedly thereafter submitted monthly invoices for the Software Contract. Defendant allegedly signed, acknowledged and accepted the quotation as a contract, and began paying for the 2007 contract services and plaintiff provided those services to them. They claim that the quotation, together with the payments, constitute a writing in confirmation of a contract for the sale of goods satisfying the statute of frauds and all formal requirements under the UCC and Gen. Obligations Law. Defendant allegedly made monthly payments of \$3465.00 through December 2009 but has refused to make additional payments for the period January, 2010 through December 31, 2010, for which plaintiff claims entitlement to \$41,580.00.

The Twenty-Third through Twenty-Eighth Causes of Action assert claims involving the software contract based upon implied contract; quasi-contract; money due and owing; quantum meruit; account stated; and unjust enrichment.

The Twenty-Ninth Cause of Action alleges a "breach of the combined software contract". In this cause of action plaintiffs consolidate claims previously made by claiming that as early as May 2006 defendant invited plaintiff to provide a quote for their software as well as "respite" software for SCNH. In response, plaintiff submitted a formal quotation for the leasing of the software in contemplation of entering into a formal contract by way of defendant accepting the quotation as a contract upon their acceptance

and acknowledgment of the contract for a monthly total of \$690 (\$345 for each facility), for the period June 1, 2006 through June 2010 ,of with automatic renewal unless notice provided by Cabrini. May 18, 2006 Cabrini allegedly signed, acknowledging accepted the quotation as a contract ("Combined Software Contract"). Plaintiff asserts that the signed quotation long with invoices for the Combined Software Contract constitute a writing in confirmation of a contract for the sale of goods which satisfies the statute of frauds as well as the requirements of the UCC and Gen. Obligations Law. Again, plaintiff asserts that defendant paid the monthly charges through December 2009 but refuse to make additional payments thereafter. Plaintiff therefore asserts damages in the amount of \$8,280.00 for failure to pay the \$690 monthly charges for January 1, 2010 through December 31, 2010.

Causes of action Thirtieth through Thirty-Fifth, relating to the Combined Software Contract, allege implied contract; quasi-contract; money due and owing; quantum meruit; account stated; and unjust enrichment.

The Thirty-Sixth Cause of Action asserts a claim for breach of the Adult Day Care Software Contract. It claims that as early as May 2005 plaintiff was invited by Cabrini to provide a quote for MDSEase™ software for use by CCNR and SCNH. The service was ACEase software for managing adult day care information. Plaintiff allegedly submitted a formal quotation for leasing of the software in contemplation of entering into a formal contract by way of Cabrini accepting the quotation and upon Cabrini's acceptance and acknowledgment of the contract for a monthly cost of \$695 for the period commencing July 1, 2005 through June 30, 2010, with automatic renewal unless notice of termination provided by Cabrini.

Plaintiff contends that Cabrini acknowledged and accepted the quotation has a contract and began paying for the services which plaintiff delivered to both CCNR and SCNH. They contend that the quotation, together with payments, constitute a writing in confirmation of a contract for the sale of goods satisfying the statute of frauds, the UCC



and the Gen. Obligations Law. Plaintiff allegedly provided the requested services for the sum of \$695.00 per month, but they were not paid for a total of seven months, thereby entitling them to damages in the amount of \$4,865.00.

The Thirty-Seventh through Forth-Second Causes of Action, dealing with the Adult Day Care Software Contract allege implied contract; quasi-contract; money due and owing; quantum meruit; account stated; and unjust enrichment.

In the Forty-Ninth Cause of Action plaintiff alleges conversion of the MDSEase™ software, Sonicwall Firewalls, a Microsoft Exchange server with 125 licenses, two Microsoft Servers with 125 licenses, and seven 48-port Hewlett Packard Managed Switches with gigabit ports. Plaintiff claims damages of \$225,125.00.

#### DISCUSSION

Defendants' motion to dismiss, originally returnable on April 6, 2011, was directed at a complaint containing Five Causes of Action. They contend that they are entitled to proceed with their motion to dismiss the complaint irrespective of the service by plaintiff of a greatly expanded amended complaint, citing *Livadiotakis v. Tzizikalakis*, 302 A.D.2d 369, 370 (2d Dept. 2003) and *Sage Realty Corp. v. Proskauer Rose, LLP*, 251 A.D.2d 35, 38 (1<sup>st</sup> Dept. 1998), rev'd. on other grounds 91 N.Y.2d 30 (1997). These cases confirm that a motion to dismiss on the merits may not be mooted by the service of an amended pleading; and that the interest of judicial efficiency is best served by permitting the moving party to elect to have the motion applicable toward the amended pleading. Defendants have done so.

In their reply memorandum of law, defendants seek dismissal of all causes of action except the First, alleging breach of the 2007 contract; Fourteenth, Unjust Enrichment for installation of cabling; and Forty-third, conversion. Plaintiff has annexed to the Amended Complaint a copy of a Hardware and Software Maintenance Agreement between HCIS and CCNR, bearing the signature of Robert DeVito, VP and CFO of Cabrini, dated February 6, 2007. Causes of Action Second through Seventh are

permutations of the same claim for \$58,140.00, alleging as they do, implied contract in the Second and Third Causes of Action, Money Due and Owing, Quantum Meruit, Account Stated and Unjust Enrichment. The existence of a valid and enforceable written agreement ordinarily precludes a quasi-contract claim. The latter, in fact, is not a contract claim at all, but rather an equitable claim that in the absence of a written contract, is designed to prevent unjust enrichment. (*Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382, 388 [1987]). The Second, Third, Fourth, Fifth and Seventh Causes of Action are dismissed for this reason.

The Sixth Cause of Action alleges an Account Stated. In *McFadyen Consulting Group, Inc. v. Puritan's Pride, Inc.*, 928 N.Y.S.2d 87 (2d Dept.2011), the Court found that these claims were not inconsistent or duplicative. That case, however, involved a written contract, also for computer services, which specifically called for monthly statements and specified the manner in which they were to be contested. The subject agreement has no such provision; rather, it calls for monthly payments of \$4,845 for the four-year period commencing January 1, 2007 and terminating on December 31, 2010. The Sixth Cause of Action for account stated and the Seventh Cause of Action for Unjust Enrichment are also dismissed since they can not stand in the face of a written agreement upon which plaintiff relies. (*Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382, 388 [1987]).

The Eighth Cause of Action alleges a contract with St. Cabrini Nursing Home based upon a written quotation of May 4, 2007, annexed as Exh. "F" to the Amended Complaint. This does not constitute a written contract, since it is not signed by defendant SCNH, the party to be charged. Plaintiff annexes as Exh. "G" a document of its own claiming that there is a balance due of \$56,210.00 for the installation of 1,262 data and voice-cable runs, including 15-year on-site service against breakage.

The Ninth through Thirteenth Causes of Action assert implied contract; quasi-contract; money due and owing, quantum meruit, account stated and unjust enrichment.

Defendants contend that all of these, except the claim of quantum meruit and unjust enrichment are barred as being duplicative of the Unjust Enrichment claim of the Fourteenth Cause of Action. Where there is a written contract, claims for implied or quasi-contract are. (*Clark-Fitzpatrick*, supra). Claims of quasi-contracts are, in r unjust enrichment. (*IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 141 [2009]; *Georgia Malone & Co., Inc. v. Ralph Rieder*, 86 A.D.3d 406 [1<sup>st</sup> Dept. 2011]). The principle holds true for implied contracts. They, too, constitute legal fictions to prevent unjust enrichment, and are enforceable under equitable theories. (*Chadirjian v. Kanian*, 123 A.D.2d 596 [2d Dept. 1986]; *Hampton Transp. Ventures, Inc. v. JD Transp., LLC*, 32 Misc.3d 1234(A) [Sup.Ct., Suff.Co. 2011]). Quantum meruit is also unavailable in the presence of an agreement on the same subject matter. (*Schutty v. Speiser Krause, P.C.*, 86 A.D.3d 484 [1<sup>st</sup> Dept. 2011]). It is a device for the prevention of unjust enrichment of one party at the expense of another. (*Kreiss v. McCorn DeLeeuw & Co.*, 37 F.Supp. 2d 294, 302 [S.D.N.Y. 1999], citing *Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382 [1987]). The claims for implied contract, quasi-contract, and quantum meruit are therefore, nothing more than claims of unjust enrichment, and are therefore duplicative. Defendants' motion to dismiss the Eighth through Thirteenth Causes of Action is granted. The Fourteenth Cause of Action for Unjust Enrichment remains.

The Fifteenth Cause of Action claims that Cabrini (the name attributed collectively to Cabrini Center for Nursing and Rehabilitation, St. Cabrini Nursing Home, Inc. and Cabrini Eldercare Consortium, Inc.) invited HCIS to provide a quote for computer services and hardware. The quote is annexed as Exh. "H". That document, dated September 26, 2004, proposes a monthly cost of services of \$15,500.00. The proposal was revised to \$12,500 per month, and ultimately resulted in monthly payments of \$12,283.22. Plaintiffs claim that the proposal, coupled with payments by Cabrini constitute a writing satisfying the statute of frauds, the UCC and the Gen. Ob. Law.

In the absence of an intent of the parties to be bound, no contract can be formed. Where parties to an agreement do not intend it to be binding upon them until it is reduced to writing, and signed by both of them, they are not bound and may not be held liable until it has been written and signed. (*Scheck v. Francis*, 26 N.Y.2d 466, 469 — 470 [1970]). As noted by defendants, the 2004 proposal is addressed to Cabrini Medical Center, which is not a party to the action and is not one of the institutions collectively referred to as “Cabrini”. It is not signed by anyone, much less a party to this litigation. There is no written agreement upon which plaintiff may seek recovery. The Fifteenth Cause of Action is dismissed.

The Sixteenth through Nineteenth Causes of Action are dismissed for the previously stated reasons that they are duplicative of the Twenty-First Cause of Action for Unjust Enrichment. The Twentieth Cause of Action alleges an account stated. The alleged agreement was not for varying services to be enumerated in regular statements. The claim is that defendant was to make regular monthly payments of \$12,283.22 for a total of \$147,398.64. The fact that plaintiff may have gratuitously mailed statements to defendant does not convert the claim to an account stated. The motion to dismiss the Twentieth Cause of Action for Account Stated is granted.

Contrary to defendants’ position, the Court does not grant the motion to dismiss the Twenty-First Cause of Action alleging Unjust Enrichment. “ ‘To state a case of action for unjust enrichment, a plaintiff must allege that it conferred a benefit upon the defendant, and that the defendant will obtain such benefit without adequately compensating plaintiff therefor’ ”. (*Smith v. Chase Manhattan Bank, USA*, 293 A.D.2d 598, 600 [2d Dept. 2002] quoting *Nakamura v. Fujii*, 253 A.D.2d 387, 390 [1<sup>st</sup> Dept. 1998]). ¶¶ 157 — 160 of the Amended Complaint allege that as a result of the provision of computer hardware, software, and maintenance services from HCIS, without paying therefor, Cabrini has been unjustly enriched in the amount of \$147,398.60 such that it would be inequitable for Cabrini to retain the amount.

Giving the pleadings the required liberal construction, the Twenty-First Cause of Action adequately alleges the receipt of benefits by the defendants to the detriment of the plaintiffs. As such, the motion to dismiss the Twenty-First Cause of Action is denied.

The Twenty-Second Cause of Action alleges a breach of a software contract. The claim is premised upon plaintiff's provision to SCNH of a quote to provide MDSEase™ software. Plaintiffs claim that this proposal was similar to the services provided under the alleged 2007 Contract, but was directed exclusively to the software and services to be provided to SCNH. The proposal called for monthly payments of \$3,465.00 for the period February 1, 2006 through January 31, 2010. As previously, plaintiffs assert that the quotation, coupled with payments in accordance with the proposal, created a valid written agreement. They also contend that the monthly invoices for the proposed monthly amount constituted an account stated.

Plaintiff has not produced a copy of what it contends to be the written agreement between the parties. Base on the previous analyses of the effect of an unsigned proposal, the Court concludes that there was no written agreement for the provision of the services allegedly recited in the proposal, and the motion to dismiss the Twenty-Second Cause of Action is granted. For the previously stated reasons, the Twenty-Third through Twenty-Sixth Causes of Action, duplicative as they are to the claim of Unjust Enrichment, are also dismissed. The proposal, for a consistent monthly payment, is not transformed to an account stated by the rendering of gratuitous monthly statements, and, for this reason, the Twenty-Seventh Cause of Action is also dismissed.

The motion to dismiss the Twenty-Eighth Cause of Action, Unjust Enrichment, is denied for the previously stated reasons that giving the plaintiff the benefit of every doubt, and applying a liberal interpretation of the pleading, they have adequately stated a claim that they have benefitted the defendant for which they are equitably entitled to payment.

In the Twenty-Ninth Cause of Action plaintiff alleges a written agreement for the

provision and licensing of MDSEase Financial and Clinical Software. (Exh. "M" to Amended Complaint). It bears the handwritten notation "Approve, F.Popoli, 5/18/06". It calls for service to five users at CCNR and five users at SCNH, for a 48-month term, with a monthly payment of \$345 by each institution. This is followed by a series of Invoices through September 1, 2009, each for \$345 per institution.

Defendant's motion to dismiss the Twenty-Ninth Cause of Action is denied. The quotation, although mistakenly addressed to "Cabrini Nursing & Rehab Center", as opposed to Cabrini Center for Nursing and Rehabilitation, clearly reflects an intention to supply software services to CCNR and SCNH. It is signed by a representative of defendants, presumably with authority to authorize the transaction. The Twenty-Ninth Cause of Action fairly states a claim for breach of a written agreement.

For the reasons previously stated, the Thirtieth through Thirty-Fifth are dismissed. These allege implied contract, quasi-contract, money due and owing, quantum meruit, account stated, and unjust enrichment. All of these allegations must fail in the presence of a written agreement. (*Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382, 388 [1987]; *Aviv Constr., Inc. v. Antiquarium, Ltd.*, 259 A.D.2d 445, 446 — 447 [1<sup>st</sup>Dept. 1999]).

The Thirty-Sixth through Forty-Second Causes of Action deal with a claimed contract for the provision of MDSEase™ software for managing an adult day care facility. Plaintiffs annex as Exh "O" a copy of the Quotation dated 5/26/2005 and a series of monthly invoices, reflecting payment through December 1, 2009. The proposal called for the provision of software for a period of 60 months.

As in the preceding claims based upon a proposal not accepted by defendant, there is no written agreement between the parties. The motion to dismiss the Thirty-Sixth Cause of Action is granted. Similarly, the Thirty-Seventh through Forty-First Causes of Action are also dismissed, for the reason that they are duplicative of the the Forty-Second Cause of Action, asserting Unjust Enrichment. The motion to dismiss the Forty-Second

Cause of Action is denied since plaintiff has adequately stated a cause of action for unjust enrichment for the use of software provided by plaintiff for the period commencing January 1, 2010.

The motion to dismiss the Forty-Third Cause of Action, a claim of conversion, is also denied. In order to recover damages for conversion, plaintiff must allege and prove legal ownership or an immediate superior right to possession of specifically identified property, and that defendant exercised an unauthorized dominion over the property in question, to the exclusion of plaintiff's right. (*Scott v. Fields*, 85 A.D.3d 756, 757 [2d Dept 2011]). Plaintiff alleges that it is the legal owner of the MDSEase™ software; two Sonicwall Firewalls with one subscription each; a Microsoft Exchange Server with 125 licenses; two Microsoft Servers (2003) with 125 licenses; and seven 48-port Hewlett Packard Managed Switches with gigabit ports, and that Cabrini's continued possession of them is inconsistent with its ownership rights, and constitutes conversion.

Plaintiff has adequately alleged a cause of action for conversion. The motion to dismiss the Forty-Third Cause of Action is denied.

#### SUMMARY

Defendants' motions to dismiss the plaintiff's Amended Complaint are granted, with the exception of the First, Fourteenth, Twenty-First, Twenty-Eighth, Twenty-Ninth, Forty-Second and Forty-Third Causes of Action. The motion to dismiss these Causes of Action is denied.

This constitutes the Decision and Order of the Court.

Dated: September 7, 2011

  
J. B. Weinstein  
ISC

**ENTERED**  
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NASSAU COUNTY  
COUNTY CLERK'S OFFICE