

*Civil Action No. 02C-10-223 SCD*  
October 14, 2005  
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**SUPERIOR COURT  
of the  
STATE OF DELAWARE**

**Susan C. Del Pesco**  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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October 14, 2005  
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Re: *FA, Inc. v. Equipment Leasing Associates 1995-VI Limited Partnership, Transcapital Corp.,  
Transcapital Computer Corp., and Murray, Devine & Co. - C.A. No. 02C-10-223 SCD*

Dear Counsel:

This letter addresses the motion to dismiss the second amended complaint which was argued on August 29, 2005.

On a motion to dismiss, the parties recognize that the court must **accept as true** all well-pled allegations. The allegations in the second amended complaint, which are detailed in the plaintiff's response to the motion to dismiss, are sufficient to meet the requirements of both 10 *Del. C.* § 3104 and the due process clause of the Constitution. This is so, because the allegations are that fraudulent conduct occurred in Delaware; the conduct being the creation of a Delaware corporate entity, a limited partnership, for the purpose of tortious conduct against plaintiff, a Delaware corporation, and that tortious injury occurred in the state.

As to subject matter jurisdiction, it is correct that the Superior Court lacks jurisdiction to pierce the corporate veil. The plaintiffs respond that their objective is not to pierce the veil, but to prove fraud and misrepresentation.

This court has subject matter jurisdiction over a claim of negligent misrepresentation when the claim is in the context of the Consumer Fraud Act.<sup>1</sup> That is not the assertion here. The motion to dismiss the claim of negligent misrepresentation is GRANTED.<sup>2</sup>

With regard to the allegations of common law fraud and intentional misrepresentation, the complaint is sufficient to set forth each cause of action. Delaware requires notice pleading. The nature of the allegations in this case has been known for a long time. Plaintiff claims that Campagna and Butler, along with corporate defendants, knowingly, or with reckless indifference to the truth, provided to the independent appraisers and to the attorney preparing the tax opinion information that was inaccurate or incomplete. As a result, the opinions they prepared were unreliable. Plaintiff claims that it relied on those opinions and was thereby fraudulently induced to purchase the equipment. I find the complaint to be adequate to meet the specificity requirements of Rule 9.

As to the allegation of breach of warranty, this must be treated as a motion for summary judgment, as the document containing the warranty has been presented to the court and argued by the parties. Neither Campagna nor Butler has signed the warranty document which plaintiff provided as Exhibit 6 to its response to this motion. As such, neither is liable for the warranties in the contract. The warranties were made by corporate representatives on behalf of the corporation. Dismissal of this claim is GRANTED as to Campagna and Butler.

A summary judgment standard applies to the alleged breach of the covenant of good faith and fair dealing. Neither Campagna nor Butler signed a contract with plaintiff(s) in their individual capacities. Without a contract, there can be no breach of the covenant of good faith and fair dealing. Summary judgment is GRANTED as to that claim.

IT IS SO ORDERED.

Very truly yours,

Susan C. Del Pesco

SCD/msg

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<sup>1</sup> *Stephenson v. Capano Dev., Inc.*, Del. Supr., 462 A.2d 1069, 1074 (1984).

<sup>2</sup> *In re Dataproducts Corp. Shareholders Litigation*, C.A. No. 11164, Jacobs, V.C. (Aug. 22, 1991), Mem.Op. At 13-14.

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