

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

ASH GROVE CEMENT COMPANY

PLAINTIFF

V.

NO. 10-CV-4069

MMR CONSTRUCTORS, INC.

DEFENDANT

JUDGMENT

Before the Court is the Report and Recommendation filed December 30, 2010, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 24). Judge Bryant recommends that Defendant's Motion to Dismiss (Doc. 9) be DENIED. Defendant has responded with timely objections. (Doc. 25). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.

In its objections to the Report and Recommendation, Defendant states that Plaintiff's complaint does not meet the requirements of Federal Rules of Civil Procedure 8 and 9 because Plaintiff has not specifically identified the persons who allegedly received the benefit of or committed the fraud. Defendant further states that, without the specificity of the identity fo the alleged wrongdoers, Defendant cannot properly formulate its defenses or properly respond to the complaint.

The Court has reviewed Defendant's objections and finds no merit in the objections. To satisfy Federal Rule of Civil Procedure 9(b), a plaintiff must allege "such matters as the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what was obtained or given up thereby." *Drobnak v. Andersen Corp.*, 561 F.3d 778, 783 (8th Cir. 2009) (quoting *Schaller Tel. Co. v. Golden Sky Sys., Inc.*, 298 F.3d 736 746

(8th Cir. 2002)). However, the Eighth Circuit has held that Rule 9(b) does not require a complaint to include highly specific allegations with respect to facts that would be known to the defendants but not to the plaintiffs before the plaintiffs have had some opportunity to conduct discovery. *See id.* at 783-84; *Abels v. Farmers Commodities Corp.* 259 F.3d 910, 921 (8th Cir. 2001). Here, Plaintiff's complaint sets forth the time, place, contents, and amount of the fraud. Plaintiff does not name the specific individuals who are responsible for the alleged fraud; however, this type of information cannot be determined by Plaintiffs without engaging in discovery.

The Court agrees with Judge Bryant that Plaintiff's complaint satisfies the requirements of Rules 8(a) and 9(b) of the Federal Rules of Civil Procedure. Accordingly, for reasons stated herein and above, as well as those contained in Judge Bryant's Report and Recommendation (Doc. 24), Defendant's Motion to Dismiss (Doc. 9) is **DENIED**

IT IS SO ORDERED, this 3rd day of February, 2011.

/s/ Harry F. Barnes
Hon. Harry F. Barnes
United States District Judge