



Not Reported in F.Supp.2d
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United States District Court,
 W.D. Texas,
 San Antonio Division.
 OILFIELD EQUIPMENT MARKETING, INC
 Plaintiff,
 v.
 NEW TECH SYSTEMS, INC., et alia Defendants.
No. SA-05-CA-1038-RF.

March 23, 2006.
 San Antonio, Cotton Bledsoe Tighe & Dawson, PC,
 San Antonio, TX, for Plaintiff.

US, Snow & Laurel, L.L.P., West Sunset, Road,
 Kenneth Matticks, Matticks & Anderson, Dallas, TX,
[Melissa D. Eastham](#), Cotton, Bledsoe, Thighe, Daw-
 son, P.C., Midland, TX, [Roland C. Anderson](#), Mat-
 ticks & Anderson, LLP, Dallas, TX, for Defendants.

ORDER DENYING DEFENDANTS' MOTION TO
 DISMISS PURSUANT TO RULE 12(b)(6)

[ROYAL FURGESON](#), J.

*1 BEFORE THE COURT are Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) (Docket No. 6), filed December 14, 2005 and Plaintiff's Response (Docket No. 15), filed February 3, 2006. The parties appeared before the Court for a hearing on this matter on March 22, 2006. After due consideration, the Court is of the opinion that Defendants' Motion to Dismiss should (Docket No. 6) should be DENIED.

The factual and procedural background of this case were set forth in this Court's Order Denying Defendants' Motion to Dismiss Pursuant to Rule 12(b)(3).

DISCUSSION

Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted

For purposes of a Rule 12(b)(6) Motion to Dismiss for failure to state a claim, the complaint must be liberally construed in favor of the plaintiff, and all the facts pled in the complaint must be taken as true.

[\[FN1\]](#) Dismissal on this basis is a disfavored means of disposing of a case, [\[FN2\]](#) and district courts should avoid such dismissals "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." [\[FN3\]](#) "The question therefore is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." [\[FN4\]](#)

[FN1. *Campbell v. Wells Fargo Bank, N.A.*, 781 F.2d 440, 442 \(5th Cir.1986\).](#)

[FN2. *Kennedy v. Tangipahoa Parish Library Bd. of Control*, 224 F.3d 359, 365 \(5th Cir.2000\).](#)

[FN3. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 \(1957\).](#)

[FN4. *Brown v. Nationsbank Corp.*, 188 F.3d 579, 586 \(5th Cir.1999\)](#)(citing 5 Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 1357, at 601 (1969)).

Defendants Hanlon and Averitt assert that they are the owners and officers of the corporate defendant, New Tech Systems, Inc. Hanlon and Averitt argue that Plaintiff's Complaint does not make any specific allegations against them individually, but rather the Complaint refers to "Defendants" in general, which would include both the individual and corporate defendants. Defendants Hanlon and Averitt contend that Plaintiff would have to plead some type of corporate veil piercing argument in order to hold them individually liable for the conduct alleged in the Complaint.

Plaintiffs counter that individuals, including corporate officers and directors, can commit and be liable for tortious activities even when they are done on behalf of a corporation. Many courts have held that a corporate officer who directs or participates in infringing activity can be liable for trademark infringement without regard to piercing of the corporate veil. [\[FN5\]](#) This Court has noted that prior cases addressing the statutory liability of a corporate officer

EXHIBIT B

often refer to the well-settled rule in tort cases against corporate officers. [\[FN6\]](#) The tort rule provides that "when corporate officers directly participate in or authorize the commission of a wrongful act, even if the act is done on behalf of the corporation, they may be personally liable." [\[FN7\]](#)

[FN5. See *Mead Johnson & Co. v. Baby's Formula Serv., Inc.*, 402 F.2d 19, 23 \(5th Cir.1968\); *Babbit Elecs., Inc. v. Dynascan Corp.*, 38 F.3d 1161 \(11th Cir.1994\); *Elec. Lab. Supply Co., Inc. v. Cullen*, 977 F.2d 798, 807 \(3d Cir.1992\)\(citing *Donsco, Inc. v. Casper Corp.*, 587 F.2d 602, 606 \(3d Cir.1978\)\); *Taylor Made Golf Co. v. MJT Consulting Group*, 265 F.Supp.2d 732, 746 \(N.D.Tex.2003\).](#)

[FN6. *Texas v. Am. Blastfax, Inc.*, 164 F.Supp.2d 892, 898 \(W.D.Tex.2001\).](#)

[FN7. *Id* \(quoting *General Motors Acceptance Corp. v. Bates*, 954 F.2d 1081, 1085 \(5th Cir.1992\)\).](#)

Viewing the pleadings in the light most favorable to the non-movants and with every doubt resolved in its favor, the Court finds that Plaintiff pleaded sufficient facts to withstand a Rule 12(b)(6) Motion to Dismiss. It is therefore ORDERED that Defendants' Motion to Dismiss (Docket No. 6) be DENIED.

*2 It is so ORDERED.

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