

PREPARED BY THE COURT

ANDREW MOON, TYLER HUCK, AND
RYAN LADD, Individually and on Behalf of
All Others Similarly Situated

Plaintiffs

vs.

CITY OF WILDWOOD, W. SCOTT JETT,
INSIGHT INTELLIGENCE LLC D/B/A/
OPRAMACHINE.COM, GAVIN ROZZI,
JOHN DOE 1-50 (fictitious names), JOHN
DOE INC. 1-50 (fictitious entities)

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY

DOCKET NO.: CPM-L-443-22

CIVIL ACTION

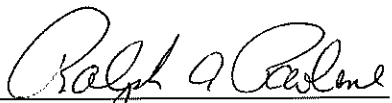
ORDER

THIS MATTER being opened to the Court, on March 17, 2023, by William N. Sosis, Esq., attorney for Defendants, Insight Intelligence, LLC and Gavin Rozzi, for an Order to dismiss complaint for failure to state a claim, and the Court having considered the moving papers, any opposition hereto, and good cause appearing;

IT IS on this 17th day of March 2023, **ORDERED** as follows:

1. Defendants' motion to dismiss complaint is **DENIED** with regard to the claims against Insight Intelligence;
2. Defendants' motion to dismiss complaint is **GRANTED** with regard to the claims against Gavin Rozzi;
3. The claims against Gavin Rozzi shall be **DISMISSED without prejudice**; and

IT IS FURTHER ORDERED that service of this Order shall be effectuated upon all parties upon its upload to eCourts and pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order.


RALPH A. PAOLONE, J.S.C.

Opposed

Unopposed



**NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS**

RALPH A. PAOLONE, J.S.C.

1201 Bacharach Boulevard
Atlantic City, N.J. 08401-4527
(609) 402-0100 ext. 47908

**MEMORANDUM OF DECISION ON MOTION
Pursuant to Rule 1:6-2(f)**

TO: Oliver T. Barry, Esquire
Barry, Corrado, & Grassi
*Attorney for Plaintiffs,
Andrew Moon, Tyler Huck, Ryan Ladd,
and Proposed Class*

William N. Sosis, Esquire
Sosis Law, LLC
*Attorney for Defendants,
Insight Intelligence and Gavin Rozzi*

RE: Andrew Moon, Tyler Huck, and Ryan Ladd, Individually and on Behalf of All Others Similarly Situated v. City of Wildwood, W. Scott Jett, Insight Intelligence LLC d/b/a/ OPRAmachine.com, Gavin Rozzi, John Doe 1-50 (fictitious names), John Doe, Inc. (1-50) fictitious entites

DOCKET NO. CPM-L-443-22

NATURE OF MOTION: Defendants Insight Intelligence and Gavin Rozzi’s Motion to Dismiss the Complaint against Defendants for Failure to State a Claim

HAVING CAREFULLY REVIEWED THE MOVING PAPERS AND ANY RESPONSE FILED, I HAVE RULED ON THE ABOVE CAPTIONED MOTION AS FOLLOWS:

NATURE OF MOTION AND PROCEDURAL HISTORY

On or about November 16, 2022, Plaintiffs Andrew Moon, Tyler Huck, and Ryan Ladd, on behalf of themselves and all persons similarly situated (“Plaintiffs”) filed their Complaint in the Superior Court of New Jersey, Cape May County, Law Division, Civil Part against the City of North Wildwood (“North Wildwood”), W. Scott Jett (“Jett”), Insight Intelligence LLC d/b/a/ OPRAmachine.com (“Insight Intelligence”), and Gavin Rozzi (“Rozzi”), (collectively, “Defendants”) alleging violations of the New Jersey Consumer Fraud Act (“CFA”) and the New

Jersey Civil Rights Act. On or about January 19, 2023, Defendants Insight Intelligence and Rozzi filed this motion to dismiss. On or about February 9, 2023, Plaintiffs requested the motion to dismiss be adjourned one (1) motion cycle to allow them time to respond. Defendants objected to the adjournment on the grounds that it was in the eleventh-hour, without good cause, and highly prejudicial as his brief was due two (2) days prior to the adjournment request. The motion was adjourned to March 3, 2023. On or about February 22, 2023, Plaintiffs filed opposition to the motion. On or about February 27, 2023, Defendants filed a reply brief.

STATEMENT OF FACTS

1. Plaintiffs' allegations stem from an incident occurring on or about January 8, 2022 when Greg Walsh ("Walsh") made an Open Public Records Act ("OPRA") request to North Wildwood through the website OPRAMachine.com, owned and operated by Insight Intelligence, with Rozzi as its Registered Agent. The request stated:

Dear North Wildwood City,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message. Records requested:

Looking for the updated recertification civil service list for the City of North Wildwood Fire Department.

Yours faithfully,
Greg Walsh

2. On or about January 10, 2022, Jett, the City Clerk of North Wildwood, uploaded a document entitled "list.pdf" through OPRAMachine.com in response to Walsh's request. This document was generated by the New Jersey Civil Service Commission - Division of Classification and Personnel Management. The document was titled "Certification of Eligible for Appointment" and contained the names, addresses, and unredacted Social

Security numbers of eighty-eight (88) individuals. This information remained on the OPRAMachine.com website, accessible to the public, for fifty-three (53) days.

3. Defendant North Wildwood is responsible for the preservation of documents and publishes many of these documents through OPRAMachine.com.

PARTIES' CONTENTIONS

Defendants

Defendants contend that Plaintiffs have failed to articulate any ascertainable loss, yet demand injunctive and monetary damages. Defendants maintain that Plaintiffs' Complaint cites no cases on point, contains no legal analysis to support their allegations, and ignores controlling law. Defendants argue that the CFA does not provide remedies for noneconomic damages for invasion of privacy or emotional injuries, and Plaintiffs have not alleged any ascertainable loss of money or property. Defendants claim that under the CFA, Defendants are not liable as "subsequent performers" to any transaction, as nothing was sold, and there was no interaction or communication between Plaintiffs and Defendants.

Defendants contend that Plaintiffs' Complaint is barred by the Communications Decency Act ("CDA") because Plaintiffs' cause of action stems from a single piece of third-party content, which Plaintiffs allege was released in response to an OPRA request made by Walsh using Defendants' website on January 10, 2022. Defendants claim the information was released solely by Jett, and their only role in this matter is the operation and ownership of the website. Defendants contend they have CDA immunity because they are not "publishers" but providers of an interactive computer service that promotes government transparency and civic engagement, as their website allows citizens to make OPRA requests to State and local government agencies. Additionally,

Defendants claim that because Rozzi was acting in the capacity as the owner of Insight Intelligence, he cannot be held personally liable for the conduct of the corporation, absent fraud, statutory liability, or injustice, which Defendants claim Plaintiffs failed to articulate.

Defendants argue the responsibility to safeguard personal information from public access befalls on the public agency and not Defendants. Defendants claim that prior to releasing public records, public agencies are under obligation to make redactions.

Plaintiffs

Plaintiffs contend that by Defendants making their personal information available on the internet, Defendants have created a tangible harm and loss in the form of extremely high risk of identity theft as well as costs of monitoring their credit to detect incidences of identity theft. Plaintiffs argue that Insight Intelligence and Rozzi violated the CFA because Defendants engaged in a variety of unconscionable and deceptive acts, practices, and omissions related to data security, which amounts to "unconscionable commercial practices" within the meaning of the CFA.

Plaintiffs maintain that Defendants (1) failed to enact adequate privacy and security measures to protect Plaintiffs' data; (2) fraudulently misrepresented that they would maintain adequate privacy and security practices and procedures; (3) omitted, suppressed, and concealed the material fact of the inadequacy of their privacy and security of Plaintiffs' data; and (4) failed to main the privacy and security of Plaintiffs' personal identifiable information, in violation of duties imposed by applicable federal and state laws. Additionally, Plaintiffs allege that Defendants' publication of Social Security numbers and other personal identifiers was willful, knowing, and/or reckless, as they had no method or practice to screen for, redact, or otherwise address such disclosures.

DISCUSSION

Rule 4:6-2(e) specifically limits a trial court to consider only the complaint under review when determining whether it fails to state a claim upon which relief can be granted. The Court must apply the following familiar standards to an application to dismiss a Complaint pursuant to R. 4:6-2(e):

[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. The essential test is simply “whether a cause of action is ‘suggested’ by the facts.”

In exercising this important function, “a reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.”

Moreover, “the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint[,]” rather, “plaintiffs are entitled to every reasonable inference of fact.” As we have stressed, “[t]he examination of a complaint’s allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.” Green v. Morgan Properties, 215 N.J. 431, 451-52 (2013) (citations omitted).

On a motion to dismiss for failure to state a claim under Rule 4:6-2(e), the Court must only consider “the legal sufficiency of the alleged facts apparent on the face of the challenged claim.” Rieder v. Dep’t of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (internal quotation marks omitted). “The court may not consider anything other than whether the complaint states a cognizable cause of action.” Ibid. The Court must “accept as true the facts alleged in the complaint,” Darakjian v. Hanna, 366 N.J. Super. 238, 242 (App. Div. 2004), and “search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary,” Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002); Printing Mart-Morristown, supra, 116 N.J. at 746 (internal quotation marks omitted). The examination of the Complaint should be one “that is at once painstaking and undertaken with a generous and

hospitable approach.” Ibid. The party opposing the motion is “entitled to every reasonable inference of fact.” Ibid.

1. Consumer Fraud Act

The CFA provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense; false promise, misrepresentation... or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice. N.J.S.A. 56:8-2.

To state a claim under the CFA, a private individual must allege (1) unlawful conduct by the defendants; (2) an ascertainable loss on the part of the plaintiff; and (3) a causal relationship between the defendant’s unlawful conduct, and the plaintiff’s ascertainable loss. N.J. Citizen Action v. Schering-Plough Corp., 367 N.J. Super. 8, 12-13 (App. Div.), certif. denied, (2003). Additionally, individual liability for violations of the CFA may be found to apply to any person, including an individual working for a corporation, when that person makes an affirmative misrepresentation or knowing omission. Gennari v. Weichert Co. Realtors, 148 N.J. 582, 609-10 (1997).

N.J.S.A. 47:1-16 expressly prohibits any person, and any public or private entity, from printing or displaying “in any manner an individual’s Social Security number on any document intended for public recording with any county recording authority.” The statute provides, “[w]henever a document is presented for public recording with any county recording authority and that document displays a person’s Social Security number, the recording authority shall delete, strike, obliterate or otherwise expunge that number prior to recording the document.” N.J.S.A. 47:1-16(b).

It is an unlawful practice and a violation of the CFA to willfully, knowingly, and recklessly violate N.J.S.A. 56:8-161-164. The CFA provides, under N.J.S.A. 56:8-164, “[n]o person, including any public or private entity, shall... (1) Publicly post or publicly display an individual’s Social Security number... [or] (4) Intentionally communicate or otherwise make available to the general public an individual’s Social Security number”.

The Court must accept the following facts as true. Defendants engaged in unlawful conduct by publishing Plaintiffs’ confidential information, including their Social Security numbers, on a publicly-accessible website for fifty-three (53) days, resulting in Plaintiffs suffering ascertainable loss, such as costs of monitoring their credit to detect incidences of identity theft and other losses consistent with the access to their data and personal identifiers by unauthorized sources. Accepting Plaintiff’s allegations as true, Plaintiffs have viable claims against Insight Intelligence under the CFA that survive a motion to dismiss.

2. Rozzi’s Liability

New Jersey courts have held that “a corporation is an entity separate and distinct from its principals.” Touch of Class Leasing v. Mercedes-Benz Credit of Can., Inc., 248 N.J. Super. 426, 441 (App. Div.), certif. denied, 126 N.J. 390 (1991). Except in cases of fraud or injustice, Courts will not pierce a corporate veil. Richard A. Pulaski Constr. Co. v. Air Frame Hangars, Inc., 195 N.J. 457, 472 (2008). Allegations of fraud must be plead with specificity: “[i]n all allegations of misrepresentation, fraud, mistake, breach of trust, willful default or undue influence, particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable.” R. 4:5-8 (emphasis added).

Here, in order for Plaintiffs to hold Rozzi liable as an agent of Insight Intelligence, Plaintiffs would have had to plead CFA fraudulent misrepresentation claims against Rozzi with specificity. Such specificity required by R. 4:5-8 is not found in Plaintiffs' Complaint. Thus, the CFA claims against Rozzi cannot survive a motion to dismiss.

3. CDA Immunity

The CDA provides a limited immunity for interactive computer services from liability related to obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable information published by third parties. 47 U.S.C. § 230(c)(1). Subsection (c)(2) of the CDA provides:

No provider or user of an interactive computer service shall be held liable on account of (a) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected, or (b) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in [subparagraph (a)]. 47 U.S.C. § 230(c)(2).

47 U.S.C. § 230(c)(1) does not create immunity of any kind, but rather merely limits who may be called publisher of information, which may affect liability for defamation, obscenity, or copyright information. City of Chicago v. StubHub!, Inc., 624 F.3d 363 (7th Cir. 2010). This immunity does not apply where a defendant is actively involved in the creating, obtaining, or curating the information at issue. See Carafano v. Metroplash, Inc., 207 F.Supp. 2d 1055 (C.D. Cal. 2002), aff'd, 339 F.3d 1119 (9th Cir. 2003).

The Court must accept the following facts as true. OPRAMachine.com is a website owned and operated by Insight Intelligence that submits OPRA requests on behalf of users and publishes responses to such requests. Defendants made representations that they enacted security procedures

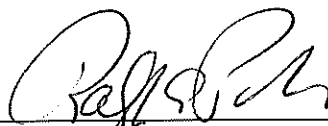
to safeguard Plaintiffs' information from unauthorized disclosure, release, data leak, and theft. The inference that follows is that Defendants had involvement in creating, obtaining, or curating the information at issue in accordance with such procedures. Accepting Plaintiffs' allegations as true, Insight Intelligence's claim for immunity does not survive a motion to dismiss.

CONCLUSION

This Court finds that under R. 4:6-2(e), accepting Plaintiff's allegations as true, Plaintiffs have viable claims under the CFA against Insight Intelligence. However, Plaintiffs have failed to plead with particularity the fraudulent misrepresentation CFA claims against Rozzi. Accordingly, Defendants' motion to dismiss for failure to state a claim is **DENIED** with regard to claims against Insight Intelligence and **GRANTED** with regard to claims against Rozzi. The claims against Rozzi shall be **DISMISSED without prejudice**.

An appropriate Order has been entered. Conformed copies will accompany this Memorandum of Decision. A copy of the order and a copy of this Memorandum of Decision shall be served on all counsel of record within the next seven (7) days.

Dated: 3-17-23



RALPH A. PAOLONE, J.S.C