IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TIMOTHY DOUGLAS WHITE and WILSON PETER COTTON as Personal Representatives of the ESTATE OF GERALD SEGELMAN,	)	
Plaintiffs,	)	No. 99 C 1740
v. v.	)	Judge Wayne R. Andersen
KENNETH WARREN & SON, LTD., BEIN & FUSHI, INC. and HOWARD GOTTLIEB,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This case is before the court on the motions of defendants Howard Gottlieb, Bein & Fushi, Inc. ("Bein"), Kenneth Warren & Sons, Ltd. ("Warren") to dismiss plaintiffs' complaint pursuant to Fed.R.Civ.P. 9(b) and 12(b)(6). For the reasons stated below, we grant in part and deny in part the motions to dismiss.

BACKGROUND

Plaintiffs Timothy White and Wilson Peter Cotton are executors of the estate of Gerald Segelman, a British subject. The complaint alleges that the defendants conspired with Peter Biddulph, also a British subject, to defraud the estate after the death of Gerald Segelman in July, 1992. Mr. Segelman left the bulk of his estate to a charitable testamentary trust, and the executors are the fiduciaries responsible for the trust. Plaintiffs assert that the estate is valued in excess of $10,000,000 and consists primarily of cash and antique string instruments and bows,

including several violins of Antonio Stradivari.

Biddulph was retained by the executors to sell in an orderly fashion and at the best prices the estate's collection of fine stringed instruments. The complaint alleges that defendants participated with Biddulph in a scheme to defraud the estate by: 1) purchasing property of the estate which Biddulph purportedly sold in the name of Vera Farnsworth, Mr. Segelman's long time companion; 2) wrongfully purchasing property of the estate at substantially below market value; 3) wrongfully purchasing estate property in secret; 4) assisting Biddulph in his wrongful and secret purchase of estate property; and 5) in the case of Warren, providing erroneous expert valuations of many of the instruments at issue.

The complaint alleges that Biddulph owed the executors a fiduciary duty to dispose of the instruments in a manner most beneficial to the estate and to account fully for his dealings. Plaintiffs claim that Biddulph enriched himself and his accomplices by engaging in self-dealing, conversion and other abuses of trust and that the defendants were participants in Biddulph's fraudulent conduct.

In late 1992, Ms. Farnsworth claimed that the instruments in the Segelman estate belonged to her. In 1995, Ms. Farnsworth commenced an action against the estate in which she sought to have many of the instruments in the Segelman collection declared to be her property. The matter was settled at an early stage, and it was determined that the instruments belonged to Segelman's estate. However, because Ms. Farnsworth was incapacitated, the settlement had to be approved by the English Court of Protection and the High Court of Justice. Until the litigation with Ms. Farnsworth was resolved, ownership of the instruments was unsettled and it was unclear whether the estate was entitled to bring this action.

In 1996, Biddulph finally remitted what he claimed were the proceeds of the earlier sales,

which he had been holding pending the resolution of the Farnsworth litigation. This was the first time that Biddulph purported to account for all that was due the estate. In March, 1997, the executors commenced an Anton-Piller proceeding in the High Court of Justice to obtain discovery and an accounting from Biddulph. The executors were able to obtain an order for pre-action discovery and a preliminary injunction freezing Biddulph's assets. As a result of the documentation obtained in that proceeding, the executors obtained information which they assert confirmed their suspicions that Biddulph had retained the proceeds of sales without remitting the same to the executors. They also claim to have learned for the first time that Biddulph had: a) sold instruments at below market rates for the benefit of dealers with whom he had long-standing relationships; b) sold instruments at prices higher than reported to the executors and kept the difference; c) received secret commissions from buyers; and d) secretly purchased instruments from the estate. As a result of the information obtained in that proceeding, the executors filed an action in England against Biddulph seeking monetary damages and an accounting.

The documentation obtained from Biddulph also disclosed his relationships with the defendants in this action and their alleged participation in various suspect transactions. In May, 1998, the executors obtained approval from the High Court of Justice so that they could use the information obtained in the Biddulph action to pursue claims against third parties who participated in Biddulph's fraudulent scheme. This complaint was filed on March 26, 1999.

As to defendant Gottlieb, the complaint alleges that in December 1992, Biddulph sold four of the estate's violins to Gottlieb, a collector of violins. The executors claim that the purchase prices paid by Gottlieb for the four violins were substantially below market value and that Gottlieb paid Biddulph a secret commission of approximately $500,000 purportedly for

consulting services.

Defendant Warren was retained by the estate to appraise some of the estate's instruments. The complaint alleges that the executors retained Warren in November, 1992 to provide a second opinion as to the adequacy of the price which Biddulph proposed to obtain for the various instruments in the Segelman collection.

Defendant Bein is an international retail dealer of fine stringed instruments. According to the complaint, Bein assisted Biddulph in the sale of some of the estate's instruments. The complaint alleges that Bein bought goods at wholesale from Biddulph, a dealer with whom Bein had prior dealings.

The complaint contains nine counts. Counts I through VI name all defendants and allege conversion, fraud, conspiracy to defraud, breach of fiduciary duty, unjust enrichment and replevin, respectively. Counts VII and VIII allege breach of contract and professional malpractice against Warren. Count IX alleges rescission against Gottlieb.

All defendants have filed motions to dismiss the complaint. In their motions, defendants argue that the complaint does not state cognizable claims against them. Warren has moved only as to the count seeking damages for conspiracy to defraud. Bein and Gottlieb argue that none of the counts of the complaint set forth a valid claim as to them.

DISCUSSION

A motion to dismiss should not be granted unless it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See also Beam v. IPCO Corp., 838 F.2d 242, 244 (7th Cir. 1988). We take the well-pleaded allegations of the complaint as true and view them, as well as reasonable inferences therefrom, in the light most favorable to the plaintiff. Ellsworth v.

City of Racine, 774 F.2d 182, 184 (7th Cir. 1985), cert. denied, 475 U.S. 1047 (1986).

I. Statute of Limitations

Bein has moved to dismiss the complaint on the ground that any claims against it are time-barred under the five-year statute of limitations provided by 735 Ill. Comp. Stat. 5/13-205 (1982). Plaintiffs claim that the action is timely notwithstanding the fact that the transactions at issue took place in late 1992 and January 1993, more than five years before this complaint was filed in March 1999. Plaintiffs claim that they were unaware of these claims until early 1997 and, because of the strictures placed on discovery materials by English law, they were limited in their use of that information until they received permission of the English Courts. Plaintiffs argue that the statute of limitations has been tolled by the Illinois Fraudulent Concealment Statute, the discovery rule, equitable estoppel and equitable tolling.

A. Illinois Fraudulent Concealment Statute

Plaintiffs first argue that under the Illinois Fraudulent Concealment Statute, 735 Ill. Comp. Stat. 5/13-215 (1982), their claims did not accrue while the wrongful acts were concealed by the defendants. The statute provides:

> If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards.

735 Ill. Comp. Stat. 5/13-215.

Plaintiffs claim that when defendants act in concert, as in this case, the fraudulent concealment of one defendant tolls the statute of limitations as to all defendants. Serafin v. Seith, 672 N.E.2d 302 (Ill. App. Ct. 1996); Diduck v. Kaszycki & Sons Contractors, Inc., 974 F. 2d 270, 282 (2d Cir. 1992) (acts of concealment by one conspirator tolls the statute of limitations against other conspirators if done in furtherance of conspiracy).

Plaintiffs claim that they did not discover the fraudulently concealed claims until the spring of 1997, when plaintiffs obtained access to Biddulph's records as part of the Anton-Piller proceeding. Using the commencement date of those proceedings, March 1997, as the disclosure date, the statute of limitations would not expire until March 2002.

Although Bein argues that plaintiffs could have discovered the fraud had they been more diligent, that argument merely raises issues of fact as to what plaintiffs knew and what Biddulph told them or failed to tell them. Therefore, construing the facts in the light most favorable to the plaintiffs, we find that this action is timely.

B. Discovery Rule

Plaintiffs next argue that their action is tolled by the application of the discovery rule. They argue that even if there was no duty to disclose and no affirmative concealment by the defendants, plaintiffs' action would still be timely as they could not have discovered the claims against these defendants before the commencement of the Anton-Piller proceeding in March 1997. They claim that they learned of the defendants' role in the alleged fraud only after they obtained access to Biddulph's records.

The discovery rule dictates that a cause of action accrues on the date when the plaintiff discovers, or should have discovered, his or her injury and that the injury was wrongfully caused. Duhart v. Fry, 957 F. Supp. 1478, 1486 (N.D. Ill. 1997); Resolution Trust Corp. v. Chapman, 895 F. Supp. 1072, 1077 (C.D. Ill. 1995). Construing the facts in the light most favorable to the plaintiffs, the complaint in this case is timely because the earliest accrual date for bringing these claims was March 1997, and the complaint was filed within five years of that date. Although Bein argues that plaintiffs could have brought the claims earlier, the facts as alleged by plaintiffs establish that they have acted diligently in pursuing these claims, subject to certain obstacles

beyond their control.

Until plaintiffs had access to Biddulph's records, they had no reason to doubt that the transaction with Mr. Gottlieb was a bona fide, arms-length transaction. Mr. Gottlieb was a wealthy collector and, on its face, the purchase price had been independently approved by Warren. It was only in 1997 that plaintiffs learned of the alleged secret commissions, the separate appraisal by Biddulph at nearly twice the purchase price, the purported resale of the instruments the following year and the prior joint ventures with Biddulph and Bein.

Similarly, with regard to Warren, the plaintiffs initially had no reason to suspect Warren's second opinion as to the value of the instruments. They claim that prior to the Anton-Piller proceeding, they could not have known that: 1) Warren had given Biddulph a substantial deposit several months prior to Mr. Segelman's death to purchase instruments from the Segelman Collection; 2) Warren had been the actual purchaser of two instruments ostensibly sold to Mr. Gottlieb; and 3) Warren previously had substantial dealings with Biddulph in other joint ventures.

The strongest case for the application of the discovery rule is with regard to Bein. Biddulph had never mentioned any sales to Bein. Two of the instruments apparently sold to Bein, the Landolfi and the Pressenda violins, were initially concealed by Biddulph. The Tecchler violin was reportedly sold, but Biddulph never identified the buyer. As to the bows for which Bein paid approximately $400,000, the plaintiffs claim that they had no reason to know of the transaction because they had no idea of the true value of the bows in the Segelman Collection. Biddulph told them that he sold all of the bows on the probate valuation to a Japanese dealer in a single lot. Thus, plaintiffs claim that they had no independent reason to inquire as to the bows sold to Bein.

In sum, construing the facts in the light most favorable to the plaintiffs, they could not have discovered their claims against these defendants until they had access to Biddulph's books and records after the commencement of the Anton-Piller proceeding. Therefore, we find that application of the discovery rule saves plaintiffs' action from being time-barred.

C. Equitable Tolling and Equitable Estoppel

Plaintiffs next argue that the statute of limitations is tolled by the doctrines of equitable tolling and equitable estoppel. Equitable tolling is a doctrine that allows a plaintiff to avoid the bar of the statute of limitations if she has been unable to obtain vital information bearing on the existence of her claim notwithstanding her diligent inquiry. Smith v. City of Chicago Hts., 951 F.2d 834, 839 (7th Cir. 1991). Equitable tolling:

> . . . does not assume a wrongful – or any – effort by the defendant to prevent the plaintiff from suing. It differs from [the discovery rule] in that the plaintiff is assumed to know that he has been injured, so that the statute of limitations has begun to run; but he cannot obtain information necessary to decide whether the injury is due to wrongdoing and, if so, wrongdoing by the defendant.

Id. at 839.

Equitable estoppel, in contrast, applies if the defendant actively prevents the plaintiff from suing in time. Id. at 840. This doctrine "is wholly independent of the limitations period and takes its life, not from the language of the statute, but from the equitable principle that no man will be permitted to profit from his own wrongdoing in a court of justice." Bomba v. W.L. Belvidere, Inc., 579 F. 2d 1067, 1070 (7th Cir. 1978). This doctrine requires that the plaintiff show improper conduct by the defendant and harm to the plaintiff resulting from such conduct. However, plaintiff is not required to show intent. Wheeldon v. Monon Corp., 946 F.2d 533, 537 (7th Cir. 1991).

In this case, plaintiffs argue that they were unable to obtain vital information bearing on

the existence of the claims notwithstanding their diligent inquiry. Plaintiffs further claim that these defendants were part of a larger conspiracy led by Biddulph to defraud the estate. Thus, whether as an issue of equitable tolling or equitable estoppel, the complaint is timely.

In sum, we deny the motion to dismiss because plaintiffs may have substantial defenses to the statute of limitations bar. Factual issues exist concerning the applicability of the Illinois Fraudulent Concealment Statute, the discovery rule, equitable tolling, and equitable estoppel. See Smith v. City of Chicago Hts., 951 F. 2d 834 (7th Cir.1991); Pucci v. Litwin, 828 F. Supp. 1285, 1298 (N.D. Ill. 1993) (the issue of when a cause of action for breach of fiduciary duty accrues is a question of fact which is not appropriate on a motion to dismiss). Accordingly, the proper procedure is to deny the motion to dismiss and to allow full discovery on the matter. Accordingly, Bein's motion to dismiss the complaint on statute of limitations grounds is denied.

II. Conversion

Defendants Gottlieb and Bein argue that the conversion claims alleged in Count I should be dismissed against them. To properly allege the elements of conversion, a plaintiff must allege: 1) defendant's unauthorized and wrongful assumption of control, dominion or ownership over plaintiff's personal property; 2) plaintiff's right in the property; 3) plaintiff's right to immediate possession of the property, absolutely and unconditionally; and 4) plaintiff's demand for possession of the property. Chicago Dist. Council of Carpenters Welfare Fund v. Gleason & Fritzshall, 693 N.E.2d 412, 414 (Ill. App. Ct. 1998).

Bein argues that Vera Farnsworth, not the Segelman estate, was the owner of the property it bought and, therefore, plaintiffs cannot establish their right to immediate possession of the property. Even Bein, however, admits that "whether the instruments were Farnsworth's or Segelman's has not been resolved." Thus, we believe that plaintiffs should be allowed discovery

in order to establish their right to ownership of the instruments and bows.

Defendants next argue that the conversion claims fail because they were good faith purchasers and because the estate approved the sales to them. However, the complaint alleges that the property was obtained fraudulently as a result of defendants' scheme with Biddulph to cheat the estate by buying violins at a substantial discount. The law is clear that obtaining property by fraud or false pretenses can constitute a wrongful taking for purposes of conversion. See Harley-Davidson Motor Co., Inc. v. Custom Cycle Delight, Inc., 664 F.2d 1371, 1372 (9th Cir. 1982). Indeed, the wrongful taking of property extends to bona fide purchasers for value, without any knowledge of the prior fraudulent act. Assoc. Discount Corp. v. Walker, 188 N.E.2d 54, 55-56 (Ill. App. Ct. 1963) (Malice, culpability or conscious wrongdoing is not a necessary element to establish a conversion for which trover will lie. All that is required is the exercise upon or control over the chattel inconsistent with the plaintiff's right of possession.) Thus, even an innocent purchaser for value can be liable for conversion. See, e.g., Assoc. Discount Corp., 188 N.E.2d at 55-56.

Given the deference owed plaintiffs' complaint at the motion to dismiss stage, we find that plaintiffs have adequately alleged the basis of a conversion claim. For these reasons, we deny the motion to dismiss the conversion claims.

III. Fraud

Gottlieb and Bein argue that plaintiffs have failed to allege fraud in Count II with sufficient particularity. We disagree.

To be sufficient under Fed.R.Civ.P. 9(b), a pleading should identify the parties to, the time, and the substance of the claimed misrepresentations. Graue Mill Dev. Corp. v. Colonial Bank & Trust Co. of Chicago, 927 F.2d 988, 992-93 (7th Cir. 1991). Rule 9(b) should be

applied with a view to its purposes which are: 1) to inform the defendants of the claimed wrong and enable them to formulate an effective response; and 2) to protect defendants from unfounded, conclusory charges of fraud. See Reshal Assoc., Inc. v. Long Grove Trading Co., 754 F. Supp. 1226, 1230 (N.D. Ill. 1990).

In the instant case, many of the facts relating to the defendants' dealings with Biddulph and their alleged participation in the fraudulent scheme are peculiarly within their knowledge. However, plaintiffs have not yet been able to obtain any information from them. The estate is at a particular disadvantage because the executors were not directly involved in the underlying transactions, and they have limited access to the information relating to Biddulph's dealings with these defendants. We believe that the complaint provides ample detail of the alleged fraudulent scheme whereby the defendants were allowed to buy the estate's property at a substantial and unfair discount. The description of the scheme, and defendants' participation in that scheme, are set forth in sufficient detail to satisfy the particularity requirement of Rule 9(b).

The moving defendants argue that plaintiffs have failed to allege fraud against them with sufficient particularity because there is no allegation concerning a specific representation made by either of them. This argument is irrelevant, however, because Illinois law recognizes the potential culpability of defendants such as Bein and Gottlieb, who are alleged to have knowingly received the fruits of a fraudulent scheme. Athey Prod. Corp. v. Harris Bank Roselle, 901 F. Supp. 1355, 1359 (N.D. Ill. 1995). Thus, a defendant may be liable for knowingly accepting the benefits from a fraud even if the complaint does not allege that the recipient personally made the misrepresentation. Cumis Ins. Soc., Inc. v. Peters, 983 F. Supp. 787, 795 (N.D. Ill. 1997).

As demonstrated by the foregoing authorities, plaintiffs do not have to plead specific misrepresentations by these defendants. What plaintiffs must plead, and what they have pleaded,

is that at least one participant in the scheme, here Biddulph and Warren, made actionable statements. Thus, the complaint provides sufficient detail of the fraud to satisfy the pleadings requirement of Rule 9(b). These allegations are sufficiently particular to accomplish the purposes of Rule 9(b), since they adequately inform the defendants of the nature of the claim against them and satisfactorily describe the factual basis upon which the assertion of fraud is based. Therefore, the motions to dismiss the fraud allegations are denied.

IV. Conspiracy to Defraud

In Count III, plaintiffs allege an action for conspiracy to defraud against all defendants. Plaintiffs allege that defendants "knowingly conspired to defraud the Estate by participating in Biddulph's pattern of fraudulent conduct . . . by purchasing Estate property at substantially less than fair value, and purchasing Estate property which had been converted by Vera Farnsworth and Biddulph." Plaintiffs further allege that defendants took affirmative steps to further the conspiracy and that plaintiffs have suffered damages.

Defendants argue that plaintiffs' claim for conspiracy to defraud should be dismissed for failure to state a cause of action. As noted by the Seventh Circuit in Cenco, Inc. v. Seidman & Seidman, 686 F.2d 449, 453 (7th Cir. 1982), "there is no basis in common law thinking for a tort of conspiracy to commit a tort. If there is a conspiracy and it fails, there is no injury and hence no tort liability; if it succeeds, the damages are fully recoverable in an action on the underlying tort." See also Resolution Trust Corp. v. S & K Chevrolet, 868 F. Supp. 1047, 1057 (C.D. Ill. 1994) (noting that "a claim of common law fraud subsumes the claim of conspiracy to commit fraud, assuming of course that the latter is a recognized claim under tort law.")

In this case, the conspiracy claim is duplicative of the Count II claim for fraud. The conspiracy claim does not bring additional defendants into the case and does not add allegations

that are not already set forth in Count II. Therefore, we grant the motion to dismiss Count III, the conspiracy to defraud claim.

V. Breach of Fiduciary Duty

In Count IV, plaintiffs assert a claim for breach of fiduciary duty against all three defendants. Gottlieb and Bein have moved to dismiss this count. Gottlieb claims that the complaint does not provide sufficient detail in violation of Fed.R.Civ.P. 9(b). Bein argues that plaintiffs have not properly pled a claim for breach of fiduciary duty because Bein did not owe plaintiffs a fiduciary duty. Plaintiffs argue that they have properly asserted a claim for breach of fiduciary duty because these defendants assisted Biddulph in breaching his fiduciary duty to the plaintiffs.

Under Illinois law, a person who knowingly colludes with a fiduciary or assists the fiduciary in breaching his duties also can be liable for the breach. Cleveland Hair Clinic, Inc. v. Puig, 968 F. Supp. 1227, 1244 (N.D. Ill. 1996). Thus, even though an individual may not be a fiduciary himself, his conduct may render him liable to a cause of action for breach of fiduciary duty. One participates in a fiduciary's breach if he or she affirmatively assists or helps conceal the breach or, by virtue of failing to act when required to do so, enables it to proceed. See Diduck v. Kaszycki & Sons Contractors, Inc., 974 F.2d 270, 284 (2d Cir. 1992).

In this case, plaintiffs have stated a cause of action against all three defendants for facilitating Biddulph's scheme to defraud plaintiffs and breach his fiduciary duty owed to them. Plaintiffs have alleged that defendants knew that Biddulph was their fiduciary and that they knew that he was breaching his fiduciary obligations. If plaintiffs can prove that the defendants acted with bad faith or had actual knowledge of Biddulph's misappropriations, plaintiffs may be able to recover. See Appley v. West, 832 F.2d 1021, 1030 (7th Cir. 1987). Because plaintiffs have

alleged bad faith and actual knowledge in their complaint, there is a legal theory on which they possibly can recover. They should be given the opportunity to proceed with discovery and to test their evidence before the trier of fact. Therefore, the motion to dismiss is denied.

VI. Unjust Enrichment

Count V alleges a cause of action for unjust enrichment. Unjust enrichment is based on an implied, or quasi-contract. A quasi-contract has been defined as an obligation similar to a contract, "but which arises not from an agreement of parties but from some relation between them." Midcoast Aviation, Inc. v. General Elec. Credit Corp., 907 F.2d 732, 736 (7th Cir. 1990). A quasi-contract claim "is established when 'the defendant has unjustly retained a benefit to the plaintiff's detriment, and . . . defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience.'" Id. at 737. In this case, the defendants' alleged participation in Biddulph's fraudulent scheme could support plaintiffs' claim for unjust enrichment.

Defendants Gottlieb and Bein argue that this count should be dismissed because the doctrine of unjust enrichment has no application when there is a specific contract which governs the relationship of the parties. Gottlieb claims that because the violins were transferred to Gottlieb pursuant to a contract of sale, plaintiffs cannot maintain an action to recover the violins or their equivalent value under the theory of unjust enrichment, rather plaintiffs' remedy lies in contract. Bein argues that plaintiffs have not established its alleged participation in the scheme with particularity.

These arguments are unavailing because even if plaintiffs had asserted the existence of a contract and sued defendants for breach of it, the Federal Rules of Civil Procedure allow claims to be pled in the alternative. See Fed.R.Civ.P. 8(e)(2). Although plaintiffs may not recover

under both claims, they are entitled to plead the alternative claims of breach of contract and unjust enrichment despite any inconsistency in those claims. Quadion Corp. v. Mache, 738 F. Supp. 270, 278 (N.D. Ill. 1990). Moreover, we find that the allegations of this claim are stated with sufficient particularity. Therefore, the motions to dismiss Count V are denied.

VII. Replevin

In Count VI, plaintiffs allege a cause of action for replevin. Defendants Bein and Gottlieb have moved to dismiss this count arguing that plaintiffs have not properly pled all of the elements necessary for replevin. We disagree.

In this case, plaintiffs allege their entitlement to the instruments at issue and the defendants' wrongful taking and retention of the instruments. Plaintiffs have alleged that they attempted to contact the defendants to no avail. Plaintiffs claim that defendants refused to provide any information or to offer any explanation concerning the transactions at issue. A demand by plaintiff to get the instruments back is unnecessary when the circumstances indicate its futility and that the demand would have been unavailing. First Illini Bank v. Wittek Indus., Inc., 634 N.E.2d 762, 763 (Ill. App. Ct. 1994).

For these reasons, plaintiffs have properly alleged a cause of action for replevin, and the motions to dismiss are denied.

VIII. Economic Loss Argument

Bein argues that plaintiffs may not recover damages in tort which are economic in nature. Illinois law generally does not allow for recovery of economic losses in tort, unless predicated on fraud, intentionally false or negligent misrepresentation, or damage from a sudden or dangerous event. See A.I. Credit Corp v. Hartford Computer Group, Inc., 847 F. Supp. 588 (N.D. Ill. 1994). However, in this case, plaintiffs are alleging that their damages were caused by the

defendants' fraud. Therefore, we find that defendant Bein's argument is without merit. See, e.g., In re Chicago Flood Litigation, 680 N.E.2d 265, 275 (Ill. 1997).

CONCLUSION

For the foregoing reasons, we grant in part and deny in part the motions to dismiss of defendants Howard Gottlieb, Bein & Fushi, Inc. and Kenneth Warren & Sons, Ltd. The motions are granted as to Count II and are denied as to all other counts. Count II of the complaint is dismissed.

It is so ordered.

_____/s/_____
Wayne R. Andersen
United States District Judge

Dated: January 13, 2000