

# Motion To Dismiss Filed by Arcserve, LLC and Marlin Management Company, LLC Is Denied.

*Cutler & Wilensky LLP Announces the Denial of a Motion to Dismiss by Arcserve, LLC & Marlin Management Company, LLC in a lawsuit with FastArchiver Software, LLC*

WALTHAM, MA, USA, April 16, 2021 /EINPresswire.com/ -- Notice is hereby given that all claims against the defendant, Arcserve (USA) LLC and Marlin Management Company, LLC were not dismissed, and all claims remain are subject to full discovery.

The Commonwealth of Massachusetts Superior Court, delivered the following denial response verbatim:

"EXPANDED ENDORSEMENT on defendant, Arcserve (USA) LLC's ("Arcserve") and Marlin Management Company LLC' s ("Marlin"), motion to dismiss. Claims brought by plaintiffs center on an asset purchase agreement between plaintiff, FastArchiver Software, LLC ("FastArchiver") and Arcserve LLC, and the communications/negotiations precedent, relating to the sale of FastArchiver's email archiving software.

The motion challenges; Count One alleging Fraud against all defendants; Count Two alleging Negligent Misrepresentation against all defendants; Count Three alleging Breach of Fiduciary Duty against Marlin; Count Four alleging Breach of the Asset Purchase Agreement against Arcserve; Count Five alleging Breach of the Implied Covenant of Good Faith and Fair Dealing against Arcserve; Count Six alleging Unfair and Deceptive Acts and Practices against all defendants; Count Seven alleging Conspiracy against both defendants; and Count Eight alleging Aiding and Abetting against all defendants.

For purposes of the decision on this motion, the court takes the well-pled facts in the complaint as true and gives the plaintiffs the benefit of "favorable inferences that reasonably can be drawn from them." Goodwin v. Lee Pub. Schools & Others, 475 Mass. 280,284 (2016) (citation omitted). See Galiastro v. Mortgage Electronic Registration Systems, Inc. & Another 467 Mass. 160, 171 (2014). The court also reviews documents (Declaration) attached to or specifically referenced in the pleadings for purposes of Mass. R. Civ. P. 12(b)(6). See generally Schaer v. Brandeis University, 432 Mass. 474,477 (2000). Here there is no legal basis, at the present time (specifically with the unique theory claimed in Count Three), to subject the plaintiffs to the ultimate remedy of dismissing their claims against Arcserve and Marlin without the parties having the benefit of discovery.

Therefore, after review of the pleadings, relevant case law, inclusive of the cited cases regarding breach of fiduciary duty, and the remote hearing held on November 3, 2020, defendants' motion to dismiss is hereby DENIED.

SO ORDERED.

Dated: December 28, 2020"

Commonwealth of Massachusetts,

Middlesex Superior Court, Docket Number: 2081CV1199

The Defendant is seeking \$9,000,000 in damages plus attorneys fees and interest at 12% which is the amount specified in the contract between the parties.

Please direct any questions to:

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