

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
DOCKET NO. BCD-CV-17-42

F.C. BEACON GROUP, INC.,)
)
Plaintiff/Counterclaim Defendant,)
)
v.)
)
CRAIG BELANGER, RICHARD CRUMB,)
RACHEL ESCHLE, and BCE PARTNERS,)
LLC,)
)
Defendants/Counterclaim Plaintiff,)
)
and)
)
MEAGHAN FLOOD and ANCHOR)
RESEARCH, LLC,)
)
Defendants.)

ORDER ON DEFENDANTS CRUMB
AND BCE'S MOTION TO AMEND
COUNTERCLAIM AND PLAINTIFF'S
MOTION TO DISMISS COUNTERCLAIM

Before the Court is Plaintiff F.C. Beacon Group, Inc.'s Motion to Dismiss Counterclaim Count III ("Fraud and Misappropriation") as well as Defendants Craig Belanger, Richard Crumb, Rachel Eschle, and BCE Partners, LLC's ("BCE Defendants") Motion to Amend the Counterclaim which they state was brought in response to Plaintiff's Motion to Dismiss Count III of their Counterclaim. Plaintiff is represented by Attorney Timothy Norton and Attorney Raymond Ausrotas and BCE Defendants are represented by Attorney Robert Kline. For reasons stated below, the Court grants the Plaintiff's Motion to Dismiss in part and denies it in part; and grants the Defendants' Motion to Amend.

ANALYSIS

Plaintiff's Motion to Dismiss is brought under Rule 12(b)(6) and Rule 9(b) of the Maine Rules of Civil Procedure. Plaintiff accurately describes the factual allegations brought by BCE Defendants in support of Count III of the Counterclaim as combining two tort claims (fraud and invasion of privacy by misappropriation of names) consisting of four paragraphs numbered 20, 30, 31 and 32. The Court further agrees that these factual allegations fall short of the standard requiring that claims of fraud must be stated with particularity with respect to the "circumstances constituting fraud or mistake." *Beck v. Sampson*, 158 Me. 502, 510 (Me. 1962).¹

BCE Defendants seem to have conceded this lack of particularity in that their Opposition addresses only Plaintiff's arguments with respect to the misappropriation of names tort, and is silent as to the alleged deficiencies in their pleading as to the fraud allegations. The Court will therefore address BCE Defendants' arguments as to the tort of invasion of privacy by the misappropriation of name only, and will grant the Motion to Dismiss Count III of the Counterclaim insofar as it alleges that Plaintiff committed fraud.

With respect to the misappropriation of names tort, the Court reviews this claim under Rule 12(b)(6) in the light most favorable to the BCE Defendants. Plaintiff argues that even under this standard the Court should dismiss what remains of Count III as it fails to allege that Plaintiff's alleged appropriation of their names caused them any injury. They concede that BCE Defendants have appropriately pleaded that the Plaintiff's conduct conferred a benefit on the Plaintiff, but Plaintiff argues that BCE Defendants still fail to allege that the Plaintiff's conduct caused any injury or damage to the BCE Defendants.

¹ The Court also agrees that Count III of the Counterclaim fails to allege the fifth element of fraud, namely that the Defendants justifiably relied upon any misrepresentation and as a result suffered damage due to the Plaintiff's conduct. *Glynn v. Atlantic Seaboard Corp.*, 1999 ME 53.

