

Cause No. 2013-20086

ESAN WORLD CONGRESS, INC.
Plaintiff

V.

GENESIS INIBHUNU,
DESMOND OKOUGBO,
PRISCILLA IKHAREBHA,
MICHAEL JARMAN AGBATOR,
FREDERICK ABIENEKPEN,
SIMON OGBEIDE,
PATRICK EMUAHAGBON
Defendants

§ IN THE DISTRICT COURT OF
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

HARRIS COUNTY, TEXAS

133RD JUDICIAL DISTRICT COURT

JACOB UNUBUN
SYLVESTER FADAL
Third Party Defendants

ⓧ P 5
7A

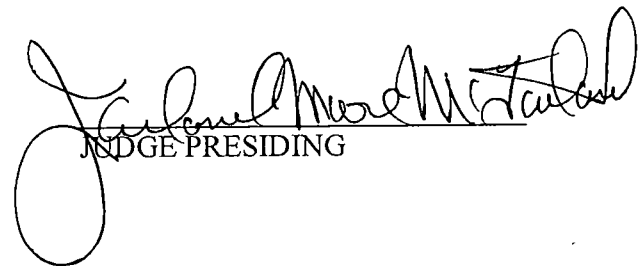
ORDER ON DEFENDANTS' MOTION FOR NO-EVIDENCE SUMMARY JUDGMENT

On March 3, 2017, the Court reviewed Defendants' Motion for Summary Judgment.

After considering the motion and response, the Court:

ORDERS that Defendants' Motion for Summary Judgment is GRANTED.

Signed this 3 day of March 2017.


JUDGE PRESIDING

Unofficial Copy Office of Chris Daniel District Clerk

Cause No. 2013-20086

ESAN WORLD CONGRESS, INC. Plaintiff	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
GENESIS INIBHUNU, DESMOND OKOUGBO, PRISCILLA IKHAREBHA, MICHAEL JARMAN AGBATOR, FREDERICK ABIENEKPEN, SIMON OGBEIDE, PATRICK EMUAHAGBON Defendants	§	133 RD JUDICIAL DISTRICT COURT

JACOB UNUBUN SYLVESTER FADAL Third Party Defendants		

DEFENDANTS' MOTION FOR NO-EVIDENCE SUMMARY JUDGMENT

Defendants Genesis Inibhunu, Michael Jarman Agbator, Simon Ogbeide, and Patrick Emuahagbon file this Motion for No-Evidence Summary Judgment and would respectfully show the Court as follows:

A. INTRODUCTION

1. Plaintiff is Esan World Congress, Inc., a non-profit organization.
2. Defendants are Genesis Inibhunu, Desmond Okougbo, Priscilla Ikharebha, Michael Jarman Agbator, Frederick Abienekpen, Simon Ogbeide, and Patrick Emuahagbon. Defendants are members and current or former officers of Plaintiff.
3. Plaintiff sued Defendants for conversion, tortious interference with contract, breach of fiduciary duty, and fraud.
4. Discovery in this suit is governed by a Level 2 discovery control plan. The discovery period ended on July 3, 2015.
5. This case is set for trial on April 17, 2017.

B. FACTS

6. On April 26, 2013, Defendants filed an answer asserting a special exception to Plaintiff's original petition as a whole and a general denial to each allegation in Plaintiff's original petition.

7. Defendants Genesis Inibhunu, Desmond Okougbo, Priscilla Ikharebha, Michael Jarman Agbator, Frederick Abienekpen, Simon Ogbeide, and Patrick Emuahagbon move for no-evidence summary judgment based on Plaintiff's lack of evidence to support its cause of action for conversion, tortious interference with contract, breach of fiduciary duty, and fraud.
8. Defendants filed and served this motion on Plaintiff at least 21 days before the hearing on this motion.
9. Defendants' Motion for Summary Judgment is set for submission on January 31, 2017.

C. ARGUMENTS & AUTHORITIES

10. A court may grant a no-evidence motion for summary judgment if the movant can show that adequate time for discovery has passed, and the non-movant has no evidence to support one or more essential elements of its claim or defense. Tex. R. Civ. P. 166a(i).
11. An adequate time for discovery has passed. Tex. R. Civ. P. 166a(i). The discovery period ended on July 3, 2015.
12. Defendants are entitled to summary judgment because Plaintiff cannot, by pleadings, depositions, answers to interrogatories, admissions on file, or other admissible evidence, demonstrate there is any evidence to support its claims for conversion, tortious interference with contract, breach of fiduciary duty, and fraud.
13. Plaintiff's claim for conversion requires proof of the following elements: (1) plaintiff owned, possessed, or had the right of immediate possession of the property; (2) the defendant wrongfully exercised dominion or control over the property to the exclusion of and inconsistent with plaintiff's rights; (3) the plaintiff demanded return of the property; and (4) the defendant failed to return it. *Ojeda v. Wal-Mart Stores, Inc.*, 956 S.W.2d 704, 707 (Tex.App.-San Antonio 1997, pet. denied). Plaintiff has not provided any evidence that Defendants wrongfully exercised control over money belonging to the organization.
14. Plaintiff's claim for tortious interference with contract requires proof of the following elements: (1) there exists a contract that is subject to interference; (2) there is a willful and intentional act of interference by the defendant; and (3) the defendant's intentional act of interference was a proximate cause of actual damages to the plaintiff. *Victoria Bank & Trust Co. v. Brady*, 811 S.W.2d 931, 939 (Tex. 1991). Plaintiff has not provided any evidence that Defendants willfully and intentionally interfered with Plaintiff's contract.
15. Plaintiff's claim for breach of fiduciary duty requires proof of the following elements: (1) there is fiduciary relationship between plaintiff and defendant; (2) the defendant breached his fiduciary duty to the plaintiff; and (3) the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant. *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App.-Dallas 2006, pet. denied). Plaintiff has not provided any evidence that Defendants breached their fiduciary duty to Plaintiff.

16. Plaintiff's claim for fraud requires proof of the following elements: (1) a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. *In re Firstmerit Bank, N.A.* 52 S.W.3d 749, 758 (Tex. 2001). Plaintiff has not provided any evidence that Defendants made a false representation.

D. CONCLUSION

17. Defendants are entitled to a summary judgment for the reasons asserted in this Motion for Summary Judgment. Defendants waive all causes of action and relief not requested in this motion.

E. PRAYER

18. For these reasons, Defendants ask the court to grant this motion and sign a final summary judgment.

Respectfully submitted,

THE LAW FIRM OF SOLOMON M. MUSYIMI

/s/ Solomon Musyimi

Solomon M. Musyimi

State Bar No. 24032775

9494 Southwest Freeway, Suite 300

Houston, TX 77074

(713) 541-4444

(713) 541-4455 (Fax)

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on January 4, 2017, a true and correct copy of the above and foregoing was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure.

/s/ Solomon Musyimi
Solomon M. Musyimi
ATTORNEY FOR DEFENDANTS

Via CMRRR: 7014 2120 0001 4372 1762
Frederick Abienekpen
2125 Estrada Parkway #1023
Irving, TX 75061
REGISTERED AGENT FOR PLAINTIFF

Via Facsimile: (281) 933-5058
John Mukuro
10101 Southwest Freeway, Suite 400
Houston, TX 77074
ATTORNEY FOR THIRD PARTY DEFENDANTS

Unofficial Copy Office of Chris Daniel District Clerk