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STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

CHITTENDEN SUPERIOR COURT  
DOCKET NO. S2368-91CnC

STATE OF VERMONT  
Plaintiff

VS.

GENE ROSENBERG AND PAUL  
COHEN, D/B/A GENE ROSENBERG  
ASSOCIATES  
Defendants

FEB 24 1992  
DIANE A. LAVALLEE  
CLERK

OPINION AND ORDER

Defendants move this court for an order requiring plaintiff to file a more definite statement, pursuant to V.R.C.P. 12(e). Defendants' motion is denied.

On December 30, 1991, plaintiff filed a complaint in the present case, alleging that defendants engaged in certain unfair and deceptive acts and practices in violation of 9 V.S.A. § 2451 et seq., the Consumer Fraud Act. Defendants, in support of their motion, argue that plaintiff's complaint fails to meet the particularity requirements of V.R.C.P. 9(b). Specifically, defendants allege that the complaint fails "to state precisely which misrepresentations or omissions were made, the time and place of each misrepresentation or omission, the manner in which they mislead consumers, and that the misleading effects of the misrepresentation were material." Defendants' Motion at 1.

Under Vermont law, all complaints must contain two elements: "1) a short and plain statement of the claim showing that the pleader is entitled to relief, and 2) a demand for judgment for the relief the pleader seeks." V.R.C.P. 8(a).

V.R.C.P. 9(b) further requires that a complaint alleging fraud must state the circumstances constituting the fraud with particularity.

Here, plaintiff is required to sufficiently plead that defendants committed "a deceptive act or practice" under 9.V.S.A. 2453. "A deceptive act or practice" consists of three elements:

- (1) there must be a representation, practice, or omission likely to mislead [the] consumer[];
- (2) the consumer[] must be interpreting the message reasonably under the circumstances; and
- (3) the misleading effects must be "material," that is, likely to affect [the] consumer[']s conduct or decision with regard to a product.

Peabody v. P.J.'s Auto Village, Inc., 153 Vt. 55, 57, 569 A.2d 460 (1989). Plaintiff has met its burden under V.R.C.P. 8(a) and V.R.C.P. 9(b).

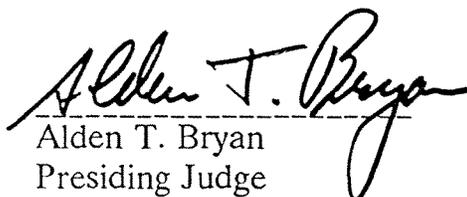
Paragraphs 4 - 16 of plaintiff's complaint sufficiently allege the necessary elements of consumer fraud. First, plaintiff's complaint identifies the specific furniture stores and the dates of the sales promoted and carried out by defendants. Second, the complaint also specifically alleges that defendants placed numerous advertisements which publicized specified discounts on the furniture. Third, the complaint alleges specific increases in the "landed cost" of furniture at each store at the time of the sale and the corresponding effect of these increases on the sale prices offered to consumers. Finally, the complaint alleges that over 700 consumers purchased the advertised furniture at the inflated price.

V.R.C.P. 9(b) does not require that plaintiff designate in its complaint the name of each consumer and the details as to each specific transaction. Plaintiff's

complaint provides defendants "with sufficient information to enable [them] to effectively prepare a response." Silva v. Stevens, et. al., 2 Vt. L. Wk. 22, 25 (January 11, 1991) (citing 5 C. Wright & Miller, § 1296, at 580). Discovery is the appropriate means by which defendants should proceed to obtain additional evidentiary information.

Defendants' motion is DENIED.

Dated in Burlington, Vermont, this 2<sup>4</sup> day of February, 1992.

  
Alden T. Bryan  
Presiding Judge