

IN THE CIRCUIT COURT FOR THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

MARLINS STADIUM OPERATOR, LLC

Plaintiff,

CASE NO.: 15-020790-CA-11

vs.

CIVIL DIVISION

SIR PIZZA OF SOUTH FLORIDA, LLC,
SIR PIZZA OF SOUTH FLORIDA
COOP ADVERTISEMENT, LLC.,
SIR PIZZA FRANCHISING, INC.,
SIR PIZZA INTERNATIONAL, INC.,
SIR PIZZA SOUTH FLORIDA CO-OP,
and RENE PRATS,

Defendants.

MOTION TO DISMISS OF SIR PIZZA FRANCHISING, INC.

Defendant, Sir Pizza Franchising, Inc ("SPF"), moves this Court to dismiss the Complaint pursuant to Rule 1.140(b) of the Florida Rules of Civil Procedure for failure to state a cause of action and states:

1. Plaintiff, Marlins Stadium Operator ("MSO") filed its four (4) count complaint seeking damages stemming for an alleged a breach of an agreement (and its amendments) between it and Defendant, Sir Pizza South Florida Co-Op. The agreement and its amendments are attached to the complaint and, as a matter of law, are considered to be part of and within the four corners of the complaint. See *Southeast Med. Prods., Inc. v. Williams*, 718 So.2d 306 (Fla. 2nd DCA 1998)(Exhibits to the complaint are considered part of the complaint when ruling on a motion to dismiss.)

2. SPF is not a party to the agreement or its amendments. A necessary element to sustain a breach of contract action is the existence of a binding and enforceable agreement between the parties. See *Abbott Laboratories, Inc. v. General Electric Capital*, 765 So.2d 737 (5th DCA 2000)(The elements of a breach of contract action are: (1) a valid contract . . .)

3. To get around this deficiency, Plaintiff alleges that “upon information and belief” SPF does business as Sir Pizza South Florida Co-Op *without any ultimate facts* to support that bald legal conclusion. That legal conclusion is insufficient to sustain a claim against the Sir Pizza defendants. The legal conclusion is also palpably false (which is beyond the scope of this motion, but troubling nonetheless).

4. Plaintiff makes the same bald legal conclusions as to Sir Pizza International, also without support with ultimate facts. “To withstand dismissal, . . . a plaintiff must allege more than [a] ‘naked legal conclusion.’” *K.R. Exchange v. Fuerst, Humphrey, Ittleman, P.L.*, 48 So.2d 889, 892-893 (Fla. 3rd DCA 2010). “Florida’s pleading rule [1.110(b)(2)] forces counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to support it, which avoids a great deal of wasted expense to the litigants and unnecessary judicial effort.” *Id.* at 893. This case illustrates the need for pleading ultimate facts because Plaintiff is attempting to sue what are, facially, legal strangers to the contract sued upon.

5. Florida law requires that Plaintiff and its counsel investigate the facts before filing a lawsuit and making unsubstantiated allegations. Plaintiff and its counsel have simply failed to investigate the facts, or worse, have ignored the facts and brought a frivolous action against SPF (and Sir Pizza International).

6. The complaint is also subject to dismissal because Plaintiff has improperly lumping

all the defendants into each of the four causes of action without distinguishing or differentiating “among the various defendants actions and statements.” *Id.*

7. While the complaint contains “Veil Piercing, Alter Ego” allegations relating to Defendant, Rene Prats, notably absent from those allegations are any facts or even legal conclusions that Rene Prats owned, controlled (or was affiliated in any way) with SPF (or Sir Pizza International). Absent ownership of SPF or Sir Pizza International, there is no way that they are responsible for the actions of Rene Prats. While beyond the four corners of the complaint, Prats has no affiliation with SPF or Sir Pizza International.

8. For the foregoing reasons, Plaintiffs complaint should be dismissed.

WHEREFORE, Sir Pizza Franchising, Inc. moves to dismiss this action against it for failure to state a cause of action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via eservice@myflcourtaccess.com to: Kenneth E. Chase, Shook, Hardy & Bacon, LLP, 1155 F Street NW, Suite 200, Washington, DC 20004 kchase@shb.com and kbrannan@shb.com and Alexander Bach Lagos, Shook, Hardy & Bacon, LLP, Miami Center, Suite 3200, 201 S. Biscayne Blvd., Miami, FL 33131 alagos@shb.com this 8th day of December, 2015.

YOUNG, BERMAN, KARPf & GONZALEZ, P.A.
Attorneys for Defendants, Sir Pizza International, Inc.
and Sir Pizza Franchising, Inc.
1001 Brickell Ave., Ste. 1400 N
Miami, Florida 33131
Tel: (305) 377-2290
Fax: (786) 219-1980

By: /s/Andrew S. Berman
ANDREW S. BERMAN
Florida Bar No.: 370932
GEORGE W. WICKHORST, III
Florida Bar No.: 488259