IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

KURT G. SCHLEGEL, *Plaintiff,*	CIVIL NO. 3:07cv00022
v.	ORDER
BANK OF AMERICA, N.A., *Defendant*	JUDGE NORMAN K. MOON

This matter is before the Court on Plaintiff's Motion to Reconsider, filed on June 26, 2007 (docket entry no. 26). Because Plaintiff's Amended Complaint fails to provide facts sufficient to support his claims that Defendant violated the Virginia civil conspiracy statute (Virginia Code § 18.2–499), Plaintiff's motion must be DENIED.

In his first complaint, Plaintiff alleged that Defendant and former employees of Plaintiff's business had conspired in violation of Virginia Code § 18.2–499. (*See* Compl. ¶¶ 1–49) I dismissed Plaintiff's first complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because I found that he failed to state a claim upon which relief could be granted. (*See* Mem. Op. and Order, June 12, 2007, docket entry no. 20 ("Opinion and Order")) Plaintiff filed a motion to reconsider and requested that should I deny his motion, give him leave to file an amended complaint alleging facts sufficient to support his claim. I granted him such leave and Plaintiff has filed an amended complaint.

In the Amended Complaint, Plaintiff includes additional facts, but none that are relevant to his claim of civil conspiracy. At most, Plaintiff's Amended Complaint alleges facts that, if true, could possibly show that Defendant should not have transferred money from the corporate

account of Piedmont (his company) to the personal account of Christopher C. Grieb ("Grieb"), a former Piedmont stockholder and director as it did upon Grieb's request.[1] With respect to Defendant's alleged conspiracy with Ralph Eugene Main, Jr. ("Main") (Piedmont's former corporate attorney who, near the relevant time, was Grieb's personal attorney), the Amended Complaint alleges facts that, even if true, would not show a concerted action between Main and Defendant.[2] Even assuming the facts could support concerted action, the only inference to be drawn from those facts would be that Defendant was attempting to justify a possibly incorrect transfer of money; they would not support an inference that Defendant acted with the purpose of willfully and maliciously injuring Plaintiff, as is required.

For these reasons, Plaintiff's Motion to Reconsider, filed on June 26, 2007 (docket entry no. 26), is hereby DENIED.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

ENTERED: _____
United States District Judge

_____
Date

[1] For example, Plaintiff alleges that at the time Defendant transferred the money, Defendant "knew the corporate account belonged to Piedmont" and that Defendant "knew that [Plaintiff] was the only signatory on the account." (Am. Compl. ¶ 15) Additionally, Plaintiff claims that Defendant "and Grieb concealed from [Plaintiff] the fact that Grieb had instructed [Defendant] to transfer the corporate funds. (Am. Compl. ¶ 16) Therefore, Plaintiff concludes, Defendant "act[ed] in concert and agreement with Grieb"—a legal conclusion, not a factual assertion—and had "the intent to facilitate Grieb's fraud and theft of Piedmont's funds"—another legal conclusion without factual support. (Am. Compl. ¶ 18)

[2] Plaintiff alleges that Defendant "secretly contacted … Main … to come up with a plan for continuing the freeze of Piedmont's funds," that Defendant "knew that Grieb was not" authorized to transfer funds, and that Defendant "looked to Main to assist in creating an argument that Grieb was CEO." (Am. Compl. ¶ 26) There is nothing to suggest any kind of agreement between Main and Defendant—these facts at most, if true, could only show that Defendant may have been interested in justifying the transfer and sought Main's assistance. Nothing here shows that Main actually agreed with Defendant for the purpose of injuring Plaintiff.