

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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BFI PRINT COMMUNICATIONS, INC.,	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 11-208-M
	)	
DARLENE M. GERVASIO,	)	
Defendant.	)	

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**ORDER**

Before this Court is Defendant’s Motion for Summary Judgment (ECF No. 11), Plaintiff’s Objection (ECF No. 14), and Defendant’s Reply. (ECF No. 17.) Because there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law, this Court GRANTS Defendant’s Motion for Summary Judgment.

“Summary judgment is granted where ‘the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.’” *Taylor v. Am. Chemistry Council*, 576 F.3d 16, 24 (1st Cir. 2009) (quoting Fed. R. Civ. P. 56(c)). Although “all reasonable inferences” are resolved “in favor of the non-moving party,” this Court “must ignore conclusory allegations, improbable inferences, and unsupported speculation.” *Id.* (quoting *Am. Steel Erectors, Inc. v. Local Union No. 7, Int’l Ass’n of Bridge, Structural, Ornamental & Reinforcing Iron Workers*, 536 F.3d 68, 75 (1st Cir. 2008)).

A detailed recitation of the facts is not necessary to understand this Court’s ruling, and the following few undisputed facts will suffice. In 2001, Plaintiff BFI Print Communications, Inc. (BFI)<sup>1</sup> obtained a judgment against Defendant’s husband, Steven J. Gervasio (Steven), in

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<sup>1</sup> BFI was formerly known as Business Forms Incorporated. (ECF No. 1.)

federal court in Massachusetts. (ECF No. 14-5.) In 2004, Steven and his wife, Defendant Darlene M. Gervasio (Darlene), executed a deed transferring a rental property they owned as tenants by the entirety to Darlene. (ECF Nos. 12-1 at 4 and 14-7 at 2.) In 2011, BFI filed this two count complaint against Darlene alleging common law fraud and civil conspiracy. (ECF No. 1.)

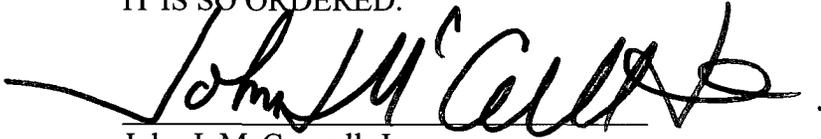
To make a claim of common law fraud, BFI must establish four elements: (i) “a false or misleading statement of material fact” (ii) “that was known by the defendant to be false” and (iii) “was made with intent to deceive,” (iv) “upon which the plaintiff justifiably relies to its detriment.” *Nisenzon v. Sadowski*, 689 A.2d 1037, 1045 n.11 (R.I. 1997); *see also Guilbeault v. R.J. Reynolds Tobacco Co.*, 84 F. Supp. 2d 263, 268 (D.R.I. 2000). “A civil conspiracy claim requires the specific intent to do something illegal or tortious.” *Guilbeault*, 84 F. Supp. 2d at 268. “Furthermore, civil conspiracy is not an independent basis of liability,” but rather “requires a valid underlying intentional tort theory.” *Read & Lundy, Inc. v. Washington Trust Co. of Westerly*, 840 A.2d 1099, 1102 (R.I. 2004) (quoting *Guilbeault*, 84 F. Supp. 2d at 268).

The unsupported allegations in BFI’s complaint and its briefing are insufficient to defeat summary judgment. *See Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir. 1990); *see also Taylor*, 576 F.3d at 24. Based on the record before this Court, BFI’s claims of fraud and civil conspiracy fail because there is not a scintilla of evidence to support the fraud claim. There is no evidence before this Court (by way of affidavit, deposition testimony, or other evidence) of the first element of a fraud claim, *i.e.*, that Darlene (or Steven) made a false or misleading statement. There is no evidence of the third element of a fraud claim, *i.e.*, that Darlene (or Steven) had an intent to deceive. Finally, there is no evidence of the fourth element of a fraud claim, *i.e.*, that BFI relied on any false statement by Darlene (or Steven). Since BFI has failed to produce any

evidence to support its fraud claim, and the civil conspiracy claim requires an underlying tort claim, summary judgment shall enter for Defendant on both the fraud claim and the civil conspiracy claim.

There are no genuine issues of material fact in this case and Defendant is entitled to judgment as a matter of law. Therefore Defendant's Motion for Summary Judgment (ECF No. 11) is GRANTED, the case is DISMISSED, and the clerk shall enter judgment for Defendant.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", written over a horizontal line.

John J. McConnell, Jr.  
United States District Judge

September 26, 2012