

**IN THE 13TH JUDICIAL CIRCUIT COURT OF
BOONE COUNTY, MISSOURI**

THE CURATORS OF THE)
UNIVERSITY OF MISSOURI,)
)
Plaintiff,)
)
v.)
)
GALEN J. SUPPES,)
WILLIAM R. SUTTERLIN,)
RENEWABLE ALTERNATIVES, LLC)
and HOMELAND TECHNOLOGIES, LLC,)
)
Defendants.)

Case No. 09-BA-CV02314

**MOTION TO DISMISS HOMELAND TECHNOLOGIES, LLC
AND MEMORANDUM IN SUPPORT**

Defendant Homeland Technologies, LLC, (“HT”) hereby moves for dismissal of HT for Plaintiff’s failure to state a claim against HT upon which relief can be granted.

I. Legal Standard.

A cause of action should be dismissed for failure to state a claim when “taking all factual allegations as true, plaintiff’s pleadings are insufficient to establish a cause of action.” *Grewell v. State Farm Mut. Auto. Ins. Co., Inc.*, 102 S.W.3d 33, 35-36 (Mo. 2003); Rule 55.27(a)(6). Upon a motion to dismiss for failure to state a cause of action, “the court reviews the allegations of the petition to determine whether the facts pled therein are sufficient as a matter of law.” *State ex rel. Union Elec. Co. v. Dolan*, 256 S.W.3d 77, 81 (Mo. 2008). In reviewing the petition, the court “assume[s] all averments to be true and give[s] the plaintiff the benefit of all reasonable inferences to be drawn therefrom.” *Thompson v. Hunter* 2003 MO 196 (MOCA 2003).

II. Plaintiff Fails to State any Claim Against HT Which Entitles it to Relief.

In each Count, Plaintiff requests relief based on contractual rights or obligations which have no relationship to Defendant HT. In fact, Defendant HT has no association with Plaintiff which could give rise to any of the obligations asserted by Plaintiff.

In Count I, Plaintiff seeks declaratory judgment for determination of ownership and dates of conception and reduction to practice for inventions created by defendants on the basis of contractual rights arising from the employment of Defendants Suppes and Sutterlin by the University. Plaintiff requests an accounting and declaration of ownership as to inventions created by Defendants Suppes and Sutterlin during their employment by the University. Count I does not contain a single allegation pertaining to Defendant HT. Moreover, although Plaintiff asserts that an accounting is owed by Defendants Suppes and Sutterlin based on their employment relationship with the University, there is nothing to support this assertion in the University's *Collected Rules and Regulations*. If there is no legal basis for Plaintiff's claim within the employment agreement from which it is derived, there can certainly be no basis for the same against a third party. In any case, Plaintiff fails to state a claim against HT, or even name HT, in Count I.

In Count II, Plaintiff requests declaratory judgment as to automatic assignment of all inventions created by defendants on the basis of the University's *Collected Rules and Regulations* which are applicable to University employees alone and makes no allegation relating to HT. Plaintiff recites excerpts from the *Collected Rules and Regulations* which allegedly obligate Defendants Suppes and Sutterlin to automatic assignment of each invention created by them during their terms of employment at the University. Once again, Plaintiff fails to state a claim against HT.

Plaintiff claims breach of contract by defendants in Count III, on the basis of the employment agreement between the University and Defendants Suppes and Sutterlin, making no mention of Defendant HT. Plaintiff makes no allegation of any breach by Defendant HT in this count. In fact, no agreement or contract between HT and Plaintiff is even alleged to exist. Plaintiff simply fails to state a claim against HT in Count III.

Despite Plaintiff's claim for tortious interference with business relationships in Count IV, it fails to state this claim against any defendant by alleging no more than, in Paragraph 59, that conduct by defendants "jeopardized" the relationship between the University and Missouri Soybean Merchandising Council, Mid-America Research and Development Foundation, and University and Senergy Chemical Corporation. Given the absence of an allegation of actual breach of a contract or relationship with the University, by these third parties, Plaintiff has failed to state a claim against any Defendant because a claim for tortious interference with business relationship requires the inducement of a breach. Plaintiff does not allege any conduct by Defendant HT which satisfies the requisite intentional interference with the alleged business relationship either. Therefore, Plaintiff fails to state a claim for tortious interference with business relationships against Defendant HT.

Finally, in Counts V, VI and VII, Plaintiff fails to state any claim against Defendant HT. In Count V, Plaintiff's allegations in support of its claim that Defendants breached a duty of loyalty rely upon the employment relationship between the University and Defendants Suppes and Sutterlin as the basis for the alleged duty. Plaintiff does not allege an employment relationship existed between the University and Defendant HT, and fails to identify any conduct on behalf of Defendant HT even allegedly in breach of the duty of loyalty claimed. Plaintiff alleges, "Suppes and Sutterlin thereby went beyond mere planning and preparation and acted in

direct competition with the interests of the University, in breach of their duties of loyalty to the University.” Petition, p.16 para. 68. Plaintiff fails to state a claim against Defendant HT on the basis of alleged conduct by Defendant Suppes and Sutterlin. While in Counts VI and VII Plaintiff requests an equitable action for accounting and specific performance, respectively, the allegations in support of these claims make no mention of Defendant HT, and in fact, rely solely on the employment relationship between the University and Defendants Suppes and Sutterlin and associated rights and responsibilities. Plaintiff fails to state any claim against Defendant HT.

III. Conclusion.

Plaintiff fails to state a claim upon which relief can be granted against Defendant HT. Defendants should not be prejudiced by the expense and burden of these proceedings on the basis of mere speculation or claims that have no basis in fact or law. Accordingly, Defendant HT requests dismissal of this action for failure to state a claim upon which relief can be granted.

Respectfully submitted,

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following attorneys by deposit in the United States Mail at Kansas City, Missouri, in a sealed envelope with first class postage thereon fully prepaid, this 15th day of June, 2009:

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