

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IGNATIUS PRESS, a division of : CIVIL ACTION
GUADELUPE ASSOCIATES, INC. :
 :
v. :
 :
THE ARCHDIOCESE OF :
PHILADELPHIA : NO. 97-2854

MEMORANDUM ORDER

This action arises from a joint project whereby the parties were to prepare and publish abridged adaptations of the English version of the Catechism of the Catholic Church. The project was never completed.

Plaintiff alleges that defendant breached contractual obligations to plaintiff, negligently misrepresented its willingness and ability to complete the project and wrongfully converted the texts prepared by plaintiff. Plaintiff also seeks a declaratory judgment defining the relative rights of the parties in the abridged and adapted texts.

Presently before the court is defendant's Motion to Dismiss Counts III through VI of plaintiff's complaint.

Dismissal for failure to state a claim is appropriate only when it appears beyond doubt that plaintiff can prove no set of facts to support its claim which would entitle it to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion

tests the legal sufficiency of a claim accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed when the facts alleged and the reasonable inferences therefrom are legally insufficient to support the relief sought. See Pennsylvania ex. rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988).

Accepting as true the factual allegations of plaintiff's complaint and viewing the documents attached thereto, see Fed. R. Civ. P. 10(c), the court is unable to conclude beyond doubt that plaintiff will be unable to support its claims of conversion (Count III), breach of the duty of good faith and fair dealing (Count IV), negligent misrepresentation (Count V) or copyright ownership of the adapted abridgements of the Catechism (Count VI).

Plaintiff concedes that his prayer for punitive damages in Count IV is misplaced as punitive damages are not available for any contractual breach of the duty of good faith and fair dealing. See Batka v. Liberty Mut. Ins. Co., 486 F. Supp. 582 (E.D. Pa. 1980) ("Punitive damages are not recoverable in a contract action in Pennsylvania").

ACCORDINGLY, this day of March, 1998, upon consideration of defendant's Motion for Partial Dismissal of

Plaintiff's Complaint Pursuant to Rule 12(b)(6) (Doc. #4), and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED IN PART** in that plaintiff's claim for punitive damages in Count IV is **DISMISSED** and the motion is otherwise **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.

The classic definition of conversion under Pennsylvania law is "the deprivation of another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification." Stevenson v. Economy Bank of Ambridge, 197 A.2d 721, 726 (1964); Bank of Landisburg v. Burruss, 524 A.2d 896 (Pa. Super. Ct. 1987), allo. denied, 532 A.2d 436 (Pa. 1987).