

# MARKS & WEINBERG, P.C.

## Medimatch, Inc. v. Lucent Technologies, Inc. 2000 WL 1672857 (N.D. Cal. Oct. 24, 2000)

Between 1993 and 1996, plaintiff acquired various business telephone equipment from the defendant. In 1998 and 1999, the defendant informed the plaintiff that the equipment was not Y2K compliant. In December 1999, the plaintiff removed the defendant's systems from operation and leased replacement equipment with fewer functions from another vendor. Plaintiff then filed suit alleging that Defendants knew that their equipment was not Y2K compliant, that they misrepresented or concealed this information from the plaintiff, that they sold such equipment with the promise that it would last well into the future and finally, that Defendants refused to repair or replace the equipment for no additional charge. The Northern District was here asked to rule on several motions to dismiss.

Analyzing these claims, the court first considered the claim under the Y2K Act. This Act outlines specific notice and pleading requirements for any Y2K action brought after January 1, 1999, for a Y2K failure occurring before, or which could potentially occur before, or has allegedly caused harm or injury before January 1, 2003. If an action falls within that time frame, the Act requires a specific statement of the nature and amount of damages, a specific description of the manifestations of material defects in the products, and a statement of facts giving rise to a strong inference that the defendants acted with the required state of mind. Id. at \*3. Because the amount of damages actually claimed



remained ambiguous, the court held that the claim made pursuant to the Y2K Act was not pleaded properly and consequently it was dismissed.

The court next considered the plaintiff's cause of action for violation of the New Jersey Consumer Fraud Act. Defendants argue that the statute of limitations ran on the action and that therefore, the court should have dismissed the action. On appeal the court held that the discovery rule applies to actions for consumer fraud. The defendants consequently argued that the plaintiffs discovered the injury or potential injury as a result of the widespread knowledge of the problems associated with Y2K. Thus, the defendants argued, the plaintiffs had imputed knowledge of the cause of action. Further, as a result of a posting on the defendants website relating the problems associated with the upcoming Y2K problem, defendants argue that the plaintiff had further opportunity to discover the cause of action and consequently, had imputed knowledge for that additional reason. The court rejected both of these arguments. Thus, the action was not barred by the statute of limitations.

The court then moved on to address the substantive claims of the Consumer Fraud allegation. In order to establish a cause of action, the plaintiff must prove that the defendant engaged in an affirmative act. Liability will accrue even in the absence of knowledge of the misrepresentation, negligence or the intent to deceive. The court in looking to the transaction found that the defendant's statements in regard to the future applicability of its equipment exceeded mere puffery and constituted affirmative acts of misrepresentation sufficient to satisfy the element of the cause of action. The plaintiffs also alleged that defendants engaged in fraudulent omissions. In order to establish such an omission, plaintiff must show an actual intent on the part of the defendant to defraud. The court held that the plaintiffs plead specific facts indicating knowledge of an easily understood problem, that defendants continued to sell their products without warning consumers of these problems, that this failure to warn was directly related to the plaintiff's injuries, and that therefore, defendant was found liable for fraudulent



omissions. The final allegation by the plaintiff involved breach of the implied warranty of merchantability. The court dismissed this claim as barred by a contractual provision whereby purchaser waived any warranties of merchantability or fitness for a particular purpose. This provision was also extended to subsequent oral and written agreements. Thus, the plaintiff's claim was dismissed.

In sum, the plaintiff's claim for violation of the Y2K Act was dismissed for insufficient pleadings; the claim for Consumer Fraud was allowed; and the claim for breach of the implied warranty of merchantability was dismissed.

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