

proof that Henderson had apparent authority to act on behalf of JAH. However, given the procedural posture of the case, BLH is not required to prove every element of its claims. The motion to dismiss this claim is denied.

E. Fraud

Henderson has also moved to dismiss the fraud claim on the grounds that BLH has not pled fraud with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure. Having found that BLH has adequately plead fraud by alleging the "who, what, when, where, and why," the Court rejects Henderson's motion to dismiss the fraud claim.

Under Rule 9(b), a heightened pleading requirement exists for fraud claims, such that a party alleging fraud or mistake "must state with particularity the circumstances constituting fraud or mistake." Only "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally."⁶² Thus, a claim of fraud cannot be based on mere "speculation and conclusory allegations,"⁶³ and the Fifth Circuit strictly interprets the requirements for pleading fraud.⁶⁴ Essentially, Rule 9(b) "requires 'the who, what, when, where, and how' to be laid out."⁶⁵

Considering the allegations pled, the Court fails to see how BLH has not sufficiently stated a claim for fraud. The "who" is clearly Marvin Henderson. The "what" is clearly the re-negotiation of the terms of the contract regarding the casino vessel and Ivey House.

⁶² Fed. R. Civ. P. 9(b).

⁶³ *U.S. ex rel. Willard v. Humana Health Plan of Tex.*, 336 F.3d 375, 385 (5th Cir. 2003).

⁶⁴ *Flaherty & Crumrine Preferred Income Fund, Inc. v. TXU Corp.*, 565 F.3d 200, 207 (5th Cir. 2009), cert. denied, 558 U.S. 873, 130 S.Ct. 199, 175 L.Ed.2d 125 (2009).

⁶⁵ *Benchmark Elecs., Inc. v. J.M. Huber Corp.*, 343 F.3d 719, 723 (5th Cir. 2003) (quoting *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1139 (5th Cir. 1992)).

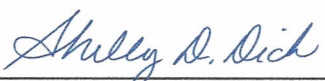
The “when” is the times that Henderson negotiated on behalf of JAH and allegedly signed documents to this effect;⁶⁶ the “when” is also alleged to be April 11, 2016, when Henderson declared that he was not a shareholder or officer of JAH although he had acted as such on several occasions with BLH.⁶⁷ Although the “where” is not clearly spelled out in the pleadings, the Court and Marvin Henderson can easily ascertain that the “where” are the places where these negotiations allegedly took place and he allegedly signed the documents. BLH has also alleged the “why” – that Henderson perpetuated this fraud to personally benefit himself.⁶⁸ Based on the allegations set forth, the Court finds disingenuous Henderson’s argument that must “read the tea leaves” to analyze the claims brought against him when the allegations are clear. Therefore, the Court finds that BLH has stated a plausible claim for relief with adequate particularity, and Henderson’s motion to dismiss the fraud claim is denied.

IV. CONCLUSION

For the reasons set forth above, Defendant’s *Motion to Dismiss*⁶⁹ is DENIED.

IT IS SO ORDERED.

Baton Rouge, Louisiana, this 4th day of January, 2017.



SHELLY D. DICK, DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

⁶⁶ Rec. Doc. No. 25-4, signed by Marvin Henderson on May 31, 2012; Exhibit 25-5, signed by Marvin Henderson on June 8, 2012.

⁶⁷ See Rec. Doc. No. 13-2, Declaration of Marvin Henderson.

⁶⁸ See Rec. Doc. No. 25, ¶15, ¶16.

⁶⁹ Rec. Doc. No. 60.