

**United States Bankruptcy Court  
District of New Mexico**

**Document Verification**

**Case Title:** Desks By Design, Inc., et al. v. Ralph Laranaga III, et al.  
**Case Number:** 03-01216  
**Nature of Suit:**  
**Judge Code:** S  
**Reference Number:** 03-01216 - S

Document Information		
<b>Number:</b>	22	
<b>Description:</b>	Order Denying Vialpando's Motion to Dismiss.	
<b>Size:</b>	3 pages (11k)	
<b>Date Received:</b>	04/14/2004 01:29:03 PM	<b>Date Filed:</b> 04/14/2004 <b>Date Entered On Docket:</b> 04/16/2004
Court Digital Signature		<a href="#">View History</a>
55 84 69 10 26 0f fc 8e 2d 6a b6 10 f2 99 16 cc cb a9 1b 23 32 7b 32 a8 72 d0 48 28 e1 03 aa b8 5a c3 2f 79 69 1a 6a ad 37 13 bc 52 90 a5 00 49 23 3d a6 04 04 0d d9 0a a4 e9 bf 6f bd 0f 2f b3 3c b2 8d 04 65 f1 21 02 80 c1 73 f2 b1 23 d3 3a bf 06 7a 09 66 8d ba 4c 9d 7a e6 5a 20 ad 73 a7 9b a2 2c 15 8f ba 5c b6 4a 38 4f ae 79 4d 53 43 fb 2f 4e cf 6e a8 09 8a f9 c5 76 2a dd 1d ae 50		
Filer Information		
<b>Submitted By:</b>	James E Burke	
<b>Comments:</b>	Order Denying Vialpando's Motion to Dismiss	

**Digital Signature:** The Court's digital signature is a verifiable mathematical computation unique to this document and the Court's private encryption key. This signature assures that any change to the document can be detected.

**Verification:** This form is verification of the status of the document identified above as of *Wednesday, December 22, 2004*. If this form is attached to the document identified above, it serves as an endorsed copy of the document.

**Note:** Any date shown above is current as of the date of this verification. Users are urged to review the official court docket for a specific event to confirm information, such as entered on docket date for purposes of appeal. Any element of information on this form, except for the digital signature and the received date, is subject to change as changes may be entered on the Court's official docket.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:

D IV DESIGNS, INC.,  
Debtor.

No. 11-03-11984 SS

DESKS BY DESIGN, INC., et al.,  
Plaintiffs,

v.

Adv. No. 03-1216 S

RALPH LARANAGA III, et al.,  
Defendants.

**ORDER DENYING VIALPANDO'S  
MOTION TO DISMISS**

This matter is before the Court on Defendant Vialpando's Motion to Dismiss and Plaintiffs' Response thereto. Defendant Patrick Vialpando is self-represented. Plaintiffs are represented by Felker, Ish, Ritchie & Geer, P.A. (Randolph B. Felker). For the reasons set forth below, the Court finds that the motion is not well taken and should be denied.

When considering a motion to dismiss, the Court takes as true all well pleaded facts. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Thompson v. Montgomery & Andrews, P.A., 112 N.M. 463, 464, 816 P.2d 532, 533 (Ct. App.), cert. denied, 112 N.M. 388, 815 P.2d 1178 (1991).

In New Mexico, "Conversion is the unlawful exercise of dominion and control over property belonging to another in defiance of the owner's rights, or acts constituting an

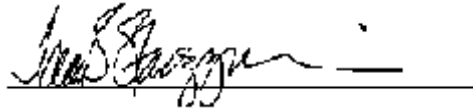
unauthorized and injurious use of another's property, or a wrongful detention after demand has been made." Security Pacific Fin. Serv., a Division of Bank of America v. Signfilled Corp., 125 N.M. 38, 43, 956 P.2d 837, 842 (Ct. App. 1998).(Citation omitted.) See also Roller v. Smith, 88 N.M. 572, 573, 544 P.2d 287, 288, cert. denied 89 N.M. 6, 546 P.2d 71 (1975); Molybdenum Corp. of America v. Brazos Eng'g Co., 81 N.M. 708, 710, 472 P.2d 971, 973 (1970). A third party who receives possession of personal property from another who does not have the power to transfer the item is subject to liability to the third person entitled to immediate possession of the item. Bruton v. Sakariason, 21 N.M. 438, 155 P. 725, 726 (1916); Restatement (Second) of Torts § 229, Comment b ("[A] purported sale, lease, pledge, gift, or bailment which is ineffectual as against the true owner of the chattel makes the purported purchaser, lessee, pledgee, donee, or bailee subject to liability to the owner for conversion.")

Plaintiffs have alleged that Larranaga improperly charged expenses and purchases to Plaintiffs for the benefit of Vialpando, and that Larranaga utilized corporate funds and accounts to pay Vialpando's personal living expenses. They further allege that the purchases made by Larranaga were for the benefit of Vialpando and were specially ordered and

earmarked for Vialpando, and that Vialpando knew or should have known of the use of the corporate funds and accounts by Larranaga. This states a claim under New Mexico law for conversion against Vialpando.

IT IS ORDERED that the Vialpando's Motion to Dismiss is hereby denied.

IT IS FURTHER ORDERED that Patrick Vialpando shall file an answer to the complaint within 30 days of the date of entry of this Order.



Honorable James S. Starzynski  
United States Bankruptcy Judge

I hereby certify that on April 14, 2004, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

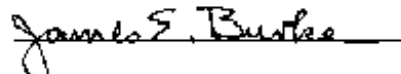
George M Moore  
PO Box 216  
Albuquerque, NM 87103-0216

Gary B Ottinger  
PO Box 1782  
Albuquerque, NM 87103-1782

Randolph B Felker  
911 Old Pecos Trl  
Santa Fe, NM 87505-0366

Patrick Vialpando  
4044 Painted Pony Circle  
Santa Fe, NM 87507

Peter D White  
2213 Brothers Rd Ste 400  
Santa Fe, NM 87505-6994



D Diego Zamora  
444 Galisteo St Ste E  
Santa Fe, NM 87501-2648