

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D35556
H/W/kmb

_____AD3d_____

Argued - April 17, 2012

RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2011-01930

DECISION & ORDER

General Motor and Truck Repair, Inc., et al., appellants,
v HOP Energy, LLC, et al., respondents.

(Index No. 18175/10)

William V. DeCandido, P.C., Forest Hills, N.Y., for appellants.

Levett Rockwood, P.C., New York, N.Y. (Robert Laplaca of counsel), and Siegle & Sims, LLP, New York, N.Y. (Eric Siegle of counsel), for respondent HOP Energy, LLC (one brief filed).

Davidoff Malito & Hutcher, LLP, Garden City, N.Y. (Mark E. Spund of counsel), for respondent Century Petroleum, Ltd.

Norton & Associates, LLC, New York, N.Y. (Michael E. Norton of counsel), for respondent Metro Terminals Corp.

Anthony P. DiCaprio, Rye, N.Y., for respondent Clean Fleet Fueling Corp.

Renda & Associates, P.C., Brooklyn, N.Y. (Sigismondo F. Renda of counsel), for Chief Energy Corp. (no brief filed).

In an action, inter alia, to recover damages for unfair competition and tortious interference with business relations, and for declaratory and injunctive relief, the plaintiffs appeal from an order of the Supreme Court, Queens County (Strauss, J.), dated January 18, 2011, which denied their motion, in effect, for summary judgment on so much of the complaint as sought certain declaratory and injunctive relief, and granted the separate cross motions of the defendants HOP

November 28, 2012

Page 1.

GENERAL MOTOR AND TRUCK REPAIR, INC. v HOP ENERGY, LLC

Energy, LLC, Century Petroleum, Ltd., Metro Terminals Corp., Clean Fleet Fueling Corp., and Chief Energy Corp. pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against each of them.

ORDERED that the order is affirmed, with one bill of costs.

The plaintiffs failed to establish their prima facie entitlement to judgment as a matter of law on so much of the complaint as sought certain declaratory and injunctive relief. Accordingly, the Supreme Court properly denied their motion, in effect, for summary judgment on those causes of action, regardless of the sufficiency of the defendants' opposition papers.

The Supreme Court properly granted the moving defendants' separate cross motions pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against each of them, as the allegations in the complaint were insufficient to make out a cognizable cause of action.

BALKIN, J.P., LEVENTHAL, HALL and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court