

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15  
Justice

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HING LAM and DEREN CHEN

Plaintiffs,

Index No. 18346/2006

Motion Date 01/16/07

- against -

Motion Cal. No. 05

SILVIO SPALLONE, individually and acting  
as Owner/Agent/Successor in interest of  
52<sup>nd</sup> DEVELOPMENT, INC. and 52<sup>nd</sup> DEVELOPMENT,  
INC.

Defendants.

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The following papers numbered 1 to 10 read on this motion by the  
defendants for an order dismissing the complaint pursuant to CPLR  
§3211(a) (1), (a) (5), (a) (7).

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Exhibits-Service.....	5 - 7
Reply Affirmation-Exhibits-Service.....	8 - 10

Upon the foregoing papers it is **ORDERED** that the motion is  
decided as follows:

This is an action for fraud, civil conspiracy and breach of  
contract. Plaintiffs are two of the principles of a corporation  
that contracted with defendant 52<sup>nd</sup> Development, Inc. for the  
purchase of property located at 25-25 College Point Boulevard and  
25-21 College Point Boulevard. Defendant Silvio Spallone  
("Spallone") is the principle of the corporate defendant.  
Plaintiffs allege that defendants conspired with non-party Roger  
Kuan in defrauding them of their share of the proceeds from the  
sale of the subject property.

Defendants now move, pursuant to CPLR §3211(a) (1), (a) (5) and  
(a) (7), to dismiss the complaint. Defendants assert that each of  
the six causes of action should be dismissed because the plaintiffs  
have failed to state a cause of action, the action cannot be  
maintained due to payment and release, and there exists a defense  
to this action based on documentary evidence.

It is asserted that, pursuant to CPLR §3211(a) (1), the

documentary evidence proves that plaintiffs cannot maintain an action. Plaintiffs' fifth and sixth causes of action state that defendants injured plaintiffs by obtaining a General Release from liability from non-party Roger Kuan, and that defendants breached the subject contract of sale. A review of the subject contract reveals that plaintiffs were not parties to the contract of sale. The General Release discloses that it was made by Roger Kuan, personally, and not in the name of the corporation. Thus, plaintiffs, in their individual capacities, do not have standing to sue over either document. It is well-settled that non-parties to a contract, lack the required privity to sue. A non-party may sue to enforce a contract only if it can be demonstrated that the non-party is an intended third-party beneficiary of the contract. (See *Green v. Fox Island Park Autobody*, 255 AD2d 417[2d Dept, 1998]). In this action, plaintiffs have offered no evidence that they were intended third-party beneficiaries to the contract of sale, or of the General Release. Accordingly, defendants' motion to dismiss, pursuant to CPLR §3211(a)(1) is granted, and plaintiffs fifth and sixth causes of action must be dismissed.

Defendants also moves, pursuant to CPLR §3211(a)(7), to dismiss the complaint for plaintiffs' failure to state a cause of action. However, a court may only grant such a motion if, from the pleadings' four corners, factual allegations are discerned which do not manifest any cause of action cognizable at law. In furtherance of this task, the court liberally construes the complaint, accepts as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion, and accords the plaintiff the benefit of every possible favorable inference (see, *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144 [2002]).

Plaintiffs' first and second causes of action allege that defendants were involved in a civil conspiracy with non-party Roger Kuan to defraud the plaintiffs. However, it is well-settled that New York does not recognize a cause of action for civil conspiracy (See *Chiaramonte, v. Boxer*, 122 AD2d 13 [2d Dept. 1986]; *Burns, Jackson, et al. v. Lindner, et al*, 88 AD2d 50 [2d Dept. 1982]). Thus, plaintiffs' first and second causes of action must be dismissed pursuant to CPLR §3211(a)(7).

Plaintiffs' third cause of action alleges that defendants dissolved the corporation in furtherance of the conspiracy to defraud the plaintiffs. As previously stated, New York does not recognize a cause of action for civil conspiracy. Further, plaintiffs do not allege that they are shareholders of the defendant corporation, intended third-party beneficiaries of its actions, or are in any way related to the defendant corporation. Thus, plaintiffs have failed to allege that they can maintain a cause of action arising from the corporation's dissolution. (See *Independent Investor Protective League, et al, v. Time, Inc.*, 50

NY2d 259 [1980]). Accordingly, pursuant to CPLR §3211(a)(7), plaintiffs' third cause of action must be dismissed.

Finally, plaintiffs' fourth cause of action alleges that the defendants interfered with the business relationship between the plaintiffs and non-party Roger Kuan. In order to maintain an action for interference with a business relationship, plaintiffs must plead that the defendants had knowledge of the relationship between the parties and Roger Kuan, that the defendants had knowledge of a contract between the parties and Roger Kuan, and interfered with this relationship by tortious or unlawful activity. (See *A.S. Rampell, Inc. v. Hyster Co.*, 3 NY2d 369 [1957]; *Guard-Life Corp. v. Parker Hardware Mfg. Corp.*, 50 NY2d 183[1980]). A review of the complaint in this action reveals that plaintiffs have failed to plead that the defendants knew of plaintiffs' relationship or contract with Roger Kuan, or that defendants tortiously or unlawfully interfered. Accordingly, defendants' motion, pursuant to CPLR §3211(a)(7), is granted and plaintiffs' fourth cause of action must be dismissed.

Thus, it is ordered that the plaintiffs' complaint is hereby dismissed in its entirety against all defendants. The foregoing constitutes the order, judgment and decision of this court.

Dated: March 22, 2007

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**JANICE A. TAYLOR, J.S.C.**