

**SBC Telecom Consulting Inc. v Vega**

2016 NY Slip Op 30196(U)

January 15, 2016

Supreme Court, New York County

Docket Number: 651352/2015

Judge: Donna M. Mills

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 58

-----X  
SBC TELECOM CONSULTING INC.  
D/B/A SBC FINANCIAL,

Plaintiff,

Index No.:  
651352/2015

-against-

ARMANDO VEGA, VEGA CREDIT CARE  
LLC, JOHN DOES #'S 1-10 AND ABC  
CORP. #'s 1-10,

Defendants.

-----X  
**DONNA MILLS, J. :**

Plaintiff SBC Telecom Consulting Inc. d/b/a SBC Financial (SBC Telecom) brings this complaint against defendants Armando Vega (Vega), Vega Credit Care LLC (Vega Credit), John Does #'s 1-10 and ABC Corp. #'s 1-10<sup>1</sup>, alleging 11 causes of action, including breach of contract, breach of fiduciary duty, tortious interference with contractual relations, libel and defamation per se. Vega is an ex-employee of SBC Telecom. Vega, acting pro se, moves, on behalf of himself and Vega Credit, pursuant to CPLR 3211 (a) (1) and (7), for an order dismissing the complaint.

#### **BACKGROUND AND FACTUAL ALLEGATIONS**

Plaintiff is a company that labels itself as an "entity in the merchant cash advance business." Complaint, ¶ 2. Vega

---

<sup>1</sup> The court has not been informed whether there are any John Doe or ABC Corp. people or entities.

Credit is a limited liability company, of which Vega is a principal. Vega was hired by SBC Telecom in August 2014 to work as a call center agent. His duties included "opening and closing deals" and he was responsible for gathering applications and financial statements from prospective clients. Aff of Vanessa Cardona, ¶ 6. When he was hired, Vega entered into an employment agreement (Employment Agreement) which included a confidential non-disclosure non-circumvent agreement (Non-disclosure Agreement).

In pertinent part, the Employment Agreement sets forth that plaintiff is engaged in "purchasing business receivables at discount prices" and that it is allowing Vega to have "access to these special unique assets for the purposes of establishing, developing and expanding the Company's client base and profitability." Complaint, exhibit A at 1. In return for this access, Vega agreed that he would not disclose confidential information that he has learned by being associated with the company.

According to the Employment Agreement, confidential information includes, among other things, all "data, analyses, reports, products . . . trade secrets and other intellectual property . . . ." *Id.* at 4. Pursuant to the Employment Agreement, Vega is not to compete with SBC Telecom for one year after his termination date.

The Non-disclosure Agreement sets forth, in pertinent part, that Vega agrees that he will not disclose confidential information about SBC Telecom, or use it for the purpose of competing with SBC Telecom. It also states that Vega is not to make contact with certain listed "individuals and entities with specific knowledge in the field of advanced merchant advance technology," among other people, for 36 months after the date the Non-disclosure Agreement is terminated. Complaint, exhibit B at 5.

According to SBC Telecom, on November 13, 2014, Vega unsuccessfully attempted to bribe one of its employees by offering her \$100.00 for user names and passwords to be able to access confidential clients' information. Around the same time, SBC Telecom allegedly found documents in a stairwell near Vega's office. These documents were client files that Vega had been working on.

Due to both of these incidents, SBC Telecom terminated Vega in the morning of November 18, 2014, and told him to go home. Vega left the office but then contacted SBC Telecom, claiming that he did nothing wrong and that he wanted to pick up his pay check. SBC Telecom told Vega that it would mail him his paycheck, as per company policy. Vega then came to the office and demanded his paycheck. SBC Telecom called security and the police, and Vega allegedly started to yell at the other SBC

employees that they should "quit ahead of time because the company was not going to pay them." Complaint, ¶ 39.

On November 19, 2014, according to SBC Telecom, Vega threatened that if he was not given his check and an extra amount, he would call SBC Telecom clients and have them stop payments on their loans. He also allegedly threatened, in the same conversation, "watch what I will put on Ripoff Report." *Id.*, ¶ 47.

SBC Telecom believes that, after he was terminated, Vega posted, or had others post, disparaging posts on [www.ripoffreport.com](http://www.ripoffreport.com) (ripoffreport) about SBC Telecom. The first post was posted around November 17, 2014 from a "madmerchant" in Atlanta, Georgia. Vega had not yet been terminated, but SBC Telecom avers that he posted this, or had someone else do it on his behalf. The post stated the following, in pertinent part:

"I was promised \$50,000 and later I found out that they only want to give me \$7000.00 with a specified amount of \$10,430.00 or the money I would have to pay back . . . all they want is to get you for a micro loan at 49% on a 30 day term and you never here [sic] from them again. they [sic] have no intention of giving you the second loan amount there [sic] whole business model is lieing [sic] to you and making an empty promise on funds you will never get . . . Thay [sic] are crooks and losers and thives [sic]."

Complaint, exhibit C at 2-3.

The second posting, made by a user in Wisconsin, was posted in January 2015. The online complaint stated the following, in relevant part:

"sbc financial contacted me and said they could give me a large working capital loan With [sic] a really low interest rate. right [sic] before I was to receive it they wanted me to first pay off a smaller loan to see if I was credit worthy. I paid off the smaller loan, then they said they would wire the larger amount to my account. Not only did they not wire it, but they keep trying to take money out of my account for the loan I paid on. They were very rude to me when I would talk to them."

Complaint, exhibit D at 2.

The third posting, allegedly done by Vega, was from a user in Florida in February 2015. The posting states, "[t]hey loan a small amount, sent stranger to our home/office, never paid . . . total ripoff, nothing but lies and deceit." Complaint, exhibit E at 2.

Vega, moving on behalf of himself and Vega Credit, argues that he did not breach any agreements and that he did not make any libelous statements against SBC Telecom. Vega believes that he was wrongfully terminated. In addition, any statements that were made, "albeit not originated or encouraged by [Vega], were clear expressions of opinion." Motion to dismiss at 5.

Vega introduces six previous postings on ripoffreport.com, that were made prior to when Vega was terminated. The postings, dated between 2013 and 2014, were from employees who had bad experiences during their training with SBC Telecom, as well as from other people who had bad experiences. For example, one of the postings was dated September 19, 2014 and entitled "SBC Financial scam, scam, scam, they will not pay you but they will

waste your day." Motion to dismiss, exhibit F at 1. In this posting, a potential employee states that the "office was small and shabby . . . [a]fter an entire day and a one hour lunch break, I was told that I was the worst of my training class and that they would not be hiring me. They let me go . . . after wasting my day." *Id.* at 2.

Another posting is from a potential employee who writes, "[t]his company is a freaking SCAM . . . AND ESSENTIALLY JOHN BUTLER IS A DRUG ADDICT." Motion to dismiss, exhibit E at 2.

Finally, another posting, dated June 11, 2014, was labeled, "SBC Financial SBC Corporation, John Butler . . . Fraudulent Lending Scheme New York." Motion to dismiss, exhibit C at 1. The posting included allegations about SBC that it was not registered with FINRA and that it was not registered with the New York Secretary of State. The posting stated that SBC Telecom was a fraud/scam and to not waste time doing business with them. SBC Telecom contacted the poster, via ripoffreport.com, with a "cease and desist" letter about the poster's alleged defamatory comments. The poster wrote back, on ripoffreport.com, "[h]ave you guys filed with FINRA yet? No? Then you're still a complete scam. What are your funding sources? Why are you not registered with the NY SOS? Don't make empty threats it makes you look stupid." *Id.* at 2.

Vega also disputes the allegations that he attempted to

bribe an employee. He questions why would he have a reason to ask for this, if according to the complaint, he threatened that he had access to all of the clients and would make them default in their payments.

In response, SBC Telecom acknowledges that the allegedly defamatory postings pre-dating Vega's employment were not made by Vega and are not part of its complaint. Nonetheless, it maintains that the postings which were allegedly made by Vega, are "false and constitute defamation as a matter of law." Schuchatowitz affirmation, ¶ 48. SBC Telecom avers that Vega cannot prove that he did not make the posts or that he did not ask someone to post it on his behalf. It states, "[t]he Ripoff Reports above are bursting with assertions of facts as to alleged particular transactions, loan amounts, interest rates that either occurred or did not occur." *Id.*, ¶ 47.

SBC Telecom continues that Vega allegedly breached his employment agreement by attempting to bribe an employee for the user names and passwords and by purportedly leaving client files loose in a stairwell. SBC Telecom further argues that Vega breached his employment agreement by making "threats to convince SBC Telecom's clients to default on their merchant cash advance obligations." *Id.*, ¶ 29. SBC Telecom provides one concrete example of how it was damaged by Vega's alleged actions. It claims that



"Upon information and belief, for example, due to Defendant Vega's efforts to convince Plaintiff SBC's client Allred Quality Exteriors LLC (hereinafter 'Allred') to default on their payments to Plaintiff, Allred defaulted on their payments and place [sic] an R08 stopped payment which caused damages to Plaintiff SBC's partner's payment processor as the maximum national reject payment rate is only 1% and Allred no longer want to make payments to the partner and has lost all faith in Plaintiff SBC and its ISO partner. Upon information and belief, Allred stopped payments on or about November 10<sup>th</sup> 2014, resumed payment through collection efforts and placed stop payments on or about December 15<sup>th</sup> 2014."

*Id.*, ¶¶ 30, 31.

According to SBC Telecom, since Vega's alleged postings, it has "suffered at least a 55% reduction in revenue, representing a loss of at least \$178,750.00 per month in revenue." Complaint, ¶ 55. SBC Telecom filed this complaint, with 11 causes of action, seeking ten million dollars in compensatory damages and two million dollars in punitive damages.

In the first cause of action for breach of contract, SBC Telecom claims that Vega breached his agreements with SBC Telecom by allegedly attempting to bribe an employee for access to user names and passwords, stealing the files and threatening to call clients and have them default on their loans and by making the internet postings. SBC Telecom states that it was damaged by Vega and Vega Credit's actions.

The second cause of action, for breach of the covenant of good faith and fair dealing, states that Vega compromised SBC Telecom's rights to receive the fruits of its relationships with

clients and other business by threatening to call clients and have them default.

In the third cause of action, SBC Telecom claims that Vega breached his fiduciary duty to SBC Telecom.

The fourth cause of action is for tortious interference with contract and business relationships. SBC Telecom maintains that it had valid contracts and/or business relationships, which were known by Vega, who then wrongfully interfered with these contracts/relationships.

In the sixth cause of action, grounded in promissory estoppel, SBC Telecom claims that it suffered damages as a result of its reasonable and foreseeable reliance on Vega's promises.

In the seventh cause of action, SBC Telecom alleges that Vega improperly converted the files belonging to SBC Telecom.

The seventh cause of action states that Vega was unjustly enriched at the expense of SBC Telecom.

In the eighth cause of action for libel, SBC Telecom claims that defendants harmed SBC Telecom by writing false statements and disseminating this information. SBC Telecom argues that, as a result of defendants' statements, it has suffered a loss of business and harm to its business reputation.

The ninth cause of action, grounded in slander, states that defendants have made false, slanderous and defamatory statements against SBC Telecom by creating the postings on ripoffreport.com.

SBC Telecom alleges that defendants engaged in defamation per se by disseminating false information about SBC Telecom's business.

In the eleventh and final cause of action, SBC Telecom contends that defendants are liable for trade libel for posting false, libelous and defamatory material with the intent to deter others from doing business with SBC Telecom.

#### DISCUSSION

##### Dismissal:

On a motion to dismiss pursuant to CPLR 3211, "the facts as alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference," and the court must determine simply "whether the facts as alleged fit within any cognizable legal theory." *Mendelovitz v Cohen*, 37 AD3d 670, 671 (2d Dept 2007); see also *P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 375 (1<sup>st</sup> Dept 2003).

Under CPLR 3211 (a) (7), "a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one." *Leon v Martinez*, 84 NY2d 83, 88 (1994) (internal quotation marks and citations omitted). Dismissal is warranted under CPLR 3211 (a) (1) "only if the documentary evidence submitted conclusively

establishes a defense to the asserted claims as a matter of law.” *Id.* However, “bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration.” *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013) (internal quotation marks and citation omitted).

Breach of Contract:

The complaint states, in vague terms, that Vega breached the agreements he had with SBC Telecom and that, as a result of his and Vega Credit’s actions, SBC Telecom was damaged. To start, a cause of action grounded in breach of contract cannot be alleged as against Vega Credit, because Vega Credit was not a party to the agreements. See *e.g. Black Car & Livery Ins., Inc. v H&W Brokerage, Inc.*, 28 AD3d 595, 595 (2d Dept 2006) (“the breach of contract cause of action was properly dismissed as to the respondent, since he was not a party to the agreement in question”).

The elements of a breach of contract claim are: (1) the existence of a valid contract; (2) performance of the contract by the injured party; (3) breach by the other party; and (4) resulting damages. *Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 (1<sup>st</sup> Dept 2007). On reply to the motion to dismiss, SBC Telecom still does not address exactly how Vega breached the two agreements that he entered into with SBC Telecom. SBC Telecom avers that, for example, Vega bribed an employee for user names

and passwords, threatened to call SBC clients and tell them to default, that he took files and that he made defamatory internet postings after he was terminated.

However, none of these actions constitutes a breach of the agreements. The agreements set forth that Vega was not to discuss SBC Telecom's confidential information, and that he was not allowed to speak to certain entities after he was terminated. Not only does SBC Telecom speculate that Vega called clients, even if he did, SBC Telecom only speculates that Vega told the clients confidential information or trade secrets about SBC Telecom. See e.g. *Gordon v Dino De Laurentiis Corp.*, 141 AD2d 435, 436 (1<sup>st</sup> Dept 1988) ("These vague and conclusory allegations are insufficient to sustain a breach of contract cause of action").

Moreover, even if Vega somehow breached the agreements, the breach of contract cause of action must be dismissed because SBC Telecom fails to set forth how it was damaged by Vega's actions. Its claims regarding loss of business after Vega allegedly contacted clients or posted comments online, are entirely speculative. "[T]he pleadings must set forth facts showing the damage upon which the action is based." *Id.*; see also *Arcidiacono v Maizes & Maizes, LLP*, 8 AD3d 119, 120 (1<sup>st</sup> Dept 2004) ("Plaintiffs' claim[] for breach of contract . . . [was] properly dismissed by reason of their failure to allege any basis

for an award of damages or to plead facts from which damages attributable to defendants' conduct might be reasonably inferred [internal citations omitted]").

Breach of the Covenant of Good Faith and Fair Dealing, Breach of Fiduciary Duty, Promissory Estoppel and Unjust Enrichment:

SBC Telecom states that, irrespective of the agreements signed by Vega, "Vega was bound to SBC Telecom by a covenant of good faith and fair dealing . . . in connection with the administration and implementation of the subject Agreement." Complaint, ¶ 61. Clearly, the alleged breach of the covenant of good faith and fair dealing is premised on the same set of facts that Vega breached his obligations under the agreements. As a result, this cause of action, as well as the ones for breach of fiduciary duty and unjust enrichment "are based on the same allegations and seek the same damages as the breach of contract . . . claim[] [and should be] dismissed as duplicative." *Ullmann-Schneider v Lacher & Lovell-Taylor, P.C.*, 121 AD3d 415, 416 (1<sup>st</sup> Dept 2014).

Moreover, "where there is an express contract no recovery can be had on a theory of implied contract. Without in some manner removing the express contract . . . it is not possible to ignore it and proceed in *quantum meruit* [internal quotation marks and citation omitted]." *SAA-A, Inc. v Morgan Stanley Dean Witter & Co.*, 281 AD2d 201, 203 (1<sup>st</sup> Dept 2001). Here, the agreements

signed by Vega when he entered into employment with SBC Telecom, which are valid and enforceable contracts, preclude SBC Telecom's claim alleging unjust enrichment.

In addition, SBC Telecom cannot successfully plead a cause of action for promissory estoppel because the "existence of valid and enforceable written contracts precludes recovery under the causes of action sounding in promissory estoppel and unjust enrichment, which arise out of the same subject matter."

*Grossman v New York Life Ins. Co.*, 90 AD3d 990, 991-992 (2d Dept 2011).

In sum, SBC Telecom has failed to sustain causes of action for breach of the covenant of good faith, breach of fiduciary duty, unjust enrichment and promissory estoppel, and these claims are dismissed.

Tortious Interference With Contract:

"The elements of a cause of action to recover damages for tortious interference with contract are the existence of a valid contract between it and a third party, the defendant's knowledge of that contract, the defendant's intentional procurement of the third party's breach of that contract without justification, and damages." *MVB Collision, Inc. v Allstate Ins. Co.*, 129 AD3d 1041, 1043 (2d Dept 2015).

SBC Telecom alleges that Vega interfered with its contracts and business relationships. However, the only example given,

which was set forth here in the facts, is when Vega allegedly told Allred to default on its loans. As a result of the default, SBC Telecom claims that SBC Telecom's payment processor suffered damages. As SBC does not claim that it itself suffered damages as a result of Vega's complained-of actions, it cannot sustain a cause of action for tortious interference with a contract and this claim must be dismissed. Moreover, SBC Telecom stated that Vega made this threat about calling clients after he was already terminated, yet SBC Telecom's opposition papers state that plaintiff made this call to Allred before Vega was terminated.

Conversion:

"A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights [internal citations omitted]."

*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 (2006).

SBC Telecom states that Vega stole files from the office "that he had left in the staircase" of SBC Telecom's building. Schuchatowitz affirmation, ¶ 18. Evidently the files remained at SBC Telecom's office. As SBC Telecom claims that the files remained in the stairwell and were not in Vega's possession, Vega does not have "dominion over the property." There is also no



nonspeculative allegation that it was Vega who left the files in the stairwell. As a result, SBC Telecom has failed to sufficiently plead a cause of action to recover damages for conversion, and it is dismissed.

Slander:

CPLR 3016 (a) provides that "[i]n an action for libel or slander, the particular words complained of shall be set forth in the complaint. . . ." In addition, "[t]he complaint also must allege the time, place and manner of the false statement and specify to whom it was made." *Dillon v City of New York*, 261 AD2d 34, 38 (1<sup>st</sup> Dept 1999).

SBC Telecom states that, "upon information and belief," Vega threatened to call existing clients and have them stop payments. This does not satisfy the pleading requirements of CPLR 3016 (a), as it does not state the particular slanderous words that Vega allegedly said to these clients, nor does it set forth the "time, place and manner of the false statement[s]." *Dillon v City of New York*, 261 AD2d at 38. Accordingly the cause of action for slander is dismissed.

Libel and Defamation Per Se:

SBC Telecom has accused Vega of posting, or having others post, four defamatory reviews of SBC Telecom's business on the site ripoffreport.com. As set forth in the facts, the postings, in sum, label SBC Telecom as a "scam," and complain that SBC

Telecom does not provide the loans as promised and that they waste the consumer's time and money. One of the postings calls SBC Telecom crooks, liars and thieves. SBC Telecom has surmised that, since the first alleged posting by Vega, it has suffered a reduction in revenue of at least 55%.

The specific elements to sustain a cause of action for defamation include a "false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se." *Dillon v City of New York*, 261 AD2d at 38. Libel is the written publication about someone that "is both false and defamatory." *Klepetko v Reisman*, 41 AD3d 551, 551 (2d Dept 2007).

Statements constitute defamation per se if they, in relevant part, "(i) charg[e] plaintiff with a serious crime; (ii) that tend to injure another in his or her trade, business or profession . . . ." *Liberman v Gelstein*, 80 NY2d 429, 435 (1992).

Statements of opinion, no matter how offensive, as opposed to statements of fact, cannot be the basis of a defamation claim. Whether words are defamatory is a legal question and "[t]he words must be construed in the context of the entire statement or publication as a whole, tested against the understanding of the average reader, and if not reasonably susceptible of a defamatory

meaning, they are not actionable and cannot be made so by a strained or artificial constriction." *Aronson v Wiersma*, 65 NY2d 592, 594 (1985). Applying these standards to the present situation, the postings are not actionable, because a reasonable reader would view the internet postings as grievances of angry consumers who utilized an internet forum as a way to express their opinions.

The present situation is similar to the one in *Matter of Woodbridge Structured Funding, LLC v Pissed Consumer* (125 AD3d 508, 508 [1<sup>st</sup> Dept 2015]), where an anonymous speaker posted negative comments about a private finance/structured settlement business on PissedConsumer.com, alleging that the business failed to fulfill its advertising promise, including statements such as "petitioner Lie[s] To Their Clients and will forget about you and . . . all the promises they made to you once you sign on the dotted line [internal quotation marks omitted]." The Court found that the statements were not actionable, holding "[a]lthough some of the statements are based on undisclosed, unfavorable facts known to the writer, the disgruntled tone, anonymous posting, and predominant use of statements that cannot be definitively proven true or false, supports the finding that the challenged statements are only susceptible of a nondefamatory meaning, grounded in opinion." *Id.* at 509.

The Court further concluded in the *Matter of Woodbridge*

*Structured Funding, LLC v Pissed Consumer* (125 AD3d 508), that the business could not demonstrate that it suffered injury to its business reputation as a result of the postings. Similarly, in the present situation, Vega has provided other disparaging posts about SBC Telecom. It is entirely speculative for SBC Telecom to conclude that it lost revenue as a result of potential consumers reading Vega's posts and not because the consumers read the other posts, or for other reasons.

In addition, statements calling SBC Telecom crooks, liars and thieves are not actionable. Courts have held that expressions such as these are nonactionable expressions of opinion because "[n]o reasonable person would conclude that . . . actual criminality is charged by the epithets thieves . . . [internal quotation marks omitted]." *Polish Am. Immigration Relief Comm. v Relax*, 189 AD2d 370, 374 (1<sup>st</sup> Dept 1993).

Accordingly, SBC Telecom cannot sustain a cause of action for libel or defamation per se against Vega or Vega Credit and these causes of action are dismissed.

Trade Libel:

Trade libel is the "knowing publication of false matter derogatory to the plaintiff's business of kind calculated to prevent others from dealing with the business or otherwise interfering with its relations with others, to its detriment . . . [A]ctual losses must be identified and causally related to the

alleged tortious act.” *Waste Distillation Tech. v Blasland & Bouck Engrs.*, 136 AD2d 633, 634 (2d Dept 1988). SBC Telecom is unable to establish that its losses were causally related to the alleged ripoffreport.com postings. As a result, it cannot sustain a cause of action for trade libel, and this cause of action is dismissed.

The court is aware that Vega moves here on behalf of himself and Vega Credit. As noted by SBC Telecom, in New York, pursuant to CPLR 321 (a), an LLC must appear by counsel in all litigation. See e.g. *Michael Reilly Design, Inc. v Houraney*, 40 AD3d 592, 593-594 (2d Dept 2007). Vega is not an attorney, and so, cannot represent Vega Credit in this action. Vega references the exception to this rule for small claims actions pursuant to NY City Civ Ct Act §§ 1809, 1809 (A); however, this statute is inapplicable to the current action. However, as no claim has been remotely demonstrated against Vega Credit, in the interests of judicial economy, all of the claims are dismissed as against Vega Credit as well.

#### Punitive Damages:

Punitive damages are permitted only when a “defendant’s wrongdoing is not simply intentional but evince[s] a high degree of moral turpitude and demonstrate[s] such wanton dishonesty as to imply a criminal indifference to civil obligations [internal quotation marks and citation omitted].” *Ross v Louise Wise*

Servs., Inc., 8 NY3d 478, 489 (2007). As the complaint does not set forth any cause of action, there can be no claim for punitive damages. Regardless, SBC Telecom has not alleged that defendants' conduct rises to this high level, despite claims of malice.

#### CONCLUSION

Accordingly, it is

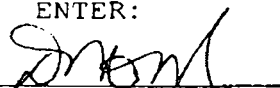
ORDERED that the motion of Armando Vega dismissing the complaint herein is granted, and the complaint is dismissed in its entirety as against Armando Vega and Vega Credit Care LLC, with costs and disbursements to said parties as taxed by the Clerk of the Court upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: \_\_\_\_\_

1/15/16

ENTER:



J.S.C.