

Hirschfeld v Citibank, N.A.

2003 NY Slip Op 30237(U)

April 14, 2003

Sup Ct, NY County

Docket Number: 603985/02

Judge: Emily Jane Goodman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **EMILY JANE GOODMAN**

PART 17

0603985/2002

HIRSCHFELD, ABRAHAM
vs
CITIBANK, N.A.

INDEX NO. 603985-02

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

SEQ 1

DISMISS ACTION

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

CLERK

APR 21 2003

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION**

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

Dated: April 14, 2003

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

J.S.C.

EMILY JANE GOODMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

-----X

ABRAHAM HIRSCHFELD,

Plaintiff,

Index No. 603985/02

-against-

CITIBANK, N.A. & CITIBANK PRIVATE BANK,

Defendant.

-----X

EMILY JANE GOODMAN, J.:

Defendant Citibank, N.A. and Citibank Private Bank (Citibank) move to dismiss the complaint in the above referenced action. Citibank Private Bank is not an independent entity, but a unit within Citibank, N.A.

This action is one in a series of actions that pro se plaintiff Abraham Hirschfeld (Hirschfeld) has brought against Citibank and others seeking damages for alleged losses arising out of Citibank closing Hirschfeld's accounts in April 2000. Hirschfeld alleges two causes of action. The first, sounding in breach of contract, claims that Citibank closed his accounts without justification in violation of his banking agreements with Citibank, and in contravention of federal banking regulations. The second cause of action alleges that Citibank violated the

covenant of good faith and fair dealing which is implied in all contracts.

In the first cause of action, in addition to alleging that Citibank violated the banking agreement by closing the accounts, Hirschfeld claims that, due to Citibank's influence, he was unable to obtain any new banking arrangements with any other reputable bank in New York City. Additionally, he contends, upon information and belief, that Citibank precipitated the closing of his account at the Nation Bank of Florida. Finally, Hirschfeld contends that Citibank cancelled a \$7 million line of credit at the same time that it closed his accounts, which prevented him from purchasing four commercial properties in Manhattan.

Defendant denies that it cancelled a \$7 million line of credit in April 2000. It contends that it has no record of Hirschfeld having any line of credit with Citibank, since at least 1999. Further, it points out that in a prior action, filed in September 1996, Hirschfeld made these same claims, with respect to the same properties. Thus, even if there were any merit to the claim, by Hirschfeld's own admission, the line of credit was cancelled prior to September 1996. As this action was not filed until October 2002, the statute of limitations would bar his claim.

In any event, Citibank refers to its banking agreement, which states "We reserve the right to close your account at any

time for any reason * * *." Notice of Motion, Exh. G, Chann Affirm., Exh. A, at 15. Citibank notes that Hirschfeld does not specify what agreement was breached, or what federal banking regulations were violated.

Hirschfeld has failed to indicate any contractual term that was violated by Citibank in closing his accounts. To the contrary, the banking agreement specifically provides that Citibank may close the account for any reason. Thus, even if Citibank closed the account without any justification, there would be no actionable claim. Although, in view of this conclusion, the Court need not address the statute of limitations defense, the Court notes that the identical claim regarding the cancellation of the \$7 million line of credit was raised in the 1996 action. Thus, if there had been a basis to seek recovery for that cancellation, it would be time-barred.

In the complaint¹, Hirschfeld seems to argue that Citibank engaged in tortious interference with a business relationship and with a prospective business relationship, without explicitly raising it as a separate cause of action. He contends that this occurred with respect to both his inability to open another bank account in New York, and the closing of his Florida bank account.

¹ In his response to the motion, Hirschfeld does not raise any facts or arguments of any legal relevance; therefore, the Court is relying solely on the allegations in the complaint to set forth Hirschfeld's position.

Leaving aside the propriety of combining both breach of contract and tortious interference in the same cause of action, the pleading of this claim is insufficient.

In order to plead a cause of action for tortious interference with respect to an existing contract, a party must allege "(1) the existence of a valid contract between plaintiff and a third party, (2) defendant's knowledge of the contract, (3) defendant's intentional procurement of a breach of the contract without justification, (4) actual breach of the contract, and (5) resulting damages." *American Preferred Prescription, Inc. v Health Mgt., Inc.*, 252 AD2d 414, 417 (1st Dept 1998). If the contract is a prospective contract, or an at-will contract, the plaintiff must allege that "wrongful means" were used, and demonstrate that a contract would have been entered into "but for" defendant's conduct. *Id.* at 418; *NBT Bancorp Inc. v Fleet/Norstar Fin. Group, Inc.*, 87 NY2d 614 (1996). "Wrongful means" include "physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure." *American Preferred Prescription, Inc. v Health Mgt., Inc.*, 252 AD2d at 418, quoting *Guard-Life Corp. v S. Parker Hardware Mfg. Corp.*, 50 NY2d 183, 191 (1980). Hirschfeld has not alleged that any wrongful means were used. Moreover, even if the banking agreement with Nation Bank of Florida was not an at-will contract, as the Citibank agreement was, Hirschfeld

has not alleged that the closing of the Florida account breached any contract. Further, Hirshfeld's general allegation that he was unable to open another bank account in New York fails to identify any prospective relation which has been impaired by Citibank's conduct. *Best Payphones, Inc. v Empire State Payphone Assoc.*, 272 AD2d 139 (1st Dept 2000). Thus, Hirschfeld has failed to properly allege any tortious interference claim, and to the extent that such a claim was pleaded, it must be dismissed. Consequently, the first cause of action is dismissed.

In response to the second cause of action, Citibank correctly argues that the covenant of good faith and fair dealing is merely an additional term read into an agreement, but does not support a separate cause of action. The covenant of good faith and fair dealing can provide a basis for a breach of contract claim, but cannot be an independent claim. Consequently, the second cause of action is dismissed as duplicative of the first cause of action. *City of New York v 611 West 152nd St., Inc.*, 273 AD2d 125 (1st Dept 2000).

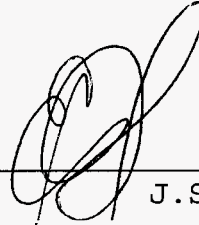
Accordingly, it is hereby

ORDERED that the motion to dismiss is granted, and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court on submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: April 14, 2003

ENTER :



J.S.C.

EMILY JANE GOODMAN