

Krinos Foods, Inc. v Vintage Food Corp.

2005 NY Slip Op 30026(U)

July 6, 2005

Supreme Court, New York County

Docket Number: 1_30060/4223

Judge: Helen E. Freedman

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

PRESENT: H. Freedman

PART 39

0604223/2004

KRINOS FOODS, INC.
VS
VINTAGE FOOD CORP.

C

INDEX NO. 604223/04

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

SEQ 1

DISMISS ACTION

The following papers, numbered 1 to _____ were filed in this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is decided in

accordance with the accompanying
memorandum of law

FILED

JUL 11 2005

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/6/05

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 39

-----x
KRINOS FOODS, INC.,

Plaintiff,

Index No. 604223/04

-against-

VINTAGE FOOD CORP.,

Defendant.

-----x
Helen Freedman, J.:

This is an action by plaintiff Krinos Foods, Inc. (Krinos) against defendant Vintage Food Corp. (Vintage) for tortious interference with contract and prospective business relations, unjust enrichment and unfair competition, in connection with a contract between Krinos and a third-party to distribute confectionary food products in the United States. Vintage moves, pursuant to CPLR § 3211, for an order dismissing the complaint. For the reasons stated below, the motion is granted and the complaint is dismissed.

Krinos and Vintage are both New York corporations in the business of importing and selling specialty food products. Non-party Sagra is a Turkish company which manufactures confectionary and bakery products and exports them to over fifty countries, including the United States.

On March 13, 2003, Krinos and Sagra executed a written agreement whereby Krinos became the sole distributor of certain

Sagra products in North America. Krinos also became the sole distributor of all Sagra products in the United States, with the exception of Sagra's hazelnut spread. In exchange, Krinos was required to import and sell a minimum of \$150,000 worth of Sagra products. Failure to meet the minimum amount was a ground for termination upon notice by Sagra.

The initial agreement was for one year. It stated that it would be "considered tacitly extended" for an additional year, on an ongoing basis, unless either party gave three months notice of termination in a given year. The parties further agreed to establish new minimum sales requirements for each year that the agreement was extended.

Krinos alleges that in April of 2003, it discovered that Vintage was importing the same products as Krinos and selling them in the same territory for which Krinos had exclusive rights. Krinos allegedly informed Vintage of its exclusive arrangement with Sagra. Krinos alleges that in May of 2003, Vintage acknowledged the infringement and agreed to cease selling Sagra products in the territory at issue as soon as it sold the remainder of its existing products.

Krinos alleges that it discovered in November of 2003 that Vintage was still importing and selling Sagra products in Krinos's territory. Vintage allegedly promised to cease such sales, but

continued to sell the products.

Krinos states that it unsuccessfully attempted to resolve this dispute by contacting Vintage in April of 2004. Thereafter, on July 27, 2004, Krinos sent a written demand to Vintage to cease violating the exclusive distributorship agreement between Sagra and Krinos. On August 27, 2004, Sagra terminated the agreement with Krinos based on Krinos's failure to reach its minimum import and sales quota. Krinos alleges that it failed to meet its quota because of the competing sales by Vintage.

Krinos commenced this action in December of 2004, asserting claims for tortious interference with contract and prospective business relations. The complaint also sets forth claims for unjust enrichment and a constructive trust as well as for unfair competition. Vintage now moves to dismiss the complaint for failure to state a claim.

On a motion to dismiss pursuant to CPLR 3211, the court must afford the complaint a liberal construction. Leon v Martinez, 84 NY2d 83, 878 [1994]. The court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine whether the facts as alleged fit within any cognizable legal theory. Goshen v Mutual Life Ins Co of New York, 98 NY2d 314, 326 [2002]; Leon v Martinez, supra at 87-88.

1. Tortious Interference with Contract

The essential elements of a claim for tortious interference with contract "are the existence of a valid contract between plaintiff and a third party, defendants' knowledge of that contract, defendants' intentional procurement of the third party's breach of that contract without justification, and damages." Weaver v. Town of Rush, 1 AD3d 920 [4th Dept 2003]; see, Lama Holding Co v Smith Barney, 88 NY2d 413, 424 [1996]; NBT Bancorp Inc v Fleet/Norstar Financial Group, Inc, 87 NY2d 614 [1996]; Kronos, Inc v AVX Corp, 81 NY2d 90, 94 [1993].

In NBT Bancorp, the plaintiff argued that "as a matter of precedent and policy, a defendant's deliberate interference with plaintiff's contractual rights that causes damage should be punishable as tortious interference whether or not the contract was actually breached." NBT Bancorp, supra at 620. The Court of Appeals rejected this argument and reiterated that breach of the underlying contract is a required element of this cause of action. Id. at 621-624.

Here, Krinos has not alleged that Sagra breached the exclusive distributorship agreement between the parties. Therefore, Krinos has failed to adequately state a claim against Vintage for tortious interference with contract. Krinos states in its papers on this motion that Sagra may have breached the agreement if it sold goods

to Vintage after the agreement with Krinos was executed. However, this is speculative at this point and neither the complaint nor the affidavits submitted here set forth any facts alleging such a breach by Sagra.

2. Prospective Business Relations

Krinos alleges that Vintage interfered with Krinos's prospective business relations with Sagra. Specifically, Krinos alleges that its agreement with Sagra would have been extended for at least ten years if Vintage had not interfered with Krinos's exclusive distributorship agreement.

In order to establish a cause of action for tortious interference with prospective contractual relations, a plaintiff must show wrongful means on the part of defendant. See, NBT Bancorp Inc v Fleet/Norstar Financial Group, Inc, 87 NY2d 614 [1996]; Newport Service & Leasing, Inc v Meadowbrook Distributing Corp, 18 AD3d 454 [2d Dept 2005]. Wrongful means has been defined as including "physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure." NBT Bancorp Inc v Fleet/Norstar Financial Group, Inc, 87 NY2d 614 [1996], quoting Guard-Life Corp v S Parker Hardware Mfg Corp, 50 NY2d 183 [1980]. Here, Krinos alleges that Vintage knowingly sold Sagra products within Krinos's exclusive territory.

However, Krinos does not set forth any allegations of wrongful means by Vintage as described above. At most, the complaint alleges that Vintage sold products in the disputed territory in furtherance of its own normal economic interest. This is insufficient to sustain this cause of action. See, Carvel Corp v Noonan, 3 NY3d 182, 189 [2004].

The complaint also fails to set forth any factual basis for the allegation that the Sagra agreement would have been extended for at least ten more years. Therefore, the second cause of action is dismissed.

3. Constructive Trust and Unjust Enrichment

Krinos alleges that Vintage was unjustly enriched by receiving profits of at least \$50,000 from its sales of Sagra products within Krinos's exclusive territory. Krinos alleges that Vintage holds the profits from the improper sales in constructive trust for Krinos.

"The elements of a cause of action for a constructive trust are: (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment." Gaentner v Benkovich, 18 AD3d 424 [2d Dept 2005]. "A cause of action for unjust enrichment is stated where plaintiffs have properly asserted that a benefit was bestowed...by plaintiffs and that defendants will obtain such benefit without adequately

compensating plaintiffs therefor." Sergeants Benev Ass'n Annuity Fund v Renck, ___ AD3d ___ 796 NYS2d 77 [1st Dept 2005], quoting Wiener v Lazard Freres & Co, 241 AD2d 114 [1st Dept 1998].

Here, the complaint does not allege a confidential or fiduciary relationship between Krinos and Vintage. Nor does it the existence of a promise or a transfer in reliance on such a promise. Therefore, the complaint fails to allege the elements of a constructive trust.

Krinos has also failed to state a claim for unjust enrichment because the complaint fails to allege that Krinos bestowed a benefit on Vintage for which Krinos is entitled to compensation. Therefore, the third cause of action is dismissed.

4. Unfair Competition

Krinos's fourth cause of action asserts a claim for unfair competition. This claim is also dismissed.

Krinos contends that by selling Sagra products in the United States, Vintage misappropriated Krinos's skills, expenditures and labors. However, Krinos does not allege any wrongful or unfair acts by Vintage to support that contention. At most, the complaint alleges facts suggesting that Vintage sought to compete with Krinos in furtherance of Vintage's own economic interests. The complaint does not allege facts demonstrating that Vintage wrongfully reaped

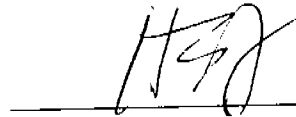
a benefit which derived from Krinos's labor or expenditures. See, Rosenberg, Minc & Armstrong v Mallilo & Grossman, ___ Misc2d ___, 2005 NY Slip Op 25146 [Sup Ct NY County, Mar 24, 2005].

Krinos has also failed to allege facts demonstrating that Vintage acted in bad faith. See, Camelot Associates Corp v Camelot Design & Development LLC, 298 AD2d 799 [3d Dept 2002]. Accordingly, it is

ORDERED that defendant's motion to dismiss the complaint is granted and the complaint is dismissed.

DATED:

ENTER:



J.S.C.

FILED

JUL 11 2005

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