

Chestnut Hill Partners, LLC v Van Raalte

2007 NY Slip Op 30293(U)

March 12, 2007

Supreme Court, New York County

Docket Number: 0602286

Judge: Helen E. Freedman

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SCANNED ON 3/16/2007
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT.

PART 39

Index Number : 602286/2006

CHESTNUT HILL PARTNMERS, LLC

vs

VAN RAALTE, PETER

Sequence Number : 002

DISMISS

C

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on 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

MAR 16 2007

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 3/12/07

3/12/07

Hzy

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

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

-----X
CHESTNUT HILL PARTNERS, LLC,
Plaintiff,

-against-

PETER VAN RAALTE, KENNETH CLAY, STEVEN
KUMBLE, JAMES MCNAIR, CORINTHIAN CAPITAL
GROUP, LLC and SABRE COMMUNICATIONS HOLDING
INC.,

Index No. 602286/06

Defendants.
-----X

HELEN E. FREEDMAN, J:

In this action, plaintiff, an investment advisory firm, sues in quasi-contract and for unjust enrichment seeking to recover a Finders Fee of \$910,000 from defendants. The gravamen of the Complaint is that plaintiff had a written finders fee contract with Lincolnshire Management, Inc. ("Lincolnshire"), a leveraged buyout firm in Manhattan, for the acquisition of a target company known as Sabre Communications Holding, Inc. ("Sabre"). The contract was signed in December 2003 by one John Camp of Lincolnshire, not a party here.

After Lincolnshire's Board of Directors rejected the acquisition in late 2004 or early 2005 and Sabre signed a letter of intent with another company, Peter Van Raalte, Steven Kumble and Kenneth Clay, Lincolnshire employees, left Lincolnshire to form Corinthian Capital Group, LLC ("Corinthian") in mid 2005. They were joined in late 2005 by James McNair, also a Lincolnshire employee. Corinthian acquired Sabre in mid 2005 after the deal with the other company fell through. Plaintiff alleges that Van Raalte, using confidential information acquired at Lincolnshire through plaintiff's efforts, led Corinthian in making the acquisition of Sabre. Chestnut Hill claims it is entitled to the finders fee for which it had a contract with Lincolnshire.

As some evidence of this claim, Schaye submits a copy of a \$75,000 check signed by Van Raalte at Corinthian that was sent to him after the Sabre deal closed. There is a notation on the copy of the check submitted to the Court stating, "Sabre Communications Holding, Inc."

Defendants move pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7) to dismiss the Complaint in its entirety on the ground that there was no written agreement between the parties; the only written agreement is between John Camp of Lincolnshire and Paul Schaye of Chestnut Hill.

Individual defendants Clay and Kumble aver that they had no dealings whatever with Shaye or Chestnut Hill when at Lincolnshire or that any dealings in connection with acquisition of Sabre. Van Raalte acknowledges that he had dealt with Chestnut Hill and Schaye while at Lincolnshire, but in connection with acquisition of two other companies, Associated Packaging Enterprises and Index Plastics, both of which deals were rejected by Lincolnshire. He states that he was unaware of the written finders fee deal between Sabre and Lincolnshire because it was handled exclusively by Camp who worked out of the Virginia office. Van Raalte worked in New York. Van Raalte contends that the \$75,000 payment was simply a good will gesture that McNair urged him to pay to provide seed money for future deals. James McNair, former Managing Director of Lincolnshire and currently a Senior Managing Director at Corinthian. He claims to have learned about Sabre from Beatrice Mitchell, a co-founder of an investment banking firm specializing in middle market mergers and acquisitions. Ms. Mitchell submits an affidavit indicating that it was she who brought Sabre to Lincolnshire and Corinthian, that she was Mr. McNair's classmate at Yale, and that she spoke to Van Raalte and Camp about Sabre when at Lincolnshire and to McNair at Corinthian. She claims never to have heard of Schaye or

Chestnut Hill.

Plaintiff sues in quasi contract claiming unjust enrichment and seeks to amend its complaint to include a cause of action for tortious interference and misappropriation of confidential information. Plaintiff claims that defendants misappropriated confidential information about the Target, Sabre, obtained while they were at Lincolnshire and used it to their own advantage in behalf of Corinthian. Plaintiff also contends that it is entitled to summary judgment based on some of defendants' admissions that they learned about Sabre when at Lincolnshire.

Defendants contend that any confidential information that they obtained while they were at Lincolnshire was authorized because Lincolnshire was a prospective or potential buyer. Additionally, plaintiff fails to indicate specifically what was misappropriated. Defendants also contend that tortious interference with a contract presumes that a valid contract existed (presumably the one between Chestnut Hill and Lincolnshire), and that somehow Corinthian or the individuals interfered with it. However, it is undisputed that Lincolnshire's principals rejected the acquisition contract. Tortious interference with prospective advantage cannot be asserted because such a claim requires malice or absence of legitimate motive, neither of which is present here.

It is true that the Statute of Frauds prevents plaintiff from obtaining a Finders Fee in any specific contractual amount because there is no written document signed by or in behalf of any of the defendant. *Fitz-Gerald v. Donaldson, Lufkin & Jenrette, Inc.*, 294 A.D.2d 176, 741 N.Y.S.2d 682 (1st Dept. 2002). It is unlikely that plaintiff will be able to show that the proffered payment of \$75,000 is referable to any contractual or quasi-contractual agreement between the parties.

However, this early time, dismissal of the claim in its entirety is not warranted based on the holding in *Bradkin v. Leverton*, 26 N.Y.2d 192 (1970). In that case, also based on pleadings, the Court of Appeals found that plaintiff had stated a claim in quasi contract for unjust enrichment. In *Bradkin*, plaintiff who was employed to find corporations which needed financing, procured a corporation and arranged \$200,000 worth of financing. However, an individual stockholder of the defendant of that employer arranged private financing transactions with the corporation that plaintiff found. The court rejected the tort claims, however. While defendants point out that in *Bradkin*, the defendant was an officer of the employer and here, no one is currently employed by either party to any contract, plaintiff sets forth at least some evidence of entitlement to a fee based on the proffer of \$ 75,000 and the claim that Corinthian was unjustly enriched.

However, the claims against Clay and Kumble must be dismissed as there is no evidence that either knew about or had any involvement whatever with the prospective Sabre deal at Lincolnshire. Similarly, although Corinthian acted through its principals, any payments it made or any unjust enrichment it may have sustained was to the entity and not to the individuals. Thus the claims against Van Raalte and McNair are dismissed.

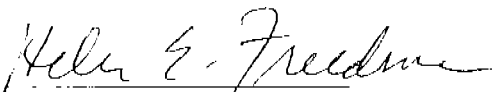
With respect to the motion to amend the Complaint to add claims of misappropriation of confidential information or tortious interference, those claims are not sustainable. McNair and Van Raalte were privy to information about Sabre when they were at Lincolnshire because Lincolnshire was asked to acquire Sabre. There is no evidence that either thwarted the deal. When the deal did not go through, the individuals participated in its acquisition by a new company, but the information about Sabre was provided to the new company by Sabre and its agent, Mitchell. As for tortious interference, it is unclear what contract or prospective business

advantage Corinthian interfered with since the Lincolnshire deal was long dead when Corinthian acquired Sabre.

Based upon the above, the Clerk is directed to dismiss the claims against the individual defendants, and Sabre and Corinthian are directed to serve an answer within 30 days. Parties are directed to appear by counsel for a preliminary conference on April 17, 2007 in Room 609 at 9:30 a.m.

Dated: March 12, 2007

Enter:


Helen E. Freedman, J.S.C.

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MAR 16 2007
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