

<b>Huntingdon Life Sciences, Inc. v Win Animal Rights</b>
2007 NY Slip Op 30806(U)
April 13, 2007
Supreme Court, New York County
Docket Number: 0602313/2006
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

HUNTINGDON LIFE SCIENCES, INC. and LIFE SCIENCES RESEARCH, INC.  
Plaintiffs,

Index No.: 602313/06

Motion Date: 10/03/06

- v -

Motion Seq. No.: 2

WIN ANIMAL RIGHTS, an unincorporated association, CAMILLE HANKINS, individually and in her capacity as President and/or Treasurer of WIN ANIMAL RIGHTS, GREG NOVARA, a/k/a GREG KELLY, individually and/or as Treasurer of WIN ANIMAL RIGHTS, and DOES 1-100, Inclusive,  
Defendants.

Motion Cal. No.: \_\_\_\_\_

The following papers, numbered 1 to 250 were read on this motion to dismiss

Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits - Exhibits \_\_\_\_\_

**FILED**  
APR 19 2007  
NEW YORK COUNTY CLERK'S OFFICE

PAPERS NUMBERED
1-20
21-239
240-250

Cross-Motion:  Yes  No

Upon the foregoing papers, defendants' motion to dismiss must be DENIED.

Plaintiff Huntingdon Life Sciences, Inc. ("HLS"), is a corporation organized under the laws of the State of Delaware, with its principal place of business located in New Jersey. Its business is to conduct safety testing, which is primarily government mandated, on pharmaceutical, bio technical and agrochemical products in order to identify risks to humans, animals and the environment. Plaintiff Life Sciences Research, Inc. ("LSR") is a corporation organized under the laws of the State of Maryland, with its principal place of business located in New Jersey. It is a publicly traded holding company that owns

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):

100% of the issued and outstanding common stock of plaintiff HLS.

Defendant Win Animal Rights ("WAR") is an unincorporated voluntary association. Its literature describes WAR as a "national non-profit organization dedicated to eliminating the exploitation and suffering of animals, while promoting and defending...their inherent rights," whose objective is "to engage in a campaign to stop the killing of animals at Huntingdon Life Sciences." Defendants Camille Hankins and Greg Novara are sued individually and as officers or other principals of WAR.

In their Complaint, HLS and LSR seek permanent injunctive relief and monetary damages in connection with their claim that defendants are tortiously interfering with contracts and tortiously interfering with prospective economic advantage. In sum, plaintiffs claim that defendants are using unlawful methods and tactics, including intimidation and invasion of privacy of persons who are plaintiffs' market makers, investors, customers and suppliers through harassing telephone calls to and confrontational demonstrations outside of such individual's personal residences. Plaintiffs allege that the sole objective of campaign is to fatally injure or harm plaintiffs' businesses and that such activity has harmed the businesses.

Defendants move pursuant to CPLR 3211(a)(7) to dismiss the complaint on the grounds that it fails to state a cause of action. Defendants move, alternatively, to strike the allegations and exhibits of the complaint as slanderous and prejudicial pursuant to CPLR 3024(b).

On a motion to dismiss for failure to state a cause of action [CPLR 322(a)((7)], the court must construe the complaint in the light most favorable to the plaintiff and all factual allegations must be accepted as true. Bovino v Village of Wappinger Falls, 215 A.D.2d 619 (2d Dept. 1995). "The sole

criteria is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause cognizable at law [,] regardless of whether the plaintiff will ultimately prevail on the merits (citations omitted).” Bovino at 620.

Defendants cite National Association for the Advancement of Colored People v Claiborne Hardware Company, 458 U.S. 886 (1982) as their authority for dismissal of the complaint based on lack of a claim cognizable in law. They argue that as in Claiborne Hardware, (1) boycott activity (or here protest activity) that is not violent is constitutionally protected and (2) common law tort liability does not lie against organizers of a boycott (or here protest activity) who made impassioned speeches or participated in the boycott (or here protest) in the absence of a showing that such persons either participated in or ratified violent activity that occurred in the wake of such speeches. Defendants reliance on Claiborne Hardware is inapposite, however, since in that case, the United State Supreme Court heard and reviewed an appeal from a judgment entered upon a jury verdict and after a full trial.

In any event, although it is true that some sixteen paragraphs of plaintiffs’ ninety-five paragraph complaint are allegations made against an organization known as Stop Huntingdon Animal Cruelty (“SHAC”), a non-party to this action, the remaining claims allege that defendants Hankins, Novarra and WAR have tortiously published names, personal residential and electronic mail addresses of persons related to entities that have or will have business or economic relations with plaintiffs; that using automatic dialing machines, defendants called or e-mailed such persons in order to barrage their telephone business lines or the electronic mail system, which in the case of one of its investors interfered with its ability to conduct business;

that defendant Hankins, as press officer of another organization known as the Animal Liberation Front, admitted in a posting to that organization's website that she and others stalked a principal of one of plaintiffs' investors at his home and vandalized his automobile and home; that in each such instance, shortly after the alleged tortious acts, the third party targeted by defendants sold all shares in plaintiff corporations. In sum, the pleadings allege that defendants themselves participated in tortious acts, and therefore, the Complaint states a cognizable tort cause of action consistent with the holding in Claiborne Hardware. Of course, this assumes that such allegations are true and is regardless of whether plaintiffs will ultimately succeed on the merits, the latter which the plaintiffs in Claiborne Hardware were unable to do.

Finally, though defendants categorically dispute and deny the allegations of the complaint, the court is unable to find that the allegations have no possible bearing upon the subject matter of the litigation, and therefore the allegations of the complaint are neither scandalous nor prejudicial. Niles v. Yoakum, 179 A.D.75 (1<sup>st</sup> Dept. 1917). Nor is the absence of a verification fatal to the complaint. CPLR 3022; Pantaleon v Ogilivie, 23 AD3d 360 (2d Dept. 2005).

Accordingly, it is hereby,

ORDERED that defendants' motion to dismiss the Complaint on the grounds of failure to state a cause of action or to strike allegations and exhibits that are slanderous and prejudicial is DENIED.

This is the decision and order of the court.

Dated: April 13, 2007

ENTER:

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Debra M. Daniels  
 DEBRA M. DANIELS J.S.C.  
 J.S.C.