

**Segal v Signal Equity Partners**

2007 NY Slip Op 32274(U)

July 20, 2007

Supreme Court, New York County

Docket Number: 0603342/2006

Judge: Bernard J. Fried

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FILED ON 7/25/2007  
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BERNARD J. FRIED  
*Justice*

PART 60

Segal, Robert B.  
PLAINTIFF

INDEX NO. #603342-2006

MOTION DATE \_\_\_\_\_

- v -

Signal Equity Partners  
DEFENDANT

MOTION SEQ. NO. #001

MOTION CAL. NO. \_\_\_\_\_

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

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

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

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.

SO ORDERED

**FILED**  
JUL 24 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 7/20/07

B. J. Fried  
J.S.C. **BERNARD J. FRIED**  
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 60

-----X  
ROBERT B. SEGAL,

INDEX NO.: 603342-2006

Plaintiff,

-against-

SIGNAL EQUITY PARTNERS, MARY THOMAS,  
SEVEN A. COHEN, SAC CAPITAL ADVISORS  
LLC, SAC CAPITAL MANAGEMENT LLC AND  
SAC CAPITAL ASSOCIATES LLC,

Defendants.

-----X

APPEARANCES:

**Attorneys for Plaintiff:**

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**FRIED, J.:**

This is an action for tortious interference with a contract and civil conspiracy brought  
by plaintiff, Robert Segal. Defendants, Signal Equity Partners (“Signal”), Mary Thomas,

Steven Cohen, S.A.C Capital Advisors LLC, and S.A.C. Capital Management, LLC (collectively "SAC"),<sup>1</sup> both move<sup>2</sup> to dismiss the verified complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action. In the alternative, defendants request that the action be stayed pending the arbitration in a related case. As explained below, plaintiff has failed satisfy the pleading requirements for a claim of tortious interference with a contract. In addition, defendants Signal and Thomas, both corporate officers, are immune from liability. As such, the motion to dismiss for failure to state a cause of action is granted.

It is axiomatic that on a motion to dismiss, the Court assumes that the facts as pleaded are true. The facts are alleged to be as follows: Plaintiff, Robert Segal ("Segal"), was the president of an investment banking advisory entity Segal Holdings, Inc. d/b/a/ Segal & Co. ("Segal Holdings"). Non-party, Oceanic Digital Communications, Inc. ("Oceanic"), formally Paradise Communications, Inc., was a client of Segal Holdings. Thereafter, Segal invested approximately one hundred and fifty thousand dollars in Oceanic through money paid by Segal Holdings. However, over a period of time, defendant SAC invested over one hundred million dollars into Oceanic and in effect, significantly diluted Segal's interest. In 1999, SAC hired Segal to act as a consultant for Oceanic. After several years as a consultant for SAC, Segal entered into an employment contract with Oceanic on August 1, 2000. Segal was to serve as the company's Chairman of the Board, President, and Chief Executive Officer. SAC was the majority and controlling shareholder in Oceanic. As the principal

<sup>1</sup> S.A.C. Capital Associates, LLC was dismissed from this action by stipulation of the parties (Exhibit A to Defendants Cohen & SAC's M.O.L.).

<sup>2</sup>Motion Sequence 001 was brought by defendants Steven Cohen and SAC; Motion Sequence 002 was brought by defendants Signal and Mary Thomas. For the purposes of this decision, both sequences have been combined.

officer of SAC, Cohen was aware of the terms and conditions of the employment contract.

On June 6, 2003, SAC hired defendant Signal to act as a consultant for Oceanic. On or about June 23, 2003, Chandler Blockage, an employee of SAC, and defendant Mary Thomas, Oceanic's chief financial officer, held a meeting with Signal to discuss Oceanic's strategies for moving forward. At this meeting, Signal informed Blockage and Thomas that the company wanted Segal to be "eliminated in order to refocus the company and to move forward." (Verified Compl. ¶ 41). Thomas and Signal agreed, but decided that plaintiff should not be fired immediately. They wanted to wait until Segal had secured a loan he was in the process of negotiating for Oceanic.

On May 17, 2004, Oceanic directors Tim Bradley, Charles Lake, and Peter Nussbaum informed Segal that they had uncovered evidence which indicated that he might have engaged in business activities outside the company.<sup>3</sup> They also informed Segal that "his active employment status was being terminated and that he was being placed on administrative duty pending further investigation." (*Id.* ¶ 54). Thereafter, Cohen decided to end SAC's private equity investments, including those in Oceanic. "In order to accomplish this objective, SAC and Cohen appointed an 'executive committee' within Oceanic's Board of Directors, consisting of SAC's officers and agents...and transformed substantially all of Segal's powers and duties as Chairman and CEO of ODC [Oceanic] to the executive committee."<sup>4</sup> (*Id.* ¶ 57). On May 26, 2005, over a year later after he was placed on

<sup>3</sup> The complaint is unclear regarding whether such activities violated the terms of Segal's employment contract.

<sup>4</sup> The complaint fails to clearly explain the connection between the transfer of Segal's power to an executive committee and the goal of ending Oceanic's private equity investments.

administrative duty, Oceanic informed Segal that he had been fired for “cause” due to his alleged misconduct.

The complaint alleges that, since plaintiff’s dismissal:

Pursuant to a clause in Segal’s Employment Agreement with Oceanic, Segal and Oceanic are currently engaged in arbitration before the American Arbitration Association in regard to Segal’s wrongful termination from the company.

...

On February 28, 2005, Segal through his counsel sought to amend his demand for arbitration in order to assert claims against defendants SAC, Cohen, Signal as well as additional third party agents of SAC, who controlled Oceanic as its majority controlling shareholder. On May 6, 2005, by arbitrator ruling, Segal was prohibited from amending his notice of arbitration claim to include the aforementioned individuals, as they were not parties to the arbitration clause contained in his Employment Agreement.

(Id. ¶¶ 60, 62).

On September 22, 2006 plaintiff filed this complaint claiming tortious interference with contract and civil conspiracy. Plaintiff seeks to recover, among other things, compensatory damages in excess of one million dollars, attorney’s fees, and punitive damages. Defendants move to dismiss for failure to state a cause of action, or in the alternative, to stay this action pending the outcome of the arbitration between Segal and Oceanic.

In support of their motion to dismiss, defendants jointly argue that, because they have an economic interest in Oceanic, they are allowed to interfere with its business operations. As a result of this economic privilege, plaintiff’s tortious interference claim must plead that the defendants interfered with the contract maliciously or by fraudulent means. Because the plaintiff failed to plead these elements, the complaint should be dismissed for failure to state

a cause of action pursuant to CPLR 3211(a)(7). Defendant Signal further contends that, “[a]lthough the verified complaint names Signal as a Defendant, Signal’s only connection to the acts alleged is through the actions of its principals Timothy Bradley and Charles T. Lake, who are alleged to be Directors of Oceanic.” (Defendants Signal & Thomas’s M.O.L. at 13). As a result of Thomas’s position as a corporate officer and Bradley and Lake’s position as members of the “executive committee,” both defendants claim they are immune from liability for tortious interference with a contract.

In opposition, plaintiff maintains that the complaint cannot be dismissed on the ground of economic privilege because defendants have not established that their actions were taken as a result of that privilege. Segal also contends that dismissals are not appropriate in tortious interference claims in the preliminary stages of the litigation, but rather, only after both parties have had the opportunity to present their evidence. Furthermore, Segal argues that the complaint’s allegations of bad faith satisfy the pleading requirements when economic privilege is asserted. Plaintiff also argues that the factual assertions in the complaint establish more than tortious interference with a contract. Plaintiff contends that the facts prove that SAC owed a fiduciary duty to plaintiff, which they consequently breached. Finally, as to defendants Signal and Thomas’s claim of immunity, Segal alleges that defendants’ bad faith actions destroy such immunity.

As a threshold matter, “a claim for tortious interference with a contract requires proof of: (1) the existence of a valid contract between plaintiff and a third party; (2) the defendant’s knowledge of that contract; (3) the defendant’s intentional procuring of the breach; and (4) damages.” White Plains Coat & Apron Co., Inc. v. Cintas Corp., 8 N.Y.3d

422, 426 (2007); Lama Holding Co. v. Smith Barney, Inc., 88 N.Y.2d 413, 424 (1996); Foster v. Churchill, Jr., 87 N.Y.2d 744, 749-750 (1996). All of the elements of the theory must be pled in order to avoid dismissal (Bonanni v. Straight Arrow Publishers Inc., 133 A.D.2d 585, 587 [1st Dep't 1987]) and an essential element of the claim is that the breach of contract would not have occurred but for the activities of the defendant. Wilmington Trust Co. v. Burger King Corp., 34 A.D.3d 401, 402-403 (1st Dep't 2006); 68 Burns New Holding, Inc. v. Burns Street Owners Corp., 18 A.D.3d 857, 858 (2d Dep't 2005); Cantor Fitzgerald Assocs., L.P. v. Tradition N. Am., Inc., 299 A.D.2d 204 (1st Dep't 2002).

It is undisputed that there was a valid employment contract in existence between Segal and a third party, Oceanic, and that defendants had knowledge of that contract. However, plaintiffs are required to allege the breach of a particular provision of the contract in order to state a cause of action for breach of contract. Cf. Kraus v. Visa Int'l Serv. Assoc., 304 A.D.2d 408 (1st Dep't 2003); Lebow v. Kakalios, 156 A.D.2d 301, 302 (1st Dep't 1989). Here, plaintiff has failed to allege that defendants breached a specific provision of his employment contract with Oceanic and therefore, have failed to satisfy the pleading requirements with regard to a claim for breach of tortious interference with contract.

While plaintiff's failure to allege the breach of a specific provision is enough to sustain the motion to dismiss, the first cause of action for tortious interference with contract is also deficient as to the "but-for" requirement. Although it is alleged that the defendants intentionally sought to interfere with Segal's employment contract with Oceanic (Verified Compl. ¶ 67), plaintiff has not alleged that, but for this interference, Segal would not have been terminated. The complaint is therefore deficient in this regard.

Segal also claims that defendants have not shown that their actions were taken as a result of the economic privilege, and therefore, the cause of action cannot be dismissed on this ground. The Court of Appeals has stated that a party's actions are economically justified to the extent that the party is acting to "preserve the financial health" of the company, Foster, 87 N.Y.2d at 751, or, "to protect its own legal or financial stake in the breaching party's business." White Plains Coat & Apron Co., Inc., 8 N.Y.3d at 425. The assertion of economic privilege has been raised in cases, such as this one, where a defendant is a significant stockholder in the breaching party's business. White Plains Coat & Apron Co., Inc., 8 N.Y.3d at 425.

In addition to allegations that defendants have an economic interest in Oceanic, it is alleged that defendants acted to protect their interest. As plaintiff readily states in the complaint, Signal, Thomas and Blockage agreed that Segal was to be "eliminated in order to refocus the company and to move forward." (Verified Compl. ¶ 41).<sup>5</sup> At such time, Signal and Thomas were both acting as agents and for the benefit of SAC.<sup>6</sup> While it is true that defendants introduced no independent evidence establishing that plaintiff's termination was the result of their concern for the company, on a motion to dismiss the court must take all factual assertions as true. Thus, the only reasonable inference, based on these statements, is that defendants were acting for the benefit of the company.

<sup>5</sup> The verified complaint fails to state which Signal employees participated in this conversation.

<sup>6</sup> ¶ 36 of the verified complaint states that, "On June 6, 2003, SAC signed an employment agreement with defendant Signal to consult for Oceanic while keeping SAC's best interests at the forefront." The complaint goes on to state in ¶ 50 that defendant Mary Thomas was acting as an agent for defendants Cohen, SAC, and Signal.

There can be no liability where the defendant has an economic interest, “absent allegations of malice or fraudulent or illegal means.” Hirsch v. Food Resources, Inc., 24 A.D.3d 293, 297 (1st Dep’t 2005). These have not been alleged in the complaint. The “failure to plead in nonconclusory language facts establishing all the elements of a wrongful and intentional interference in a contractual relationship requires dismissal of the action.” Id. at 109-110 (quoting Bonanni, 133 A.D.2d at 587); See also Mansfield AG, 2006 U.S. Dist. LEXIS at \*18-19. While plaintiff claims that allegations of bad faith and sham investigations satisfy the malicious or fraudulent pleading requirement, these are nothing more than conclusory statements and are therefore insufficient. Plaintiff’s failure to allege malice or fraudulent means on the part of defendants is also reason for this Court to dismiss the complaint for failure to state a cause of action.

In opposition, the plaintiff argues that the complaint “does more than allege a mere tortious interference with contract claim – it alleges facts, which if proven, establish that a controlling majority shareholder (SAC) owed and breached a fiduciary duty to the minority shareholders (here, Plaintiff).” (Plaintiff’s M.O.L in Opp’n at 16). However, plaintiff’s allegations regarding a fiduciary duty do not satisfy the pleading requirements. The breach of a fiduciary duty does not fall under the ambit of malicious or fraudulent conduct. Neither has plaintiff alleged a cause of action for breach of a fiduciary duty. Therefore, such an allegation has no effect on this motion.

Finally, plaintiff’s claim that dismissal is appropriate only after evidence has been presented is incorrect. Dismissal of a claim for tortious interference with contract for failure to allege malice or fraudulent conduct in the face of an economic privilege justification has

been granted on a 3211(a)(7) motion to dismiss. Spectacolor, Inc. v. Banque Nationale de Paris, 207 A.D.2d 726 (1st Dep't 1994); Shea v. Hambro America Inc., 200 A.D.2d 371, 372 (1st Dep't 1994); Masefield AG v. Colonial Oil Indus., No. 05 Civ. 2231, 2006 U.S. Dist. LEXIS 5792 at \*20 (S.D.N.Y. Feb. 15, 2006).<sup>7</sup> Therefore, plaintiff's failure to allege any malicious or fraudulent conduct on the part of defendants is grounds for dismissal.

Additionally, defendants Thomas and Signal correctly argue that they are immune from liability. Thomas's immunity arises out of her role as a corporate officer for Oceanic. Signal is also immune from liability because its only connection to the complaint is through the actions of its principals, Timothy Bradley and Charles T. Lake, both alleged members of the "executive committee" within Oceanic's Board of Directors. (Verified Compl. ¶ 57). "A cause of action seeking to hold corporate officials personally responsible for the corporation's breach of contract is governed by a heightened pleading standard." Joan Hansen & Co., Inc. v. Everlast World Boxing Headquarters Corp., 296 A.D.2d 103, 109 (1st Dep't 2002). The general rule holds that an officer or director is only liable if he acts "for his personal rather than the corporate interests." Id. at 110. Plaintiff contends that allegations of "bad faith" remove the defendants from this shield of immunity. However, the heightened pleading standard requires the plaintiff to plead more than conclusory allegations. Id. at 109-110. "Thus, a pleading must allege that the acts complained of, whether or not beyond the scope of defendant's authority, were performed with malice and

<sup>7</sup> The holding in Felsen v. Sol Café Mfg. Corp., 24 N.Y.2d 682, 687 (1969), supports this proposition, even though the decision was not made pursuant to a 3211 motion. The Court stated, "It is clear that plaintiff did not establish a prima facie case of malicious inducement of a breach of contract and...motion to dismiss the cause of action should have been granted." Additionally, plaintiff relies on the holding in Record Club of America, Inc. v. United Artists Records, Inc., 611 F. Supp. 211 (S.D.N.Y. 1985), which is not binding on this court.

were calculated to impair the plaintiff's business for the personal profit of the defendant." Id. at 110. The complaint fails to allege that defendants Thomas and Signal (through Bradley or Lake) were acting for their personal rather than company interests. Therefore, plaintiff does not satisfy this heightened pleading requirement.

Accordingly, plaintiff has failed to state a cause of action for tortious interference with contract.

With regard to the plaintiff's second cause of action for civil conspiracy, defendants correctly point out that civil conspiracy is not recognized in New York as an independent tort. Hoag v. Chancellor, Inc., 246 A.D.2d 224, 230 (1st Dep't 1998); Smukler v. Lofts Realty, Inc., 156 A.D.2d 161, 163 (1st Dep't 1989); Island Condo Mgmt. Corp. v. Katan Gardens Condo., 250 A.D.2d 816, 817 (2d Dep't 1998). This is not disputed. Therefore, since the plaintiff has failed to state a claim for tortious interference with a contract, the civil conspiracy claim must be dismissed.

Finally, inasmuch as the complaint is dismissed in its entirety, I need not address defendants alternative request for a stay.

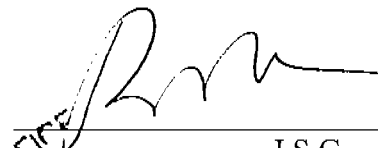
Accordingly, the motion to dismiss the complaint is GRANTED.

Dated: 7/20/07

**FILED**

JUL 24 2007

NEW YORK  
COUNTY CLERK'S OFFICE



J.S.C.

**BERNARD J. FRIED**  
J.S.C.

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

PRESENT: BERNARD J. FRIED  
*Justice*

PART 60

Segal, Robert B  
PLAINTIFF

INDEX NO. #603342-2006

MOTION DATE \_\_\_\_\_

- v -

Signal Equity Partners  
DEFENDANT

MOTION SEQ. NO. #002

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

This motion is decided in accordance with the memorandum decision filed in connection with Sequence # 001.

SO ORDERED

**FILED**  
JUL 24 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 7/20/07

Bernard J. Fried  
J.S.C.

**BERNARD J. FRIED**  
J.S.C.

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FOR THE FOLLOWING REASON(S):