

**City Natl. Bank, N.A. v Merchant Ivory  
Prods. (USA), Inc.**

2007 NY Slip Op 33259(U)

October 9, 2007

Supreme Court, New York County

Docket Number: 0600897/2007

Judge: Bernard J. Fried

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

PRESENT: BERNARD J. FRIED  
*Justice*

PART 60

CITY NATIONAL BANK, N.A.  
Plaintiff,

INDEX NO. 600897/2007

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

- v -

MOTION SEQ. NO. 001

MERCHANT IVORY PRODUCTIONS (USA), INC.,  
CITY PRODUCTIONS, INC.,  
and RICHARD HAWLEY  
Defendants,

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 papers submitted, It is

This motion is decided in accordance with the accompanying memorandum decision.

SO ORDERED

**FILED**  
OCT 11 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 10/9/07



**HON. BERNARD J. FRIED**  
**HON. BERNARD J. FRIED**

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: COMMERCIAL DIV. PART 60  
----- X  
CITY NATIONAL BANK, N.A.

Plaintiff,

- against -

I n d e x N o .  
600897/2007

MERCHANT IVORY PRODUCTIONS (USA), INC.,  
CITY PRODUCTIONS, INC.  
And RICHARD HAWLEY,

Defendants.

**FILED**  
OCT 11 2007  
NEW YORK  
COUNTY CLERKS OFFICE

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**APPEARANCES:**

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Attorneys for the Defendants:

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**Fried, J.:**

Plaintiff City National Bank, N.A. ("CNB"), a national banking association providing banking services to businesses and individuals, brings this action against Defendants Merchant Ivory Productions ("Merchant") and City Productions ("City"), both New York corporations engaged in the production of motion pictures, and Richard Hawley, a citizen of new York who is a film producer and an agent of both Merchant and City.

Plaintiff asserts a breach of contract claim against Merchant, City, and Mr. Hawley (collectively, the “Defendants”), alleging that each of them maintained a bank account with CNB, that each of them withdrew funds from its account that exceeded its account balance, and that, despite demands for payment, none of them has paid. Plaintiff now seeks damages in the amount of each overdraft, plus interest. Defendants deny the allegations and assert a counterclaim against Plaintiff, alleging that CNB has tortiously interfered with their business contracts and relationships.

A brief recitation of the procedural posture is in order. CNB served its complaint upon Defendants on March 20, 2007. (Piskora Aff. ¶ 3.) On April 6, 2007, Defendants answered the complaint and asserted its counterclaim against CNB. (*Id.* ¶ 4.) On April 30, 2007, CNB moved for summary judgment as to its affirmative claims and to dismiss Defendants’ counterclaim. (*Id.* ¶ 5.) Upon receipt of Plaintiff’s motion, Defendants, claiming that they had not had access to a copy of the relevant account agreements, became aware of an arbitration clause contained in the agreements governing each of their accounts with CNB, and subsequently demanded that Plaintiff agree to arbitrate the breach of contract claims. (*Id.* Exh. 3.)

Upon initiating arbitration proceedings, Plaintiff proposed that Defendants stipulate to a stay of the affirmative claims pending arbitration and to Plaintiff’s withdrawal of its motion for summary judgment. (*Id.* ¶ 8; *see also id.* Exh. 4.) Because the proposed stipulation form did not provide for a stay of Defendants’ counterclaim, however, Defendants refused to sign the form. (Sacks Aff. ¶ 7.) The parties thus did not reach an agreement as to the disposition of their respective claims and motions prior to appearing before me for

argument on September 6, 2007.

At that appearance, however, Plaintiff orally agreed to withdraw its motion for summary judgment. (Mot. H'rg Tr. 7-9, Sept. 6, 2007.) Because Defendants had no objection to Plaintiff's motion to stay its affirmative claims pending arbitration, I granted that motion. (*Id.* at 10.) Having thus disposed of the motion for summary judgment and the motion to stay the affirmative claims, all that is presently before me is Plaintiff's motion to dismiss the counterclaim pursuant to C.P.L.R. § 3211(a)(7), and Defendants' cross-motion, pursuant to C.P.L.R. § 2201, to stay the counterclaim pending arbitration.

C.P.L.R. § 2201 provides that, "the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." Because the decision of whether to grant a stay is within my discretion, and because the Defendants' pleadings fail to set forth facts sufficient to state a cause of action, the Defendants' motion to stay is denied, and the Plaintiff's motion to dismiss the counterclaim is granted.

In their answer to the complaint, Defendants allege only that, "Defendants were and are producers of, or guarantors to the financial obligations pertaining to, the 'City of Your Final Destination' (the 'Picture')"; and that "[b]y its actions, Plaintiff is knowingly and intentionally interfering with Defendants' efforts to complete the Picture, including without limitation, interfering in its business contracts and relationships<sup>1</sup> with Defendants' financial institutions, suppliers, vendors and performers"; and that as a result, "Defendants have sustained, and will continue to sustain, substantial economic damages and damages to their

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<sup>1</sup>

Although Defendants have asserted only one counterclaim, it is unclear whether they intended it to sound in tortious interference with contractual relations or with prospective business relationships/economic advantage. I therefore address both.

reputations.” (Answer ¶¶ 25-27.)

To plead a claim for tortious interference with contract in New York, the claimant (or, as in this case, the counterclaimant) must allege facts sufficient to demonstrate the existence of a valid contract between the Defendants and a third party; Plaintiff’s knowledge of that contract; Plaintiff’s intentional procurement of the third-party’s breach of the contract without justification; actual breach of the contract by the third party; and damages resulting therefrom. *330 Acquisition Co., LLC v. Regency Sav. Bank, F.S.B.*, 293 A.D.2d 314, 315 (1st Dep’t 2002); *Lama Holding Co. v. Smith Barney*, 88 N.Y.2d 413, 424 (1996). Similarly, a claim for tortious interference with prospective relationships (or prospective economic advantage) requires the claimant to demonstrate that the alleged interference with the prospective business relationship was achieved by “wrongful means,” or that the interference was accomplished for the sole purpose of harming the claimant. *Snyder v. Sony Music Entertainment, Inc.*, 252 A.D.2d 294, 299-300 (1st Dep’t 1999). “Wrongful means” must involve something more than simple persuasion, and may include physical violence, fraud, misrepresentation, civil suits or criminal prosecution. *Guard-Life Corp. v. Parker Hardware Mfg. Corp.*, 50 N.Y.2d 183 (1980).

On a motion to dismiss pursuant to C.P.L.R. 3211(a)(7), I am obligated to construe the pleadings liberally and accept as true the facts therein. *511 West 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 152 (2002). Even if the Defendants’ allegations are true, however, they are insufficient to support a counterclaim for tortious interference with contract or tortious interference with prospective business relations.

Regarding the contract claim, Defendants have not offered anything more than generalized allegations that Plaintiffs' unnamed actions have in some way interfered with unspecified contracts. Defendants do not allege that Plaintiff had knowledge of any specific contract between them and any third parties, let alone that Plaintiff intentionally procured its breach. Furthermore, Defendants offer no information as to whether any such contract was in fact breached.

The counterclaim for interference with prospective business relations fails on the same ground. Defendants simply have not alleged specific facts about any business relationship with which Plaintiff might have interfered, nor do their pleadings include any allegations that such interference was accomplished by wrongful means or for the sole purpose of harming Defendants.

Plaintiff's motion to dismiss the counterclaim is therefore granted. As such, Defendants' cross-motion to stay the counterclaim is necessarily denied.

For the foregoing reasons, it is hereby

ORDERED that Plaintiff's motion (Seq. 001) for summary judgment is denied as moot, having been withdrawn; and it is further


ORDERED that Plaintiff's motion (Seq. 001) to dismiss the counterclaim is granted; and it is further

ORDERED that Plaintiff's motion (Seq. 002) to stay the affirmative claims pending arbitration is granted without opposition; and it is further

ORDERED that Defendants' cross-motion (Seq. 002) to stay the counterclaim is denied.

Dated October 9, 2007

ENTER:

  
\_\_\_\_\_  
J.S.C.  
**HON. BERNARD J. FRIED**

**FILED**  
OCT 11 2007  
NEW YORK  
COUNTY CLERKS OFFICE