

**Maplewood Equity Partners L.P. v Casita, L.P.**

2007 NY Slip Op 34257(U)

December 20, 2007

Supreme Court, New York County

Docket Number: 0111690/2007

Judge: Helen E. Freedman

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

PRESENT:  
Index Number : 111690/2007  
MAPLEWOOD EQUITY PARTNERS LP  
vs  
CASITA, L.P.  
Sequence Number : 001  
DISMISS ACTION

PART \_\_\_\_\_

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
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 ...  
Answering Affidavits -- Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion **IS DECIDED**

**IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION**

**FILED**  
JAN 02 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

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

Dated: 12/20/07

HSR J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate  DO NOT POST  REFERENCE

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

-----X  
MAPLEWOOD EQUITY PARTNERS L.P.,  
MAPLEWOOD EQUITY PARTNERS (OFFSHORE)  
LTD., MAPLEWOOD MANAGMENT L.P.,  
MAPLEWOOD HOLDINGS LLC, and  
MAPLEWOOD PARTNERS L.P.,

Plaintiffs,

-against-

CASITA, L.P., EAGLE ADVISORS, INC., DAVID  
ALEXANDER, Individually, and EKKEHART  
HASSELS-WEILER, Individually,

Defendants.

-----X  
**HELEN E. FREEDMAN, J.:**

Index No. 111690/2007  
**FILED**  
JAN 02 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

In this action, plaintiffs MapleWood Equity Partners, L.P., MapleWood Equity Partners (Offshore) Ltd., MapleWood Management, L.P., MapleWood Holdings LLC, and MapleWood Partners, L.P. (collectively, "plaintiffs"), sue defendants Casita L.P., Eagle Advisors, Inc., David Alexander, and Ekkehart Hassels-Weiler (collectively, "defendants"), for defamation, tortious interference with contractual relations, and tortious interference with business relations.

Defendants now move to dismiss the complaint on statute of limitations ground pursuant to CPLR 3211(a)(5), and for failure to state a claim pursuant to CPLR 3211(a)(7).

For the reasons set forth below, defendants' motion is granted and plaintiffs' complaint is dismissed in its entirety.

*Parties*

MapleWood Equity Partners (Offshore) ("MapleWood Offshore"), and MapleWood

Equity Partners ("MapleWood Domestic"), are investment funds which invest in companies and try to sell them at a profit. MapleWood Management manages both funds; MapleWood Partners serves as an advisor to both funds; and MapleWood Holdings is the general partner of MapleWood Management and MapleWood Partners. All the plaintiffs operate in Florida. Casita is a New York based partnership which has invested over \$20 million in MapleWood Offshore and is its largest shareholder.

### *Background*

At issue in the underlying action are statements that Casita made in a letter dated October 6, 2005, and other communications allegedly made between October 2005 and December 2005, to at least one or more of the MapleWood investors regarding plaintiffs' management of the funds. The statements were made in response to a MapleWood's investor newsletter, after a large investment resulted in a loss and several lawsuits ensued.

In August 2000, the funds invested \$31 million in AMC Computer Corporation ("AMC"), becoming its controlling shareholder. Casita invested an additional \$2.5 million in AMC as a co-investor. In September 2001, to overcome some adverse market conditions, Eugenia, a Casita affiliate, provided AMC with a credit facility, and later on with a revolving line of credit pursuant to a credit agreement. In May 2005, Eugenia declared AMC to be in default under the credit agreement based on revelations of fraudulent activity at the company. AMC ultimately went bankrupt and was placed in receivership in New York state court. Subsequently, Eugenia brought several lawsuits against AMC, the funds, and their principals. To satisfy obligations related to AMC's bankruptcy and payment of litigation expenses, the funds made capital calls to all their investors for approximately \$2 million. Casita refused to honor its

portion of the capital call (approximately \$700,000) and sued MapleWood Offshore in New York State court seeking a temporary restraining order to prevent being declared in default under the fund's governing documents for failure to honor the capital call. The temporary restraining order was granted to Casita on October 3, 2005. No other investors refused to honor the capital call.

On October 6, 2005, Casita drafted a letter addressed to MapleWood investors commenting on the then ongoing litigation and including copies of the complaints that Eugenia and Casita had filed in the courts against the funds. In the letter, Casita suggested a meeting of all limited partners in the MapleWood funds to discuss the management competency in protecting the remaining investments; it opined that, in light of the allegations against several MapleWood's representatives, the best solution may be to truncate the funds and sell off those remaining investments; and it further commented that MapleWood's "management competence, and honesty, in our opinion, are in serious doubt."

On January 9, 2006, plaintiffs filed an action in Florida state court against the defendants named in this action, alleging defamation, tortious interference with business relations, and tortious interference with contractual relations, all claims based on the statements contained in the October 2005 letter and similar statements made to unspecified MapleWood investors. That action was dismissed on July 11, 2007 by the Florida's Third District Court of Appeal for lack of personal jurisdiction. Plaintiffs then commenced the instant action on August 2007, by filing a virtually identical complaint to the one filed in Florida.

### *Discussion*

#### I. Defamation Claim.

Defendants argue that the defamation claim should be dismissed because it is time-

barred. Plaintiffs contend that the applicable statute of limitations was equitably tolled during the pendency of the appeal in the Florida court, and that the claim was timely when filed in this court.

CPLR 215(3) provides for a one-year statute of limitations on defamation claims. The statute of limitations begins to run on the day the statements at issue were originally published. *Hochberg v. Nissen*, 180 A.D.2d 435 (1<sup>st</sup> Dep't 1992). Here, plaintiffs' defamation claim was filed approximately one year and eight months after the publication of the alleged defamatory statements and is time-barred unless it falls within a procedural rescuing provision. Under certain circumstances, CPLR 205(a) provides that actions brought after termination of a prior action may have the benefit of the earlier filing date. CPLR 205(a) provides as follows:

If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a *failure to obtain personal jurisdiction over the defendant*, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff . . . may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action . . . .

CPLR 205(a) (emphasis added). For purposes of this statute, "termination" of the prior action occurs when appeals as of right are exhausted. *Andrea v. Arnone, Hedin, Casker, Kennedy and Drake*, 5 N.Y.3d 514 (2005).

Since CPLR 205(a) specifically excludes actions dismissed for failure to obtain personal jurisdiction and the action in Florida was dismissed on appeal for that reason, plaintiffs' defamation claim cannot be rendered timely by CPLR 205(a); it is barred by the relevant one-year statute of limitations, and must be dismissed.

Additionally, CPLR 205(a) is not applicable because plaintiffs' earlier action was not filed in a New York court. *Lehman Bros., Inc. v. Hughes Hubbard & Reed, LLP*, 245 A.D.2d 203 (1<sup>st</sup> Dep't 1997), *aff'd*, 92 N.Y.2d 1014 (1998) (plaintiff's earlier action filed in Texas State court and dismissed for lack of personal jurisdiction was not a "prior action" within the meaning of CPLR 205(a)).

Moreover, even if it were not time-barred, the defamation claim is untenable because the statements were protected by "qualified privilege." "A qualified privilege arises when a person makes a bona fide communication upon a subject in which he or she has an interest, or a legal, moral, or social duty to speak, and the communication is made to a person having a corresponding interest or duty." *Garson v. Hendlin*, 141 A.D.2d 55 (2d Dep't 1988); *see Byam v. Collins*, 19 N.E. 75 (1888). In addition, comments about proceedings, essentially summarizing or restating the allegations of a pleading filed in an action are privileged statements under Civil Rights Law § 74, which provides that a "civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding." *Lacher v. Engel*, 33 A.D.3d 10 (1<sup>st</sup> Dep't 2006); N.Y. Civ. Rights Law § 74. Moreover, "[a]n expression of pure opinion is not actionable. It receives the Federal constitutional protection accorded to the expression of ideas, no matter how vituperative or unreasonable it may be." *Steinhilber v. Alphonse*, 68 N.Y.2d 283 (1986). Here, the statements about MapleWood's management competence and honesty are privileged because they were made within the common interest that Casita shared with other investors in MapleWood Offshore and MapleWood Domestic, which are both managed by the same entities, because they were statements of opinion, and because they merely reiterated what was contained in court papers.

## II. Tortious Interference With Contractual Relations.

Defendants contend that plaintiffs' allegations in the complaint fail to state a claim for tortious interference with contractual relations. To state a cause of action for tortious interference with contractual relations, a plaintiff must demonstrate: (1) the existence of a valid contract between the plaintiff and a third party; (2) defendant's knowledge of that contract; (3) defendant's intentional procurement of the third-party's breach of the contract without justification; (4) actual breach of the contract; and (5) resulting damages. *Lama holding Co. v. Smith Barney Inc.*, 88 N.Y.2d 413 (1996). There can be no claim for inducing a breach of contract where there is no evidence of a broken contract. *NBT Bankcorp Inc., Fleet/Norstar Financial Group, Inc.*, 87 N.Y.2d 614 (1996). This claim must be dismissed because plaintiffs have not alleged any breach of contract in the complaint resulting from defendants' alleged defamatory statements.

## III. Tortious Interference With Business Relations Claim.

Defendants argue that plaintiffs fail to state a claim for tortious interference with business relations and that the alleged defamatory statements supporting the claim are privileged and thus non-actionable statements. To make out a claim for tortious interference with prospective business relations a plaintiff must establish the following elements: (1) business relations with a third party; (2) the defendant's interference with those business relations; (3) the defendant acting with the sole purpose of harming the plaintiff or using wrongful means; (4) and (d) injury to the business relationship. *Advanced Global Technology LLC v. Sirius Satellite Radio, Inc.*, 15 Misc.3d 776 (Sup. Ct. N.Y. Co. 2007) (citing *Guard-Life Corp. v. Parker Hardware Mfg. Corp.*, 50 N.Y.2d 183 (1980)). If lawful means are used in interfering with the business relations of

another, the motive for the interference must be solely malicious and not based on self-interest.

*Pamilla v. Hospital for Special Surgery*, 223 A.D.2d 508 (1<sup>st</sup> Dep't 1996).

Here, Casita's motive for making the statements contained in the October 2005 letter to other MapleWood investors is not "solely malicious." In the complaint, plaintiffs allege that Casita had over \$20 million invested in one of the MapleWood funds. The funds were AMC's controlling shareholder when the AMC venture went sour, resulting in a large loss for all the investors, including Casita, and fraud claims were brought against AMC. Plaintiffs' allegations show that Casita's reason for contacting entities whose investments in the funds were managed by the same MapleWood representatives and for questioning the competence and honesty of the management was at least in part in its own self-interest, that is, to protect its remaining investments with the funds. Moreover, plaintiffs have not alleged any injury resulting from defendants' conduct. Instead, plaintiffs state that no other investor followed Casita in refusing to honor MapleWood's capital call.

Moreover, when an action for defamation is time-barred, a plaintiff cannot avoid the one-year statute of limitations by reformulating that cause of action as a different tort where a longer statute of limitations is applicable. *Dubourcq v. Brouwer, Sup.*, 124 N.Y.S.2d 61, aff'd, 282 A.D. 861 (1<sup>st</sup> Dep't 1953). Although couched as claims for tortious interference, plaintiffs' claims sound in defamation because they are based on the allegedly defamatory statements contained in the October 2005 letter and the remedy sought is redress for injury to plaintiffs' reputation. *See In Re Entm't Partners Group v. Davis*, 198 A.D.2d 63 (1<sup>st</sup> Dep't 1993) (dismissing a claim for tortious interference with business relations as an attempt to bring a defamation action which was time-barred).

Based on the above analysis, plaintiffs' claim for tortious interference with business relations is dismissed.

Accordingly, it is hereby

ORDERED that defendants' motion is granted and the complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: 12/20/07

Enter:



Helen E. Freedman, J.S.C.

**FILED**  
JAN 02 2008  
NEW YORK  
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