

Hill v Coates

2008 NY Slip Op 30136(U)

January 16, 2008

Supreme Court, New York County

Docket Number: 0603162/2006

Judge: Herman Cahn

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

PRESENT: Justice Cahn
Justice

PART 49

AL G. Hill III

INDEX NO. 603162106

MOTION DATE _____

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

- v -

Theodate Coates

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

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION IN MOTION SEQUENCE.....**

FILED

JAN 18 2008

NEW YORK
COUNTY CLERK'S OFFICE

Dated: January 16 2008 Am. Cahn J.S.C.

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: IAS PART 49

-----X
AL G. HILL III,

Plaintiff,

-against-

Index No. 603162/06

THEODATE COATES,

Defendant.
-----X

FILED
JAN 18 2008
NEW YORK
COUNTY CLERK'S OFFICE

Herman Cahn, J.:

This is an action for tortious interference with contract, fraud and misappropriation.

Defendant Theodate Coates moves, pursuant to CPLR §§ 3211(a)(1), 3211(a)(5) and 3211(a)(7), to dismiss the Amended Complaint.

Background

It is alleged in the Amended Complaint, that plaintiff is a resident of Dallas, Texas, with business interests in real estate development, oil and gas exploration and securities investments. Defendant is a New York resident and the daughter of Benjamin Coates. Benjamin Coates was a successful businessman with extensive real estate holdings. Among other things, he owned a 21,000 acre ranch (Rancho Guejito) in San Diego County, California and a 31-story commercial office building at 555 Madison Avenue in New York City.

The Amended Complaint asserts that in order to shield his assets from various tax liabilities, Benjamin Coates formed a Trust on April 17, 1986 under the laws of Liechtenstein. The Trust had a term of 100 years; its purpose was to grow its assets throughout that period. At the end of the term, the assets were to pass to the Principal Trustee with the "hope" that the Principal Trustee would create a successor trust similar to the original Trust.

According to the Amended Complaint, Benjamin Coates contributed nearly all his assets to the Trust, including his real estate holdings and securities worth hundreds of millions of dollars. Non-party Thomas Fisher was appointed as Principal Trustee. Fisher resigned in January of 1997 whereupon Benjamin Coates became Principal Trustee.

According to plaintiff, Benjamin Coates and the Hill family became acquainted in the 1960's. Plaintiff asserts that he and Benjamin Coates developed a strong relationship, nearly akin to father and son. Based on this relationship, Benjamin Coates eventually decided that plaintiff should one day take over management of his assets. Plaintiff asserts that Benjamin Coates wanted the Trust's assets to continue to grow after his death, rather than be distributed, with the exception of income which would provide for his descendants. Benjamin Coates is alleged to have told plaintiff that Coates' son was incapable of managing the Trust and that defendant was not equipped to do so on her own.

The Amended Complaint alleges that between 1999 and 2004, plaintiff and Benjamin Coates had numerous conversations in which Benjamin Coates stated his desire

for plaintiff to manage the Trust's assets. The parties also allegedly consulted with attorneys to determine how to carry out Benjamin Coates' wishes in connection with the Trust. Plaintiff states that in July of 1999, Benjamin Coates began to share detailed information with plaintiff and his father about the assets of the Trust. Benjamin Coates also instructed his advisors and employees to provide plaintiff with any information about the Trust that plaintiff would need to help carry out the transition of the management of the Trust.

Plaintiff alleges that in the Spring of 2004, he and Benjamin Coates entered into an oral agreement under which Benjamin Coates, on behalf of the Trust, appointed plaintiff to manage the assets of the Trust. Benjamin Coates also allegedly asked plaintiff to assist in the restructuring of the Trust. Plaintiff suggested the formation, in the Cayman Islands, of Coates Management Company, which would serve as investment adviser to the Trust. Plaintiff and his family would be the Principal Directors of the company and would receive compensation in the form of fees and dividends.

The Amended Complaint further alleges that Benjamin Coates requested that plaintiff transfer the Trust itself to the Cayman Islands. In October of 2004, Benjamin Coates allegedly had one of his attorneys prepare documents memorializing the relocation of the Trust's domicile and naming Coates Management Company as manager of the assets. However, Benjamin Coates passed away on December 7, 2004, without having signed any such documents. Moreover, plaintiff does not allege that Benjamin Coates

signed any documents memorializing the various aspects of his alleged agreement with plaintiff.

Plaintiff commenced this action, asserting claims for tortious interference with contract, fraud and misappropriation of assets.¹ Plaintiff alleges that immediately after Benjamin Coates' death, defendant interfered with the alleged oral agreement between plaintiff and Benjamin Coates pursuant to which plaintiff was to assume control of the Trust. Specifically, the Amended Complaint sets forth that defendant "wrongfully and surreptitiously assumed the position of Principal Trustee of the . . . Trust," despite allegedly knowing that she had no legal authority to do so. (Am Compl ¶ 68). Plaintiff claims that, on September 13, 2005, defendant resigned that position and appointed a new Principal Trustee, Maria de Los Angeles Hernandez Olivares, who is a citizen of Mexico. (Id. ¶ 73). Plaintiff alleges that Olivares does not exert independent judgment in carrying out the mandate of the Trust and, as such, defendant has retained de facto control over the Trust. (Id. ¶ 74).

It is also alleged in the Amended Complaint that defendant "fully and secretly took control over the companies which own and manage the . . . Trust's assets, even though she was aware that Benjamin Coates had appointed Plaintiff as the manager of these assets." (Id. ¶ 75). Plaintiff alleges that "[a]t present, Defendant is the Director and Chief Executive Officer of the companies that manage and control the trust's assets." (Id.). As

¹ The misappropriation claim was withdrawn, without prejudice, during oral argument of this motion.

such, she controls the day to day operations of the companies, and thereby controls the Trust itself. (Id.).

Plaintiff argues that defendant's actions enabled her to misappropriate assets, income and distributions from the Trust for her own benefit, and that defendant "is treating herself, directly and indirectly, as the owner of all the corporate stock that is actually owned by the . . . Trust." (Id., ¶ 76).

Defendant now moves to dismiss the Amended Complaint.

On a motion to dismiss made pursuant to CPLR 3211(a)(7), the court must accept the complaint's factual allegations as true and accord the plaintiff the benefit of every possible favorable inference determining only whether the facts as alleged fit within any cognizable legal theory. Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc., 10 AD3d 267, 270 [1st Dept 2004].

Tortious Interference with Contract

Plaintiff's first cause of action is for tortious interference with contract. "[T]he elements of a cause of action to recover damages for tortious interference with contract . . . are the existence of a valid contract with a third party, defendant's knowledge of that contract, defendant's intentional and improper procuring of a breach, and damages." New York Merchants Protective Co, Inc v Rodriguez, 41 AD3d 565, 566 [2d Dept 2007], citing White Plains Coat & Apron Co v Cintas Corp, 8 NY3d 422, 426 [2007]; Lama Holding Co v Smith Barney, 88 NY2d 413, 424 [1996]. Defendant argues that this cause of action

must fail because plaintiff has not adequately alleged the existence of an enforceable contract between plaintiff and Benjamin Coates, on behalf of the Trust.

The Amended Complaint fails to adequately allege facts supporting the elements of an oral agreement between plaintiff and Benjamin Coates whereby plaintiff would manage the assets of the Trust, and be paid therefor. The allegations made are conclusory and insufficient facts are pleaded. Conclusory allegations alone are not sufficient to sustain the cause of action. As such, the Amended Complaint does not adequately allege a claim for tortious interference with contract.

Plaintiff has not sufficiently set forth when the alleged agreement was actually entered into. Plaintiff vaguely states that “by the dawn of 2004” Benjamin Coates “began requesting a commitment from plaintiff that he would take oversight and control of the management of the assets in the [T]rust.” (Am Compl ¶ 50). Plaintiff further alleges that by “the Spring of 2004 Mr. Coates asked plaintiff to begin working directly with Mr. Coates’s attorneys to accomplish the structure and to obtain final documents to effect the transfer of control.” The Amended Complaint does not provide any specific details as to when the claimed agreement was entered into, e.g. the day of the year, or even the month. Nor does plaintiff demonstrate or even allege where such an agreement was entered into. Moreover, the allegation that an agreement was fully reached in early 2004 is contradicted by other allegations in the Amended Complaint which state that, as late as October of 2004, Benjamin Coates continued to work with his attorneys and other employees in an

attempt to implement changes in the structure of the Trust. (Id. ¶ 54). Such allegations undermine plaintiff's claim that an agreement was reached earlier in the year.

The Amended Complaint also fails to set forth essential details of the alleged agreement. Significantly, it fails to specify the amount of plaintiff's compensation or how such compensation was to be determined. Plaintiff states that he was "to receive both director's fees and dividends from the Trust" as compensation for his services. (Id. ¶ 62). However, as late as August of 2004, Benjamin Coates and his attorneys were still allegedly communicating with regards to adding a provision limiting the total compensation "payable to the Trustees, the Protector, Investment Advisors, and Investment Managers to no more than 30% of the income of the Trust." (Id.). Thus, plaintiff's own allegations demonstrate that he and Benjamin Coates had not reached a final agreement on compensation.

Defendant also points out other factors which indicate that a final agreement was never reached whereby plaintiff would take over management of the Trust. Most significant is plaintiff's allegation that the new Trust structure

called for the formation of the Coates Management Company . . . to manage the trust's assets. Mr. Coates, Plaintiff, Al Jr. [plaintiff's father], and Defendant were to be the directors of the Management Company. The Management Company was to serve as the Protector and Investment Advisor of the trust, and receive compensation for these services from the trust.

(Id. ¶ 61).

The Amended Complaint also states that "Mr. Coates, Plaintiff, and Defendant were also to enter into a separate Members' Agreement to govern their rights, duties, and

obligations concerning the Management Company.” (Id. ¶ 62) (underlining added).

Furthermore, “[t]he Members’ Agreement provided that Plaintiff’s family would be the Principal Directors of the Management Company, and that the Management Company would have decision-making authority over the management of the assets in the trust.” (Id.).

Based on the foregoing, it is clear that plaintiff’s role as manager of the Trust was predicated on an agreement which required defendant to act as a Director of the newly formed Coates Management Company. However, there is no allegation that defendant ever agreed to operate in such a capacity or that she agreed to enter into the Members’ Agreement described above. Thus, plaintiff’s own allegations demonstrate that a certain amount of cooperation and involvement by defendant was part of the proposed structure whereby plaintiff would manage the Trust. The fact that such cooperation was indisputably never acquired or agreed to undermines plaintiff’s allegation that a final agreement was reached between plaintiff and Benjamin Coates as to how the Trust was to be managed.

At most, the Amended Complaint adequately alleges that Benjamin Coates contemplated changing the structure of the Trust and the manner in which the Trust was governed. However, plaintiff has not adequately alleged that he and Benjamin Coates entered into an oral agreement whereby plaintiff was to take over as manager of the Trust. See Galesi v Galesi, 37 AD3d 249 [1st Dept 2007] (totality of the circumstances demonstrated that there was never a meeting of the minds on all essential terms of alleged

agreement). Taken as a whole, the Amended Complaint simply does not adequately allege the terms of the claimed agreement. Therefore, this cause of action is dismissed.

Fraud

The second cause of action asserts a claim for fraud. Plaintiff alleges that after Benjamin Coates died, defendant represented to plaintiff that she understood that her father intended for plaintiff to take over management of the Trust. Further, defendant allegedly represented to plaintiff that she would assist in implementing that intent, i.e. that she would take steps to implement the transition, to plaintiff, of the management of Trust's assets.

Plaintiff alleges that defendant's statements were false and that such statements induced plaintiff to forebear initiating legal action against the Trust in the United States until defendant could appoint a foreign national as the Principal Trustee, which she eventually did, as set forth above.

The cause of action is dismissed. Plaintiff's claim rests on his assertion that defendant misrepresented her authority to manage the Trust and that it was plaintiff who was entitled to manage the assets of the Trust, pursuant to his alleged agreement with Benjamin Coates. (See PI Br at 22.) However, as set forth above, plaintiff has failed to adequately plead the existence of an agreement whereby he, rather than defendant, was entitled to manage the Trust. Nor has he adequately alleged that defendant did not have the authority to manage the Trust. Thus, he has not demonstrated that he reasonably relied on any statements whereby defendant allegedly promised to assist him in taking over

management of the Trust. See Water Street Leasehold LLC v Deloitte & Touche LLP, 19 AD3d 183 [1st Dept 2005] (reasonable reliance is an essential element of fraud claim). Therefore, the fraud claim must fail.


Accordingly, it is

ORDERED that the motion to dismiss the Amended Complaint is granted and the Amended Complaint is dismissed, and it is further

ORDERED that the Clerk may enter judgment in favor of defendant against plaintiff, dismissing the Amended Complaint, together with the costs and disbursement of the action.

DATED: January 16, 2008

ENTER:

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J.S.C.

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JAN 18 2008
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