

Manti's Transp., Inc. v C.T. Lines, Inc.

2008 NY Slip Op 30649(U)

February 25, 2008

Supreme Court, Richmond County

Docket Number: 0101575/2006

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

DCM PART 3

**MANTI'S TRANSPORTATION, INC. and
ALFRED J. MANTI,**

**Index No: 101575/06
Calender No. 1968 - 001**

Plaintiffs,

-against-

**DECISION & ORDER
HON. JOSEPH J. MALTESE**

**C.T. LINES, INC., d/b/a CAMPUS COACH,
BERTRAM J. ASKWITH a/k/a MIKE LONG,
and PATRICIA KENNER,**

Defendants.

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The following papers numbered 1 to 6 were used on this motion the 2nd day of November, 2007:

| | Pages Numbered |
|--|-------------------|
| Defendants' Notice of Motion for Summary Judgment, with Supporting Papers..... | 1 |
| Defendants' Memorandum of Law..... | 2 |
| Affidavit of Bertram J. Askwith (dated June 13, 2007)..... | 3 |
| Amended Affidavit of Alfred J. Manti in Opposition to Motion for Summary Judgment (dated September 20, 2007)..... | 4 |
| Plaintiffs' Amended Memorandum of Law in Opposition..... | 5 |
| Defendants' Reply Affirmation (dated October 24, 2007)..... | 6 |

Upon the foregoing papers, defendants' motion for summary judgment dismissing the complaint is granted, in part, and denied, in part, in accordance with the following.

This action arises out of a business transaction wherein plaintiff Manti's Transportation, Inc., a former commuter bus company, through its president, plaintiff Alfred J. Manti (hereinafter, collectively "Manti"), agreed to purchase several buses from defendant C.T. Lines, Inc. d/b/a Campus Coach (hereinafter "C.T."). Plaintiffs assert seven causes of action: (1) fraudulent inducement to enter a contract to purchase vehicles; (2) fraudulent concealment of a scheme to prevent plaintiffs from operating vehicles purchased

from defendants; (3) fraudulent misrepresentation of defendants' ownership of and right to title and register the vehicles; (4) continuing fraudulent concealment of the use of vehicles by defendants; (5) continuing tortious interference with business; (6) continuing tortious interference with contract; and (7) continuing prima facie tort (withdrawn on consent).

Insofar as it appears on the papers before the Court, on November 18, 1999, Manti entered into a security agreement with nonparty Associates Commercial Corp. (hereinafter "Associates") for the financing to purchase two of the planned 18 buses which Associates had agreed to finance. Notably, it is alleged that it was necessary for all 18 buses to be operational before Manti could commence operation of its bus routes. It is undisputed that on November 18, 1999, Associates delivered a check covering the total purchase price of the first two buses (i.e., \$133,066.00) to C.T. In return, defendant Bertram J. Askwith (C.T.'s principal), acting with Manti's consent, delivered C.T.'s endorsed certificates of title and bills of sale for both buses to Associates' vice president, Larry Shute (hereinafter "Shute"), who was to deliver these documents along with any other necessary documents to the New York State Department of Motor Vehicles (hereinafter "DMV") in order to obtain Certificates of Title in Manti's name so that the buses could be registered and insured. Pending the DMV's issuance of the new title documents (which were to be forwarded to Associates as lienholder), the two buses remained on C.T.'s premises.

Insofar as it is pertinent to the instant matter, it is alleged that Shute subsequently but falsely assured Manti that he had completed processing the title transfers, and had obtained new certificates of title for each of the buses that were to be purchased with financing from Associates. It is further alleged that while Associates continued to demand its periodic loan payments, it fraudulently prevented Manti from titling any of the fleet, thereby rendering Manti incapable of commencing operations and generating revenue. It was these acts that purportedly precipitated plaintiffs default on all of its loans from Associates. In an attempt at an explanation, Shute allegedly advised Manti that although the new titles had been obtained from the DMV, Associates had withheld their release to Manti because the latter was in default on the loans. As a result, on October 17, 2000, plaintiffs commenced a lawsuit against Associates in the Supreme Court, Kings County for, *inter alia*, fraud, breach of express and implied contract, unjust enrichment, and tortious interference with prospective business advantage. That action was eventually removed to federal court (hereinafter "Manti I"), where it was dismissed prior to the onset of discovery based on a "Mutual Release" purportedly executed on or about November 18, 1999. In

addition, Associates was granted summary judgment on its counterclaim against Manti for more than \$1 million, representing the outstanding balance of the loans.

Following certain alleged “new discoveries” by plaintiffs in “late 2005 and early 2006”, Manti commenced a second action in federal court on April 12, 2006 (hereinafter “Manti II”) seeking to vacate the original determination based on allegations of a “fraud upon the court.” In support, it was alleged that in October 2005, Manti discovered for the first time that no applications had ever been filed by Associates with the DMV to effectuate the title transfers, and that Associates had never filed lien applications securing the \$1 million in outstanding loans. Rather, plaintiffs claim that Shute retained possession of the original title documents for all of the buses, and several of the vehicles had been repossessed by Associates through the use of “laundered” titles obtained by filing false affidavits with the States of New York, Indiana and West Virginia. Manti II is still pending in federal court.

As for the two “C.T.” buses that are at issue in this action, plaintiffs claim that (1) title has remained in the name of C.T. since the date of Manti’s purchase in November 1999, (2) these vehicles were never repossessed by Associates, (3) registration records obtained from the DMV in December 2005 indicate that C.T. never relinquished title to either of the buses, and fraudulently registered and insured them, and (4) C.T. has continued to earn revenue from its operation of these vehicles since the purported date of sale. Based on this newly discovered evidence, plaintiffs contend that defendants were privy to Shute’s plan to prevent Manti from titling, registering, and operating said buses and to “put [plaintiffs] out of business.” In addition, it is alleged that as part of that plan, Askwith was allowed to register, insure, operate and earn revenue from the buses he sold to Manti while retaining the entire \$133,066.00 sales price. Finally, plaintiffs maintain that since Askwith and Shute have yet to be deposed, dismissal of the action at this stage of the litigation would be premature, as much of the evidence of their alleged joint efforts presently lies exclusively within the knowledge and possession of Shute and the defendants.

In moving for summary judgment, defendants maintain that so much of plaintiffs’ claims as derive from their allegations of fraud, misrepresentation, concealment and/or manipulation of the certificates of title on the part of Associates are barred from re-litigation by the dismissal of the complaint in Manti I. Defendants further maintain that plaintiffs’ claim for damages bear no relationship to the allegations of wrongdoing on the

part of C.T. In addition, defendants maintain that the Statute of Limitations is a complete bar to each and every cause of action. More particularly, C.T. maintains that plaintiffs' purported claims arose on November 18, 1999, six and one-half years prior to the commencement of this action on May 16, 2006. According to defendants, this lapse of time constitutes a bar to plaintiffs' first, second, third and fourth causes of action, each of which sounds in fraud and is barred by either the six-year Statute of Limitations in fraud as measured from the date of accrual, or the alternative two-year limitations period measured from the date of discovery (CPLR 213[8]). Defendants further claim that the fifth and sixth causes of action alleging "tortious interference" are barred by the applicable three-year Statute of Limitations in tort (*see* CPLR 214[4]). In the alternative, it is maintained that plaintiffs have failed to plead their fraud claims with the specificity required by CPLR 3016. Finally, defendants contend that all of plaintiffs' claims are frivolous, and ask for sanctions to be assessed against them.

With regard to plaintiffs' third cause of action based on C.T.'s alleged fraudulent misrepresentation of its right to title and register the two buses purchased in November 1999, defendants correctly point out that this claim is predicated *solely* on Vehicle and Traffic Law §392, which does not create a private right of action for its violation. Rather, it imposes criminal penalties against persons who (1) knowingly make false statements on DMV applications for renewals of motor vehicle registrations, or (2) operate a vehicle using or displaying any such false documents. Thus, plaintiffs' third cause of action must clearly be dismissed.

Turning to the issue of whether plaintiffs' fraud claims are barred by the Statute of Limitations, the allegations in the complaint relative to Manti's discovery in October and December, 2005 of C.T.'s purported fraudulent acts are sufficient to raise a triable issue of fact as to whether or not said fraud could have been discovered earlier "with reasonable diligence" (*see* CPLR 213[8]; *cf.* Fabozzi v Coppa, 5 AD3d 722, 723-724). Accordingly, plaintiffs' first, second and fourth causes of action are not time-barred as a matter of law.

Moreover, plaintiffs have pleaded all of the required elements of a fraud claim, i.e., the misrepresentation or concealment of a material fact, falsity, scienter, justifiable reliance, and injury (*see* Small v Lorillard Tobacco Co., 94 NY2d 43, 47; Dembeck v 220 Centr. Park S., LLC, 33 AD3d 491, 492; Merrill Lynch, Pierce, Fenner & Smith v Wise Metals Group, 19 AD3d 273, 275), with sufficient specificity to withstand dismissal under CPLR

3016(b).

With regard to plaintiffs' fifth and sixth causes of action, it is well settled that a cause of action for tortious interference with business relations will lie only where the alleged interferer used unlawful means or acted with the intention of inflicting harm upon plaintiff without excuse or justification (Datlow v Paleta Intl. Corp., 199 AD2d 362, 363; *see* Slifer-Weickel v Meteor Skelly, 140 AD2d 320). In contrast, tortious interference with contract requires neither unlawful or malicious conduct, but rather "(1) the existence of a contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional inducement of the third party to breach or otherwise render performance impossible; and (4) damages to plaintiff" (Kronos, Inc. v AVX Corp., 81 NY2d 90, 94; *see* Carvel Corp. v Noonan, 3 NY3d 182, NBT Bancorp. Inc. v Fleet/Norstar Financial Group, Inc., 87 NY2d 614; Guard-Life Corp. v Parker Hardware Mfg. Corp., 50 NY2d 183, 189-190).

As the proponents of summary judgment, defendants at bar have failed to meet their initial burden of establishing as a matter of law that their actions were lawful and bore no nexus to, e.g., Associates' alleged "scheme" to induce a breach of the security agreements and/or plaintiffs' claimed business failure (*see* Anderson v Livonia, Avon & Lakeville R.R., 300 AD2d 1134, 1135; *see generally* Zuckerman v City of New York, 49 NY2d 557, 562). More particularly, defendant Askwith's mere denial of "contact" between Associates and the C.T. defendants regarding the possession and use of the first two buses is legally insufficient to eliminate material issues of fact relative to, e.g., C.T.'s alleged interference with Manti's contractual agreements with Associates, and its unlawful, post-sale registration and use of the Manti buses to bring about the collapse of plaintiffs' business. Accordingly, the Court is of the opinion that the dismissal of plaintiffs' fifth and sixth causes of action would be premature prior to the completion of discovery (*see* CPLR 3212[f]).

Moreover, in view of the continuing nature of plaintiffs' damages, i.e., its lost business revenues, defendants have failed to conclusively establish that plaintiffs' claims of damage from defendants' tortious interference are time-barred in their entirety (CPLR 214[4]; *see* Kronos Inc. v AVX Corp., 81 NY2d at 94). Pertinent in this regard is plaintiffs' annexed copy of DMV registration records indicating that one of the "C.T." buses at issue in this case (the 1980 Crusa) was continually registered to C.T. until February 25, 2003, when it was withdrawn from service, while the second (the 1981 MCI) has been continually

registered to C.T. from the date of Manti's purchase until the present time. In any event, plaintiffs have set forth sufficient factual allegations of deception and concealment on the part of these defendants to raise a triable issue as to whether the doctrine of equitable estoppel should be applied to bar their attempted application of the three-year Statute of Limitations to bar plaintiffs' fifth and sixth causes of action in tort (*see Niagra Mohawk Power Corp. v Freed*, 288 AD2d 818, 819).

Finally, inasmuch as C.T.'s corporate officers have yet to be deposed, it is premature to determine whether either or both can be held personally liable for the alleged corporate misconduct. In any event, read together, the complaint and exhibits annexed thereto sufficiently demonstrate that defendant Askwith may have personally participated in the alleged wrongdoing, and that both he and his daughter, defendant Patricia Kenner, signed the annual registration renewals for the subject buses (*see CPLR 3212[f]*).

Accordingly, it is hereby:

ORDERED, that defendants' motion for summary judgment is granted only as to plaintiffs' third cause of action, which is hereby severed and dismissed; and it is further

ORDERED, that the balance of defendants' motion is denied; and it is further

ORDERED, that the Clerk enter judgment accordingly.

E N T E R,

Dated: February 25, 2008

Joseph J. Maltese
Supreme Court Justice