

**Women's Interart Ctr., Inc. v Clinton Hous.
Dev. Fund Corp.**

2008 NY Slip Op 31997(U)

July 14, 2008

Supreme Court, New York County

Docket Number: 0113088/2007

Judge: Karen Smith

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

PRESENT: HON. KAREN SMITH
Justice

PART 62

Index Number : 113088/2007
WOMEN'S INTERART CENTER
vs
CLINTON HOUSING DEVELOPMENT
Sequence Number : 002
DISMISS ACTION

INDEX NO. _____
MOTION DATE 07/03/2008
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

his motion to ~~for~~ dismiss the complaint

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits <u>Memorandum</u>	<u>1</u>
Answering Affidavits — Exhibits <u>Memorandum</u>	<u>2-3</u>
Replying Affidavits	<u>4</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

FILED
JUL 17 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 7/14/08

K. S. S.
HON. KAREN SMITH 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 62

-----X
WOMEN'S INTERART CENTER, INC.,

Plaintiff,

-against-

Index No.: 113088/2007
Motion Seq.: 002
Motion Date: 07/03/2008

CLINTON HOUSING DEVELOPMENT FUND CORP.,

Defendants.

DECISION AND ORDER

FILED
JUL 17 2008
COUNTY CLERK'S OFFICE
NEW YORK

PRESENT: KAREN S. SMITH, J.S.C.:

Defendant's motion to dismiss the complaint herein is denied except to the limited extent that the first cause of action titled "AS AND FOR A THIRD CAUSE OF ACTION" (for tortious interference with contracts) is dismissed and the claim for punitive damages contained within the second cause of action titled "AS AND FOR A THIRD CAUSE OF ACTION" (sounding in *prima facie* tort) is also dismissed, however, the balance of said cause of action shall continue.

Plaintiff ("WIC") commenced this action against defendant ("CHDF") alleging four causes of action seeking: 1) a judgment declaring a certain "net lease" between CHDF and the City of New York ("CNY") for real property known as 500 and 549 West 52nd Street null and void as well as various related declarations concerning CHDF's authority with respect to WIC's tenancies at the subject premises, 2) a permanent injunction precluding CHDF from attempting to evict WIC from the buildings, otherwise interfering with WIC's right to occupy the buildings or taking any action which might interfere with WIC's potential ownership rights in the buildings should WIC prevail in the specific performance action WIC currently has pending against CNY

(and which has been consolidated with this action), 3) compensatory and punitive damages against CHDF for its tortious interference with the rental agreements between WIC and CNY concerning the subject premises and 4) compensatory and punitive damages for CHDF's intentional infliction of harm upon WIC without justification (ie: *prima facie* tort).

Before submitting its answer herein, CHDF now moves to dismiss the action on CPLR §3211(a) (1) and (7) grounds contending: 1) The equitable claims (the first cause of action for a declaratory judgment and the second cause of action for a permanent injunction) should be dismissed because WIC has unclean hands, 2) WIC does not have standing to challenge the "net lease" agreement because WIC is not a party or third party beneficiary to the agreement and has not shown that it has or will suffer a direct harm as a result of the "net-lease" between CHDF and CNY., 3) the documentary evidence (ie: the "net lease" agreement) conclusively contradicts WIC's allegations that CHDF has no legal title or interest in the buildings which would give it authority to attempt to terminate WIC's tenancies thereat, 4) WIC is not entitled to injunctive relief since it has not shown that it will suffer any irreparable harm if it is evicted from the premises, 5) WIC's cause of action for tortious interference with contracts fails to state a cause of action because WIC has not alleged any actions by CHDF which caused CNY to breach its agreements with WIC and 6) WIC's cause of action for *prima facie* tort fails to specifically allege the actual damages sustained by WIC as a result of CHDF's alleged tortious acts.

A pre-answer CPLR §3211 motion addresses the face of the complaint. It is well settled that the role of the court on such a motion is limited to determining whether the allegations are sufficient to put the defendant on notice of events which, if proven at trial, establish a legally cognizable claim. For purposes of considering the motion, the factual allegations of the

complaint are deemed true and granted every favorable inference which may be derived therefrom unless the documentary evidence submitted in support of the motion conclusively establishes facts to the contrary.

In its motion papers, CHDF fails to address the facial sufficiency of the complaint except as to the causes of action for tortious interference with contract and *prima facie* tort. Instead, CHDF cites facts which they allege contrast with the allegations set forth by WIC in the complaint. Except for those facts conclusively established by documentary evidence, CHDF's assertions and arguments of fact within its motion papers may not be used to defeat the presumption of truth otherwise accorded the allegations contained in WIC's complaint. CHDF's offer of the document purporting to be the "net lease" agreement between itself and CNY does not conclusively establish any facts which contradict the allegations in WIC's complaint. WIC's complaint alleges that the "net lease" agreement is invalid, null and void because CNY has not complied with the necessary procedures to create a valid lease agreement. Under these circumstances, the mere existence of the document does not conclusively establish its validity and the court is not in a position to determine if the purported agreement confers any legitimate authority upon CHDF. As the document does not conclusively establish facts contradicting the allegations contained in WIC's complaint, it is not sufficient to rebut the presumption of the truthfulness of those allegations for the purposes of a CPLR §3211 motion.

CHDF does, however, properly challenge the facial sufficiency of WIC's cause of action alleging tortious interference with the property rental agreements between WIC and CNY. CHDF correctly contends that it is an essential element of a cause of action for tortious interference with a contract that another party to the contract allegedly being interfered with

actually breach the contract, and that plaintiff sustain damages as a result of the breach (See: *Lama Holding Co. v. Smith Barney Inc.*, 88 N.Y.2d 413 [1996]). In the instant matter, WIC has not alleged that CNY has actually breached its rental agreements with WIC. As WIC's complaint herein fails to set forth a proper claim for tortious interference with contract and WIC has not requested leave to replead this claim, the branch of CHDF's motion to dismiss this cause of action is granted.

CHDF also challenges WIC's cause of action alleging *prima facie* tort. CHDF contends that WIC has failed to specifically allege its actual damages and that such an allegation is a necessary element of a *prima facie* tort. While CHDF's contention is factually correct, WIC's complaint has specified the nature of the damages it alleges to have sustained and case precedent establishes that the missing information may be supplied in a bill of particulars (See eg: *Broadway & 67th St. Corporation v City of New York et al* 100AD2d 478 [1st Dept, 1984]). Accordingly, the branch of CHDF's motion which seeks the dismissal of this claim is premature. However, plaintiff is limited to the actual damages and may not receive punitive damages in connection with a cause of action for *prima facie* tort (See *Walsh Brothers, Inc. v Jacob Ruppert*, 7 AD2d 896 [1st Dept, 1959] and 103 NY Jur 2d, Torts § 20). Therefore, the portion of CHDF's motion to dismiss WIC's claim for punitive damages on its cause of action for *prima facie* tort is also granted. The portions of CHDF's motion seeking the dismissal of the remaining causes of action, is denied. Accordingly, it is;

ORDERED that the first cause of action titled "AS AND FOR A THIRD CAUSE OF ACTION" (for tortious interference with contracts) is dismissed and the portion of the second cause of action titled "AS AND FOR A THIRD CAUSE OF ACTION" (sounding in *prima facie*

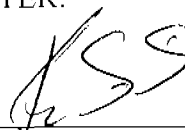
tort) which seeks punitive damages is also dismissed but the balance of WIC's cause of action sounding in *prima facie* tort and remainder of WIC's complaint shall remain, and it is further:

ORDERED that, upon service of a copy of this order together with notice of entry hereof and such forms and fees as the clerk may reasonably require, on the appropriate division of the clerk's office, the clerk shall forthwith make the appropriate entries in the court's records to reflect the dismissals set forth herein but to continue the balance of this action.

The foregoing constitutes the decision and order of this court.

Dated: July 14, 2008

ENTER:



Hon. Karen S. Smith, J.S.C.

FILED
JUL 17 2008
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NEW YORK