

**Ford, Inc. v Next Mgt., LLC**

2009 NY Slip Op 31836(U)

August 12, 2009

Supreme Court, New York County

Docket Number: 603304/08

Judge: Marcy S. Friedman

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SCANNED ON 8/17/2009

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

PRESENT: \_\_\_\_\_

PART \_\_\_\_\_

Index Number : 603304/2008  
**FORD, INC.**  
VS.  
**NEXT MANAGEMENT, LLC**  
SEQUENCE NUMBER : 001  
DISMISS ACTION

INDEX NO. \_\_\_\_\_

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

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

— *Next*  
n this motion to/for *Dismiss*

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits *Memo to Opp. M. 1*

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is decided as per*  
*decision/order dated 8-12-09*

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

**FILED**  
AUG 17 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: *8-12-09*

*[Signature]*  
\_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

\_\_\_\_\_ x

FORD, INC.,

*Plaintiff,*  
**FILED**  
AUG 17 2009  
COUNTY CLERK'S OFFICE  
NEW YORK  
*Defendants.*

Index No.: 603304/08

DECISION/ORDER

- against -

NEXT MANAGEMENT, LLC and KAREN  
CHANTI,

\_\_\_\_\_ x

In this breach of contract action, defendants Karen Chanti and Next Management, LLC (“Next”) each move to dismiss the complaint pursuant to CPLR 3211. Chanti seeks dismissal on the grounds that plaintiff’s claims must be arbitrated and that the complaint fails to state a cause of action. Next seeks dismissal on the grounds that the complaint is barred by res judicata and fails to state a cause of action.

This action arises out of an employment agreement (“Agreement”) between Ford Models, Inc. (“Ford”)<sup>1</sup> and Chanti, dated March 15, 2007. As alleged in the complaint, Ford is “a leading model management company that represents and manages the careers of models.” (Complaint, ¶ 8.) Chanti was employed by Ford as a “model manager” or booker whose responsibility it was to manage the careers of models. (*Id.*, ¶ 13.) It is undisputed that Chanti voluntarily terminated her

<sup>1</sup>The complaint was brought in the name Ford, Inc. Plaintiff contends that the plaintiff was misnamed and that it will move to amend the caption to name plaintiff as Ford Models, Inc. The misnomer is not relevant to issues in this motion and, for purposes of this decision, both entities are referred to as “Ford.”

employment with Ford in August 2008 and shortly afterwards went to work in the same capacity for Next, a competitor of Ford's. The complaint alleges that while at Ford, Chanti had been the manager of a model named Pamela Semmache with whom Ford had a "binding contract" (*id.*, ¶ 21); that Chanti and Next "solicited and induced Semmache to breach her exclusive contract with Ford and to follow Chanti to Next" (*id.*, ¶ 24); and that Semmache terminated her contract with Ford as of October 2, 2008. (*Id.*, ¶ 21.) Based on these factual allegations, the complaint pleads causes of action for tortious interference with contract, tortious interference with prospective economic advantage, unfair competition, and breach of contract.

As a threshold matter, the court rejects Chanti's contention that Ford's claims must be arbitrated. The arbitration provision of the employment agreement between Ford and Chanti expressly provides for the arbitration of disputes "[w]ith the exception of Ford Models' enforcement of the Confidential Information provisions in Paragraph 9, the Non-Solicitation Provisions of Paragraph 10, and the Covenant Not to Compete in Paragraph 11." (Agreement, ¶ 14.) As the causes of action are based exclusively on the Confidential Information and Non-Solicitation provisions of the Agreement, arbitration clearly is not mandated.

The court also rejects Next's contention that this action is barred by *res judicata*. As defendant points out, a prior action brought by Ford against Next (Ford Models, Inc. v Next Management, LLC, Sup Ct, NY County, Index No. 602377/08), was discontinued against Next with prejudice by stipulation dated September 10, 2008. A prior action against Chanti and another manager (Ford Models, Inc. v Lockner & Chanti, Sup Ct, NY County, Index No. 602361/08) was discontinued without prejudice by stipulation of the same date. These discontinuances were executed in connection with a Confidential Settlement Agreement

("Settlement") dated September 9, 2008. By its terms, the Agreement was intended to resolve all disputes between the parties with respect to the two prior lawsuits. (See Settlement, ¶ 1.01.) The prior lawsuits, in turn, involved claims that Next had induced Chanti (and the other manager) to violate the non-compete clauses in their employment agreements with Ford by going to work for Next. The prior lawsuits also involved claims of Next's and the bookers' solicitation of models Agnete Hansen and Natalia Andrade who were under contract with Ford. Under the Settlement, Ford acknowledged that Chanti was currently working for Next and "agree[d] to waive the provisions of Paragraph 11" (the non-compete paragraph) of the employment agreement as against Chanti. (Settlement, ¶ 2.02.) Next agreed to pay to Ford for a specified period all commissions received by Next for services performed by Hansen. (Id., ¶ 2.01.)

In waiving claims against Chanti for breach of the non-compete provision of the employment agreement, Ford expressly reserved all of its other rights against Chanti under the agreement. (See Settlement, ¶ 2.02.) Thus, contrary to Next's contention, Ford did not waive its claims against Next or Chanti for use of confidential information prohibited by the agreement or solicitation of Ford's clients. In addition, the transactions at issue in the instant action occurred in October 2008, after execution of the Settlement. The Settlement accordingly does not bar Ford's claims in this action.

Nor do defendants demonstrate that the complaint fails to state a cause of action. The standards for determination of a motion to dismiss are well settled:

The motion must be denied if from the pleadings' four corners "factual allegations are discerned which taken together manifest any cause of action cognizable at law." In furtherance of this task, we liberally construe the complaint and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion. We also accord plaintiffs the benefit of every

possible favorable inference.

(511 W. 232<sup>nd</sup> Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 152 [2002] [internal citations omitted].)

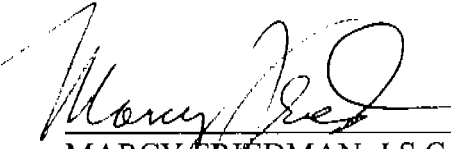
In claiming that the complaint does not state a cause of action, defendants rely on the affidavits of Chanti and Semmache, stating that Chanti did not solicit Semmache to leave Ford and that Semmache determined herself to be represented by Next. Defendants thus in effect seek judgment on the merits of the claims in this action. However, a determination on the merits is not proper on a motion to dismiss. Nor should the motion be converted to one for summary judgment. Not only are the averments in the affidavits conclusory, but plaintiff has not yet had the opportunity to conduct discovery as to information (e.g., defendants' conduct, if any, in soliciting Semmache) that is solely within the knowledge of defendants or third-parties. (See e.g. Integrated Logistics Consultants v Fidata Corp., 131 AD2d 338 [1<sup>st</sup> Dept 1987]; Simpson v Term Indus., 126 AD2d 484 [1<sup>st</sup> Dept 1987].) To the extent that defendants argue that the complaint is not pleaded with sufficient specificity, the court is unpersuaded by that contention.

The branch of defendants' motions to dismiss should accordingly be denied. Defendants request that, in the event the complaint is not dismissed, plaintiff be required to replead the complaint "without any sensationalism or editorializing." This branch of the motion is without merit, as the complaint is pleaded in a restrained, professional manner. Nor is there any basis for Semmache's request that any references in the complaint to models other than Semmache be struck. Next's request for attorney's fees and costs is in effect a request for sanctions that is wholly unwarranted on the facts.

It is accordingly hereby ORDERED that the motions to dismiss of defendants Karen Chanti and Next Management, LLC are denied in their entirety.

This constitutes the decision and order of the court.

Dated: New York, New York  
August 12, 2009

  
\_\_\_\_\_  
MARCY FRIEDMAN, J.S.C.

**FILED**  
AUG 17 2009  
COUNTY CLERK'S OFFICE  
NEW YORK