

**Pitcock v Kasowitz, Benson, Torres & Friedman,
LLP**

2009 NY Slip Op 32262(U)

September 29, 2009

Supreme Court, New York County

Docket Number: 601984/08

Judge: Martin Shulman

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

PRESENT: MARTIN SHULMAN
J.S.C.
Justice

PART 1

Kasowitz, B

INDEX NO. 601965/08

- v -

Pitcock, J

MOTION DATE _____

MOTION SEQ. NO. 01

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 ...

PAPERS NUMBERED

1

Answering Affidavits — Exhibits _____

2,3

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

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

FILED
OCT 01 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: Sept. 29, 2009

[Signature]
MARTIN SHULMAN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 1

-----X
JEREMY S. PITCOCK,

Plaintiff,

Index No.: 601984/08

-against-

DECISION & ORDER

KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP,
ERIC WALLACH and SITRICK AND COMPANY,

Defendants.

-----X
KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP,

Plaintiff,

Index No.: 601965/08

-against-

JEREMY S. PITCOCK,

Defendant.

-----X
Martin Shulman, J.S.C.:

FILED
OCT 01 2009
COUNTY CLERK'S OFFICE
NEW YORK

BACKGROUND

Motion sequence numbers 001, 003 and 004 are consolidated for disposition.

The two cases have been consolidated under the above caption pursuant to an order of this court dated January 14, 2009.

In motion sequence number 001, Jeremy S. Pitcock ("Pitcock") moves, pursuant to CPLR 3211(a)(7), (a)(4), and CPLR 3016, to dismiss the action against him. In motion sequence number 003, Sitrick and Company ("Sitrick") moves, pursuant to CPLR 3211(a)(7), and 3211(c), to dismiss the complaint as against it. In motion sequence number 004, Kasowitz, Benson, Torres & Friedman, LLP ("KBT&F") and Eric Wallach ("Wallach") move, pursuant to CPLR 3211(a)(4) and (a)(7), to dismiss the complaint as

against them. The portion of the above-referenced motions relating to CPLR 3211(a)(4) is based on a federal suit filed by Pitcock, which has subsequently been discontinued, rendering this portion of the motions moot.

Pitcock is an attorney specializing in intellectual property ("IP") and was hired as a partner by KBT&F in March of 2006. Pursuant to the terms of the partnership agreement in effect at the time that Pitcock became a partner, a partner could be expelled from the partnership for cause. One example given in the agreement constituting cause is "any action that injures the professional standing of the Partnership." Partnership Agreement, § 10.1.1. Additionally, section 12.1.2 of the agreement states: "Duties to Partnership/Fiduciary Responsibilities. All active Partners agree to safeguard the assets of the Partnership and conduct themselves and their personal affairs in a manner which will protect and enhance the name and reputation of the Partnership." At the time that Pitcock joined KBT&F, he also received a copy of the employee handbook, which states that KBT&F maintains a policy prohibiting sexual harassment.

On December 7, 2007, KBT&F terminated Pitcock because he allegedly engaged in inappropriate and unwelcome conduct with seven of the firm's female employees. According to KBT&F, it had to conduct an extensive investigation into Pitcock's actions based on complaints of several female workers.

On the day prior to his termination, Pitcock sent an e-mail to one of the partners in the firm stating:

I wanted to have a chance to apologize to you for my recent behavior. It is far from the standard that others expect of me, and that I expect for myself. I am truly sorry for the effect of that behavior on others at the firm, and I

am willing to make amends however possible. After talking matters over with my wife, I am committed to remaining at the firm if possible and proving that I will never again engage in any even arguably inappropriate behavior. To that end, I will accept whatever appropriate discipline you decide upon.

Opposition Ex. B.

In January 2008, Pitcock joined the firm of Morgan & Finnegan LLP ("M&F"). M&F issued a press release on its website, indicating that Pitcock was bringing with him a number of important clients from KBT&F. KBT&F states that no client actually left the firm. The day after the M&F press release, IP Law 360, an intellectual property law website, reported that M&F " nabbed " KBT&F's IP leader and that Pitcock had " jumped ship " from KBT&F to become a partner at M&F. Opposition Ex. F.

KBT&F states that, after the IP Law 360 release, it received inquiries from its clients questioning the viability of KBT&F's IP group. KBT&F avers that it requested IP Law 360 to issue a retraction, which it refused to do. As a consequence, allegedly to protect its reputation, KBT&F issued the following statement:

Recent news items have reported, following a news release by a law firm, Morgan & Finnegan, that Jeremy Pitcock left Kasowitz, Benson, Torres & Friedman LLP., to join that firm. Some news items incorrectly reported that Mr. Pitcock had "defected" or "jumped ship."

The fact is that Mr. Pitcock was terminated for cause by our firm in December, 2007, because of extremely inappropriate personal conduct. We were not looking to publicize this incident, but because of those incorrect news items, we feel compelled to set the record straight.

Motion Ex. F.

This statement was issued on KBT&F's behalf by Sitrick, the public relations firm KBT&F hired. Sitrick asserts that the information it released was given to it by KBT&F and was based on the personal opinions of the firm's partners.

Shortly after the KBT&F statement was released, M&F ousted Pitcock and, allegedly, Pitcock has been unable to find other employment, which Pitcock asserts is because of KBT&F's smear campaign against him. On June 5, 2008, Pitcock instituted the above-mentioned and now-discontinued federal lawsuit against KBT&F. According to paragraph 57 of KBT&F's complaint in the instant action:

In his complaint and through out-of-court statements by Pitcock and his counsel in that lawsuit, Pitcock claimed that KBT&F had engaged in a false and dishonest campaign to 'destroy Pitcock's reputation [...] so they could make more money' and 'profit [] from Pitcock's work.' Pitcock further claimed that KBT&F used a 'consensual kiss,' which he described as 'minor misconduct,' as a pretext to fire him, and has denied all other incidents of harassment.

KBT&F alleges six causes of action against Pitcock: (1) breach of fiduciary duty; (2) breach of contract; (3) defamation; (4) injurious falsehood; (5) prima facie tort; and (6) declaratory judgment.

In Pitcock's suit against KBT&F, Wallach and Sitrick, Pitcock alleges 14 causes of action. As against KBT&F and Wallach, a partner in KBT&F, Pitcock alleges the following causes of action: (1) breach of fiduciary duty; (2) breach of good faith and fair dealing; (3) breach of contract as to the partnership agreement and post-termination payments; (4) fraudulent inducement; (5) unjust enrichment; and (6) unfair competition. As against all defendants, Pitcock alleges the following causes of action: (7) conspiracy; (8) tortious interference with contract; (9) tortious interference with business relationships; (10) tortious interference with prospective employment or advantage; (11) defamation and defamation per se; (12) injurious falsehood; (13) false light and invasion of privacy; and (14) public disclosure of private facts.

DISCUSSION

CPLR 3211(a), "Motion to dismiss cause of action," states that:

"[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(7) the pleading fails to state a cause of action"

As stated in *Ladenberg Thalmann & Co., Inc. v Tim's Amusements, Inc.*, 275 AD2d 243, 246 (1st Dept 2000):

the court's task is to determine only whether the facts as alleged, accepting them as true and according plaintiff every possible favorable inference, fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

To defeat a pre-answer motion to dismiss pursuant to CPLR 3211, the opposing party need only assert facts of an evidentiary nature which fit within any cognizable legal theory. *Bonnie & Co. Fashions, Inc. v Bankers Trust Co.*, 262 AD2d 188 (1st Dept 1999). Further, with respect to contractual claims, if any question of fact exists with respect to the meaning and intent of the contract in question, a dismissal pursuant to CPLR 3211 is precluded. *Khayyam v Doyle*, 231 AD2d 475 (1st Dept 1996).

At the outset, the court notes that neither Pitcock, in his motion to dismiss, nor KBT&F, in its opposition, has provided the court with a copy of KBT&F's complaint. A copy of the complaint is necessary to enable the court to determine the motion, and the failure of the parties to attach a copy of the pleadings could result in an automatic denial of the motion. *Alizio v Perpignano*, 225 AD2d 723 (2d Dept 1996). However, considering that the complaint had been filed with the court prior to the filing of the instant motion, the mandates of CPLR 2214(c) have been sufficiently met so as to

conclude that the complaint is "already in the possession of the court," and, therefore, the substance of the motion may be considered.

Pitcock bases his primary objection to KBT&F's complaint as a lack of standing by KBT&F to assert a sexual harassment claim. However, the court agrees with KBT&F that this argument is specious at best. The complaint does not assert any cause of action alleging damages for sexual harassment; the complaint alleges causes of action founded in breach of contract and breach of fiduciary obligations, among other things, that are based on Pitcock's alleged actions. Therefore, this argument is unavailing.

With respect to the first and second causes of action for breach of fiduciary duty and breach of contract, Pitcock argues that these two causes of action are mutually exclusive because they are based on the same actions. This argument is also unpersuasive.

The courts have held that law partners, such as Pitcock and KBT&F, are bound by fiduciary duties "requiring 'the punctilio of an honor the most sensitive' [citation omitted]." *Graubard Mollen Dannett & Horowitz v Moskovitz*, 86 NY2d 112, 118 (1995). Further, courts have allowed both breach of contract and breach of fiduciary duty claims to co-exist in a single action. *Id.*; *Weiser LLP v Coopersmith*, 51 AD3d 583 (1st Dept 2008); *ProHealth Care Assocs., LLP v Shapiro*, 46 AD3d 792 (2d Dept 2007). However, having said that, the court finds, in the instant case, that KBT&F's first two causes of action must be dismissed.

To succeed on a cause of action to recover damages for breach of fiduciary duty, a plaintiff must do more than make allegations of unscrupulous acts. [T]he proponent of a claim of breach of fiduciary duty must, at a minimum, establish that the offending parties' actions were a substantial factor in causing an identifiable loss. A plaintiff must provide

evidence to establish that the alleged misconduct [was] the direct and proximate cause of the losses claimed. There must be some reasonable connection between the act or omission of the defendant and the damage which the plaintiff has suffered [internal quotation marks and citations omitted].

Greenberg v Joffe, 34 AD3d 426, 427 (2d Dept 2006).

In the instant matter, KBT&F has failed to allege any actual losses that it suffered because of Pitcock's actions. Not only is no identifiable loss alleged, there is no specific indication that Pitcock's acts resulted in any loss of business to KBT&F. *Gibbs v Breed, Abbott & Morgan*, 271 AD2d 180 (1st Dept 2000). In fact, KBT&F asserts that, despite Pitcock's alleged statements, not a single client left KBT&F. Consequently, KBT&F's complaint fails to allege facts sufficient to maintain a cause of action for breach of fiduciary duty.

Similarly, KBT&F's second cause of action for breach of contract must also be dismissed. KBT&F has only made conclusory statements that it suffered damages because of Pitcock's actions, but has not been able to allege actual damages as a natural and probable result of Pitcock's breach of the partnership agreement and the employee manual. The unspecified damages alleged by KBT&F are too speculative to sustain this cause of action. *Rakylar v Washington Mut. Bank*, 51 AD3d 995 (2d Dept 2008); *Wenger v Alidad*, 265 AD2d 322 (2d Dept 1999).

KBT&F's third cause of action for defamation is dismissed. KBT&F identifies two sources of Pitcock's allegedly defamatory statements: the words appearing in his complaint in the now-defunct federal action and his out-of-court statements. The alleged

defamatory words appearing in Pitcock's federal complaint are completely immune to liability for defamation. *Ticketmaster Corp. v Lidsky*, 245 AD2d 142 (1st Dept 1997).

In order to maintain a cause of action for defamation, the claimant must allege in the complaint the particular words complained of, and the time, place and manner in which the words were stated must be set forth clearly. *Rosenberg v Home Box Office, Inc.*, 33 AD3d 550 (1st Dept 2006). As indicated above, in the quoted portion of its complaint, KBT&F fails to meet the specificity requirements with respect to the non-immune out-of-court statements that KBT&F asserts Pitcock made through the dissemination sources, and the requirements for alleging a cause of action for libel or slander are strictly construed. *Mañas v VMS Assocs., LLC*, 53 AD3d 451 (1st Dept 2008).

KBT&F's fourth cause of action is for injurious falsehood.

The tort of trade libel or injurious falsehood consists of the knowing publication of false matter derogatory to the plaintiff's business of [a] kind calculated to prevent others from dealing with the business or otherwise interfering with its relations with others, to its detriment. The communication must play a material and substantial part in inducing others not to deal with the plaintiff, with the result that special damages, in the form of lost dealings, are incurred. In pleading special damages, actual losses must be identified and causally related to the alleged tortious act [internal citations omitted].

Waste Distillation Tech., Inc. v Blasland & Bouck Eng'rs, P.C., 136 AD2d 633, 634 (2d Dept 1988).

In its complaint, KBT&F states:

75. In January 2008, IP360.com asserted in an online article that Pitcock had been 'nabbed' by Morgan Finnegan and had 'jumped ship' from KBT&F. Pitcock was responsible for these statements, which called into question the viability of KBT&F's IP practice.

76. Pitcock knew or should have known that his false statements would cause KBT&F's clients and professional colleagues to question the viability of KBT&F's IP practice.

77. As a result of the foregoing, KBT&F has suffered damages in an amount to be determined at trial.¹

These statements do not identify any actual losses and KBT&F, while stating that it did receive some telephone calls after the online publication, also stated that it did not lose any clients thereby. KBT&F has "failed to allege special damages with the required specificity to state a cause of action sounding in injurious falsehood or prima facie tort." *Stanton v Carrara*, 28 AD3d 642 (2d Dept 2006). Therefore, KBT&F's fourth cause of action is dismissed.

KBT&F's fifth cause of action is for prima facie tort, alleging that Pitcock acted maliciously to injure KBT&F's reputation.

Prima facie tort was designed to provide a remedy for intentional and malicious actions that cause harm and for which no traditional tort provides a remedy, and not to provide a catch all alternative for every cause of action which is not independently viable. The elements of a cause of action for prima facie tort are: (1) the intentional infliction of harm, (2) which results in special damages, (3) without any excuse or justification, (4) by an act or a series of acts which would otherwise be lawful. To make

¹ Pitcock has also argued that KBT&F's cause of action for defamation would fail even if treated as a cause of action for defamation per se. Defamation per se is applicable in situations in which, among other things, the statements tend to injure another in his trade, business or profession. *Epifani v Johnson*, 882 N.Y.S.2d 234 (2d Dept. 2009). The words alleged to constitute defamation per se are the ones quoted with respect to the cause of action for injurious falsehood. "[W]hether particular words are defamatory presents a legal question to be resolved by the court in the first instance ... and if not reasonably susceptible of a defamatory meaning, they are not made actionable and cannot be made so by a strained or artificial construction." *Golub v Enquirer/Star Group, Inc.*, 89 NY2d 1074, 1075 (1997). "[O]n a professional level, a defamatory meaning may attach to derogatory statements that would cause apprehension about a person's ability to conduct business." *Id.* The court does not find that the words attributed to Pitcock fall within the realm of defamation per se.

out a claim sounding in prima facie tort, 'the plaintiff [must] allege that disinterested malevolence was the sole motivation for the conduct of which [he or she] complain[s]' [internal citations omitted].

Epifani v Johnson, supra, 882 N.Y.S.2d at 241.

"A critical element of the cause of action is that plaintiff suffered specific and measurable loss, which requires an allegation of special damages." *Freihofer v Hearst Corp.*, 65 NY2d 135, 143 (1985). However, KBT&F does not allege "a specific and measurable loss not compensable under the cause of action for defamation [internal quotation marks and citation omitted]." *Pezhman v City of New York*, 47 AD3d 493, 494 (1st Dept 2008). Consequently, this cause of action is dismissed.

Since all of KBT&F's other causes of action have been dismissed, its last cause of action for declaratory relief is dismissed as moot. Accordingly, Pitcock's motion to dismiss is granted in its entirety.

KBT&F's and Wallach's motion to dismiss Pitcock's complaint as against them is also granted. The standards for determining whether a cause of action lies for breach of fiduciary duty is discussed above. Pitcock's complaint alleges that KBT&F and Wallach failed to conduct a complete investigation of the sexual harassment complaints against him and that they did not afford him a chance to respond to the allegations, thereby not meeting their fiduciary obligations to a law partner. However, as indicated by the e-mail quoted above, Pitcock admitted his wrongdoing, which obviates this claim.

Pitcock's second cause of action for breach of the duty of good faith and fair dealing is based on the same investigation of the allegations of sexual harassment just

discussed. As stated *The Hawthorne Group, LLC v RRE Ventures*, 7 AD3d 320, 323 (1st Dept 2004):

[a] cause of action for breach of the implied duty of good faith and fair dealing cannot be maintained where the alleged breach is 'intrinsically tied to the damages allegedly resulting from a breach of the contract' [citations omitted].

Pitcock has not alleged the violation of any duty specified in the partnership agreement, which is the contract in question, nor has he demonstrated that KBT&F or Wallach assumed a duty separate or distinct from those contractual obligations. Consequently, this cause of action must be dismissed.

Pitcock's claims with respect to a breach of contract allege that he was not paid the post-termination payments specified by the partnership agreement. In this claim, Pitcock bases his argument on the partnership agreement provision for post-termination payments due to partners who involuntarily withdraw in the absence of cause. However, Pitcock was expelled for cause, as specified in the section of the partnership agreement reproduced above. The partnership agreement provides for different termination payments, depending upon whether the partner was expelled for cause or was involuntarily terminated without cause. Therefore, Pitcock lacks the basis to maintain this cause of action and it is dismissed.

Pitcock's fourth cause of action, for fraudulent inducement, alleges that he was induced to remain working for KBT&F for several weeks after his expulsion as a partner based on representations made in a draft, unexecuted separation agreement that allegedly would have permitted him to have a severance package allowable to partners who involuntarily withdraw in the absence of cause. To maintain a cause of action for

fraudulent inducement, the injured party must allege a false representation of a material fact made with scienter, which the injured party relied upon to his or her detriment.

National Union Fire Ins. Co. of Pittsburgh, Pa. v Worley, 257 AD2d 228 (1st Dept 1999).

In the case at bar, Pitcock does not allege any specific false statement, just that his impression, based on the negotiations with regard to the separation agreement, was that he would receive a specific severance package. Additionally, during this transition period, after his expulsion as a partner with KBT&F and his joining M&F, he was paid a salary. Based on these facts, this cause of action must be dismissed.

Pitcock's cause of action for unjust enrichment is dismissed. A claim for unjust enrichment is precluded where there is a valid agreement between the parties covering the same subject matter. *See MT Property, Inc. v Ira Weinstein & Larry Weinstein, LLC*, 50 AD3d 751 (2d Dept 2008). The partnership agreement precludes this cause of action.

Pitcock's fifth cause of action is for damages resulting from unfair competition.

A cause of action based on unfair competition may be predicated upon trademark infringement or dilution in violation of General Business Law §§ 360-k and 360-l, or upon the alleged bad faith misappropriation of a commercial advantage belonging to another by exploitation of proprietary information or trade secrets [internal quotation marks and citation omitted]."

Out of Box Promotions, LLC v Koschitzki, 55 AD3d 575, 578 (2d Dept 2008); *Eagle Comtronics, Inc. v Pico Prods., Inc.*, 256 AD2d 1202 (4th Dept 1998).

In his complaint, Pitcock asserts that KBT&F misappropriated his skill and labor for its own commercial advantage. These allegations do not comport with the

requirements to sustain a cause of action for unfair competition and, therefore, this cause of action is dismissed.

Pitcock's seventh cause of action for conspiracy is likewise dismissed. New York does not recognize a cause of action for conspiracy to commit a tort standing alone. "Allegations of conspiracy are permitted only to connect the actions of separate defendants with an otherwise actionable tort." *Alexander & Alexander of New York, Inc. v Fritzen*, 68 NY2d 968, 969 (1986); *Anesthesia Assocs. of Mount Kisco, LLP v Northern Westchester Hosp. Ctr.*, 59 AD3d 473 (2d Dept 2009). Since the cause of action for defamation has been dismissed, the cause of action for conspiracy cannot be maintained and thus is dismissed.

In *Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 94 (1993), the court stated the elements necessary to maintain a claim for tortious interference with contract. These elements are: (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.

Pitcock alleges, in his eighth cause of action for tortious interference with contract, that all the defendants circulated malicious and false statements about him with the intent to cause M&F to renege on its partnership agreement with Pitcock. The allegedly false and malicious statement was that Pitcock was terminated "for extremely inappropriate personal conduct." This statement, based on the facts presented and Pitcock's own admission of his actions in the above-quoted e-mail, is a statement of a

fact. Further, the statement was allegedly made to protect KBT&F's reputation, not to interfere with Pitcock's relationship with M&F, and the complaint does not plead that KBT&F deliberately interfered with Pitcock's relationship with M&F. Consequently, this cause of action is dismissed.

Turning to Pitcock's ninth cause of action, to make out a claim for tortious interference with business relationships Pitcock must show "that the defendant interfered with the plaintiff's business relationships either with the sole purpose of harming the plaintiff or by means that were unlawful or improper [internal quotation marks and citation omitted]." *71 Pierrepont Assocs. v 71 Pierrepont Corp.*, 243 AD2d 625, 625-626 (2d Dept 1997); *Henek v Bechor*, 289 AD2d 294 (2d Dept 2001).

Pitcock has failed to demonstrate that the defendants interfered with his business relationships with the sole purpose of harming him, or that the statement defendants made was either unlawful or improper. *Long Island Pulmonary Assocs., P.C. v Metropolitan Life Ins. Co.*, 303 AD2d 645 (2d Dept 2003). Pitcock's "conclusory allegations that the defendants acted maliciously and in bad faith [are] insufficient to defeat the motion." *McQuillan v Kenyon & Kenyon*, 271 AD2d 511, 512 (2d Dept 2000).

In order to maintain Pitcock's tenth cause of action for tortious interference with prospective employment advantage, Pitcock must allege that this was "accomplished by wrongful means or that the defendant acted for the sole purpose of harming the plaintiff [internal quotation marks and citations omitted]." *Caprer v Nussbaum*, 36 AD3d 176, 204 (2d Dept 2006). If the defendant shows that the interference is intended, at least in part, to advance its own interests, then it was not acting solely to harm plaintiff. *Carvel*

Corp. v Noonan, 3 NY3d 182 (2004). In the case at bar, KBT&F has demonstrated that the action it took was to protect its own economic advantage and, therefore, this cause of action is dismissed.

Pitcock's eleventh cause of action seeks damages for defamation and defamation per se. As previously stated, the only words cited by Pitcock attributed to defendants is that they said that Pitcock was terminated for cause because of extremely inappropriate personal conduct. Also, as previously stated, Pitcock's own admission demonstrates the truth of this statement.

Truth is always a defense to an allegation of defamation. *Kamalian v Reader's Digest Ass'n, Inc.*, 29 AD3d 527 (2d Dept 2006). "Even if a publication is not literally or technically true in all respects, the defense of truth applies as long as the publication is 'substantially true,' and minor inaccuracies are acceptable [citation omitted]." *Matovcik v Times Beacon Record Newspapers*, 46 AD3d 636, 638 (2d Dept 2007). Based on the foregoing, the cause of action for defamation is dismissed.

The twelfth cause of action for injurious falsehood is dismissed. To allege a sustainable cause of action for injurious falsehood, a plaintiff must allege special damages by itemizing specific business lost (*Squire Records, Inc. v Vanguard Recording Soc'y, Inc.*, 19 NY2d 797 [1967]), which Pitcock has failed to do.

New York law does not recognize Pitcock's thirteenth cause of action for false light and invasion of privacy and this cause of action is also dismissed. *Messinger v Gruner + Jahr Printing & Publ'g*, 94 NY2d 436 (2000); *Kane v Orange County Publ'ns*, 232 AD2d 526 (2d Dept 1996).

Lastly, the court could find no legal support, nor has Pitcock provided any, for his fourteenth cause of action for public disclosure of private facts that are unrelated to a commercial use of such public dissemination, which is not alleged here. Therefore, this cause of action is dismissed.

Based on the foregoing, Sitrick's motion to dismiss need not be individually addressed and is also granted.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that Jeremy S. Pitcock's motion to dismiss Kasowitz, Benson, Torres & Friedman, LLP's complaint (Index No. 601965/08) is granted and the complaint is dismissed with costs and disbursements to Jeremy S. Pitcock as taxed by the Clerk of the Court; and it is further

ORDERED that Kasowitz, Benson, Torres & Friedman, LLP's and Eric Wallach's motion to dismiss Pitcock's complaint (Index No. 601984/08) is granted and the complaint is dismissed as against them with costs and disbursements to Kasowitz, Benson, Torres & Friedman, LLP and Eric Wallach as taxed by the Clerk of the Court; and it is further

ORDERED that Sitrick and Company's motion to dismiss Pitcock's complaint (Index No. 601984/08) is granted and the complaint is dismissed as against it with costs and disbursements to Sitrick and Company as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for the parties.

Dated: New York, New York
September 29, 2009



HON. MARTIN SHULMAN, J.S.C.

FILED
OCT 01 2009
COUNTY CLERK'S OFFICE
NEW YORK