

**Lauder v Stein**

2009 NY Slip Op 33038(U)

December 10, 2009

Supreme Court, New York County

Docket Number: 104026/09

Judge: Emily Jane Goodman

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

PRESENT: **EMILY JANE GOODMAN**

PART 17

Index Number : 104026/2009

**LAUDER, WILLIAM**

vs.

**STEIN, JENNIFER TAYLOR**

SEQUENCE NUMBER : 003

DISMISS

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

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

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

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

n this motion to/for \_\_\_\_\_

PAPERS NUMBERED

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

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

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*is denied in part (striking defenses) by decision attached. Other relief sought in same motion denied separately.*

**FILED**

DEC 29 2009

NEW YORK COUNTY CLERK'S OFFICE

Dated: 12/09/09

*EJG*  
**EMILY JANE GOODMAN** 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):

*12-29-09*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK I.A.S. PART 17

-----X  
WILLIAM LAUDER,

Plaintiff,

Index No. 104026/09

-against-

JENNIFER TAYLOR STEIN and EDWARD  
W. HAYES,

Defendants.

-----X  
EMILY JANE GOODMAN, J.S.C.:

**FILED**  
DEC 29 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff moves, inter alia, to strike the affirmative defenses of Edward W. Hayes (Hayes). These are: Failure to state a cause of action; "unclean hands"; Plaintiff's prior breach of the Agreement. This decision relates solely to this portion of Plaintiff's Motion.

The underlying Agreement is between William Lauder (Lauder) and Taylor Jennifer Stein (Stein) with respect to their child (Child). According to the Agreement neither Stein or any agent acting on her behalf shall reveal the contents of the Agreement or circumstances from which it flows.

Plaintiff has commenced what he calls a simple breach of contract action against both Stein and Hayes, the attorney who represented her in the execution of the Agreement. He alleges that Hayes was the source of certain items that appeared on Gawker.com and in The New York Post and that his conduct is attributable to Stein, thereby causing her to be in breach of contract. Hayes has not denied the statements, but

claims, inter alia, that any comments he may have made were in connection with a lawsuit he commenced in Surrogate's Court on behalf of Stein and which referred to public records.

Plaintiff's memorandum of law in support of the motion to strike the affirmative defenses, concedes that "such a defense will usually be allowed to stand at the pleading stage," *Riland v. Todman & Co.*, 56 A.D.2d 350, 352 (1<sup>st</sup> Dep't 1977). Hayes is not a party to the contract and whether he should be in this lawsuit is an issue yet to be determined; but he has the right to litigate his standing in this action. If he is an improper party, then there would be, by definition, no cause of action against him. Striking his defense would have the effect of not allowing him to argue that he is not a proper party. Motion denied.

Hayes further relies on the equitable doctrine of "unclean hands." The motion to strike is based on the theory that no fiduciary relationship existed, which, it is argued, is essential for the doctrine to apply. However, the doctrine of unclean hands is not limited to the narrow class of fiduciary relationships *Mehlman v. Aurech*, 546 AD2d 753 [2<sup>nd</sup> Dep't 1989]. The doctrine is only applicable when the conduct relied on is directly related to the subject matter in litigation and the party seeking to invoke the doctrine was injured by such conduct. Hayes has been sued as if he were a principal, and at the same time is described as an agent of co-Defendant Stein. He may attempt to establish his damages, which he argues, are the loss of Stein as a client, as a result of Plaintiff's

withholding of funds and commencing this action, and loss of the source of income representing her provided. Motion to strike this affirmative defense is denied.

The third affirmative defense the Plaintiff seeks to strike, is Hayes's theory that Lauder himself materially breached the contract prior to any breach that may have been committed or caused by Hayes. Again, though Hayes is not a party to the Agreement, he is a party to this litigation. He claims (as does Stein) that Lauder breached the Agreement by not releasing to Stein the sum of \$500,000 (five hundred thousand dollars) that was owed and is to her, and that by so-doing, Hayes was denied certain benefits in the form of fees that he may have been entitled to under the Agreement. Improperly withholding funds from Stein would constitute a material breach since that is the quid pro quo for the confidentiality clause which leads to this lawsuit and perhaps to the damages Hayes claims *Becker v. Elm Air Conditioning Corp.*, 143 AD3d 965 [2<sup>nd</sup> Dep't 1988]. Plaintiff has not come forward with a factual challenge to this defense. Whether Lauder's withholding of funds was permissible is not decided here, but there is sufficient basis to allow the affirmative defense to stand in the pleadings, particularly in light of this state's policy of liberal pleadings. If there is any doubt as to the availability of a defense, it should not be dismissed *Becker v. Elm [supra]*.

Interestingly, Plaintiff now offers to consider Plaintiff's possible breach, an argument for rescission, which is not before the Court and never has been; it is attorney hyperbole. Nonetheless, in that connection, Plaintiff's counsel raises that this Court's

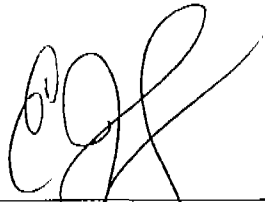
mention of “public policy” being violated, suggests that such findings might lead to rescission of the entire Agreement. However, she misquotes the Court; the statement was not that the Agreement violates public policy, but that certain clauses may, i.e., as set forth above, that Stein cannot tell her daughter, the Child, who her father is. Motion to strike denied.

Accordingly, motion to strike Defendant’s affirmative defenses is denied.

**This constitutes the Decision and Order of the Court.**

Dated: December 10, 2009

ENTER:

  
\_\_\_\_\_  
J.S.C.  
**EMILY JANE GOODMAN**

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DEC 29 2009  
NEW YORK  
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