

White Chocolate Mgt., L.L.C. v Jackson

2009 NY Slip Op 33089(U)

December 14, 2009

Supreme Court, New York County

Docket Number: 604244/07

Judge: Barbara R. Kapnick

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

PRESENT: **BARBARA R. KAPNICK**

PART 39

Index Number : 604244/2007
WHITE CHOCALATE MANAGEMENT
vs.
JACKSON, QUINTON RAMONE"
SEQUENCE NUMBER : 003
DISMISS

INDEX NO. 604244/07

MOTION DATE _____

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

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

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED

DEC 22 2009

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 12/14/09

BARBARA R. KAPNICK 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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IA PART 39

-----x
WHITE CHOCOLATE MANAGEMENT, L.L.C., and
REED WALLACE, individually,

Plaintiffs,

-against-

DECISION/ORDER
Index No. 604244/07
Mot. Seq. No. 003

QUINTON RAMONE "RAMPAGE" JACKSON,
individually, and JUANITO BOXING MMA, INC.
and John "Juanito" Ibarra, individually,
and XYZ Companies, as will be revealed in
the course of discovery,

Defendants.

-----x
BARBARA R. KAPNICK, J.:

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This action arises out of an Entertainment Management Agreement dated September 28, 2006 entered into by plaintiffs Reed Wallace ("Wallace"), the president and major shareholder of White Chocolate Management ("WCM" or "Entertainment Manager"), and WCM, which is engaged in the business of management and promotion of mixed martial arts fighters, with defendant Quinton Ramone "Rampage" Jackson ("Jackson" or "Artist"), a world renowned professional mixed martial arts fighter.

Pursuant to that Agreement, Jackson engaged WCM as his "NON-exclusive personal Entertainment Manager for an initial period of one (1) year", which plaintiffs claim was extended for an additional year on August 15, 2007.

Plaintiffs claim that beginning on or about February, 2007, Jackson rejected 100% of all bona fide opportunities, circumventing the efforts of plaintiffs by "going behind their back" and disparaging plaintiffs' reputation by falsely denying the existence of a contract and/or any working relationship with plaintiffs.

Plaintiffs further claim that on August 15, 2007, defendants John "Juanito" Ibarra ("Ibarra") and Juanito Boxing MMA, Inc., ("MMA Inc.") tortiously interfered with WCM's Agreement with Jackson, by instigating, encouraging and causing a letter of termination dated October 31, 2007 to be sent by Jackson to Wallace and WCM.

The Complaint sets forth claims for breach of contract (first cause of action), tortious interference with a contract (second cause of action), trade disparagement (third cause of action), prima facie tort (fourth cause of action), aiding and abetting tortious acts against plaintiff (fifth cause of action), defamation (sixth cause of action), and breach of the covenant of good faith and fair dealing (seventh cause of action).

Defendant Jackson now moves for an order pursuant to CPLR § 3211(a)(7) dismissing the first through seventh causes of action against him.

In the first cause of action for breach of contract, plaintiffs allege that "[n]otwithstanding the continued efforts, introductions, expenditure of funds and hard work by Wallace and WCM, defendant [Jackson] breached the agreement by unilaterally, and without cause, rejecting all the deals proposed by Wallace and WCM while Jackson repeatedly defamed and disparaged the business of plaintiffs in an effort to avoid paying Wallace and WCM the agreed upon commissions."

In the seventh cause of action for breach of covenant of good faith and fair dealing, plaintiffs allege that defendant Jackson "intentionally and willfully injured the plaintiffs by taking affirmative steps inconsistent with the spirit and language of the contract."

Defendant Jackson argues that the first and seventh causes of must be dismissed on the grounds that the plain language of the contract authorizes defendants to reject employment opportunities, i.e., WCM was hired on a non-exclusive basis, and Jackson retained the "sole right" pursuant to paragraph 5(c) of the Agreement "to determine whether to accept any proposed offer of employment..."¹

¹ Defendant Jackson also argues that the contractual-based claims must be dismissed pursuant to Article 11 of the General Business Law (GBL) on the ground that plaintiffs never obtained a license. See, GBL § 172 which provides, in relevant part, that "[n]o person shall open, keep, maintain, own, operate

In addition, defendant Jackson argues that the seventh cause of action must be dismissed as duplicative of the first cause of action.

Plaintiffs argue that defendant's position is inconsistent with the aims of the contract, because the parties never intended that Jackson would reject *all* sponsorship opportunities proposed by plaintiff without any basis or reasoning. Alternatively, plaintiffs argue that even if this Court determines that defendant did not technically breach the terms of the contract, plaintiffs have at least set forth a claim for breach of covenant of good faith and fair dealing.

Plaintiffs' counsel further stated at the oral argument held on the record on August 31, 2009 that discovery recently conducted has revealed that defendant Jackson accepted deals based on the same or similar terms initially proposed by plaintiffs for which plaintiffs received no compensation.

or carry on any employment agency unless such person shall have first procured a license therefor as provided in this article"). Plaintiff, however, argues that there is no requirement under the GBL that entertainment managers obtain a license in order to conduct business in New York, where, as plaintiff contends is the case here, the seeking of employment was incidental to the management contract.

Plaintiffs, however, have not submitted any documentation in support of these allegations which are, in any event, not clearly set forth in the Complaint.

Accordingly, this branch of defendant Jackson's motion is granted to the extent of dismissing the first cause of action for breach of contract, with leave to replead, if deemed appropriate, within 30 days.

[A] claim for breach of the implied covenant of good faith can survive a motion to dismiss 'only if it is based on allegations different from those underlying the accompanying breach of contract claim.'" [citations omitted]. The duty of good faith and fair dealing, however, "cannot be used to create independent obligations beyond those agreed upon and stated in the express language of the contract[s]." [citations omitted].

JPMorgan CHase Bank, N.A. v IDW Group, LLC, 2009 WL 321222, *5 (SDNY). See also, *Broder v Cablevision Systems Corp.*, 418 F3d 187 (2nd Cir. 2005).

In the instant case, plaintiffs have made no showing that their claim for breach of the implied covenant of good faith and fair dealing is based on any allegations separate and apart from their potential claim for breach of contract. Accordingly, the seventh cause of action is dismissed with prejudice.

In the second cause of action for tortious interference with a contract, plaintiffs allege that defendants Ibarra and MMA, Inc. "improperly interfered with and induced Jackson to breach his agreement with WCM." The cause of action is dismissed as against defendant Jackson since plaintiffs acknowledge that they never intended to assert this claim against him.

Defendant Jackson next argues that the third cause of action for trade disparagement and sixth cause of action for defamation must be dismissed on the grounds that the Complaint: (i) fails to set forth the alleged disparaging/defamatory statement with the required specificity (see, CPLR § 3016[a]); (ii) fails to attribute any statement as made by Jackson; and (iii) fails to allege any specific special damages, i.e., to identify any customers or business lost.

Although plaintiffs express their hope that the specific circumstances such as the time, place, date and recipients of the defamatory statements will become known during discovery, it is well settled that the Complaint itself must "sufficiently articulate the 'particular words complained of, as well as the time, manner and persons to whom the alleged defamatory statements were made' [citations omitted]." *Dobies v Brefka*, 273 AD2d 776, 777 (3rd Dep't 2000), lv. *dism'd*, 95 NY2d 931 (2000). Moreover,

plaintiffs' Complaint fails to allege any special damages. See, *Bell v Alden Owners, Inc.*, 299 AD2d 207 (1st Dep't 2002), *lv. to app denied*, 100 NY2d 506 (2003).

Accordingly, the third and sixth causes of action against defendant Jackson are dismissed with prejudice.

That portion of defendant Jackson's motion seeking to dismiss the fourth cause of action for prima facie tort against him with prejudice is granted, as this Court finds that the Complaint fails to allege that defendant's sole motive was "disinterested malevolence." See, *Burns Jackson Miller Summit & Spitzer v Linder*, 59 NY2d 314 (1983); *Woytisek v JP Morgan Chase & Co.*, 46 AD3d 331 (1st Dep't 2007).²

In the fifth cause of action for aiding and abetting, plaintiffs allege that "[d]efendants acted in concert and knowingly and substantially assisted in the commission of the tortious acts against the Plaintiffs."

Defendant Jackson correctly argues that the Complaint is devoid of any factual allegations of the underlying wrongful

² In fact, the Complaint specifically alleges to the contrary, i.e., that defendants sought to enrich themselves at plaintiffs' expense.

conduct, including how, when or which wrongful acts Jackson aided and abetted. Accordingly, the fifth cause of action is dismissed with leave to replead, if deemed appropriate, within 30 days to allege specific conduct attributable to defendant Jackson.

This constitutes the decision and order of this Court.

Dated: December 12th, 2009



Barbara R. Kapnick
J.S.C.

**BARBARA R. KAPNICK
J.S.C.**

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