

Drohan Lee LLP v Kelley
2011 NY Slip Op 33877(U)
June 23, 2011
Sup Ct, New York County
Docket Number: 602397/09
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

DROHAN LEE LLP,
Plaintiff,

Index No.: 602397/09

Motion Date: 08/05/10

- v -

Motion Seq. No.: 01

IAN KELLEY,
Defendant.

The following papers, numbered 1 to 6 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits	No(s) .	1
Answering Affidavits - Exhibits	No(s) .	2 - 4
Replying Affidavits - Exhibits	No(s) .	6

FILED

Cross-Motion: Yes No

JUN 27 2011

Upon the foregoing papers, it is ordered that this motion is

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The court shall deny plaintiff's motion to dismiss the defendant's counterclaim in this action based upon a law firm partnership agreement. The counterclaim alleges that plaintiff owes defendant a termination payment pursuant to a formula specified in the parties' Partnership Agreement and such a claim is sufficient to state a cause of action for breach of contract. See Kyslansky v Kyslansky, Robbins, Stechel and Cunningham, LLP, 50 AD3d 1100 (1st Dept 2008) (sustaining the claim of former partner to recover damages for breach of contract based on the alleged failure of the defendants to pay him the value of his

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

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .. MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

interest in the subject partnership as provided for in the parties' partnership agreement upon a partner's withdrawal from the partnership).

Defendant's cross-motion for partial summary judgment on the counterclaim shall also be denied as defendant concedes that there are issues of fact as to the entitlement to and calculation of any payment that may be due the defendant under the Partnership Agreement.

The defendant also cross-moves to dismiss plaintiff's complaint. Contrary to defendant's other contentions, the complaint does not claim that defendant did not have the right to solicit plaintiff's clients after his expulsion from the firm but rather that defendant failed perform his duties in a manner that complied with his contractual obligations. The first cause of action alleges a breach of Section 11.1 of the Partnership Agreement which requires partners to devote best efforts to serving clients and the firm. This allegation is sufficient at the pleading stage to survive dismissal.

With respect to the second cause of action for breach of fiduciary duty, the Court has held that "the members of a partnership owe each other a duty of loyalty and good faith, and as a fiduciary, a partner must consider his or her partners' welfare, and refrain from acting for purely private gain. Partners are constrained by such duties throughout the life of

the partnership and the manner in which partners plan for and implement withdrawals is still subject to the constraints imposed on them by virtue of their status as fiduciaries." Gibbs v Breed, Abbott & Morgan, 271 AD2d 180, 184 -185 (1st Dept 2000) (citations and internal quotations omitted). The allegations that defendant failed to communicate important issues involving clients and their matters to the plaintiff is sufficient to state a cause of action.

Finally, plaintiffs third cause of action for tortious interference with contract is adequately pled. "[W]here there is an existing, enforceable contract and a defendant's deliberate interference results in a breach of that contract, a plaintiff may recover damages for tortious interference with contractual relations even if the defendant was engaged in lawful behavior." NBT Bancorp Inc. v Fleet/Norstar Financial Group, Inc., 87 NY2d 614, 621 (1996). Plaintiff here alleges that defendant told plaintiff's clients who were provided services under retainer agreements with plaintiff that they should pay defendant directly. Such an allegation of interference with an existing contract is sufficient at the pleading stage.

Accordingly, it is

ORDERED that plaintiff's motion to dismiss defendant's counterclaim is DENIED; and it is further

ORDERED that defendant's cross-motion to dismiss and for summary judgment is DENIED; and it is further

ORDERED that the parties shall appear in IAS Part 59, Room 103, 71 Thomas Street, New York, New York 10013 on July 26, 2011 at 9:30 A.M. for a Preliminary Conference.

This is the decision and order of the court.

Dated: JUN 23 2011

ENTER:

~~W. Carl A. DeLoe~~
J.S.C.
DEBRA A. JAMES

FILED

JUN 27 2011

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