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

PRESENT: MANUEL J. MENDEZ PART 13
Justice

CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC., and NORMAN SEABROOK, as president of the Correction Officers' Benevolent Association, Inc.,

INDEX NO. 100720/12

MOTION DATE 10-24- 2012

- v -

MOTION SEQ. NO. 004

FRED CABAN, RICHARD REUTER, HECTOR MALDONADO TOBY COLES, TREVOR CHAMBERS, GERALD BROOKS, ALISON BUSH, TATUM SHEEHAN, RAYMOND CAMPBELL, CHARLES WILLIAMS, JOSEPH ARCHIBALD, CHANDRA LASONDE, MARK LONG, MARK PEARSON, CHERYL LEVY, CORRECTION OFFICERS REPRESENTED EQUALLY,

MOTION CAL. NO.

The following papers, numbered 1 to 7 were read on this motion to dismiss the complaint and cross motion to compel disclosure and for sanctions.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits	1-2, 3
Answering Affidavits — Exhibits	4-5, 6
Replying Affidavits	7

Cross-Motion: X Yes No

Upon a reading of the foregoing cited papers, it is ordered that this motion to dismiss plaintiffs' complaint pursuant to CPLR 3211 (a)(7) for failure to state a cause of action is granted and the complaint is dismissed. The cross motion is denied as moot.

Plaintiffs bring an action for a declaratory judgment in essence declaring that the meetings held by defendants were not official meetings of the Correction Officers' Benevolent Association, any unofficial meetings and any decisions taken at such meetings are void and that the Official Board is the one comprised of the Board Members listed in the complaint. The Complaint asserts five causes of action:
1- Breach of contract for defendants convening unauthorized meetings, conducting votes at the meetings and holding themselves out as authorized COBA officers;
2- Violation of the Not for Profit Corporation Law sections 603, 605, 608 and 609;
3- Fraud for stating that the December 21, 2011 and January 18, 2012 meetings were valid union meetings;
4- Prima Facie Tort; and
5- Tortious interference with contract.

This entire matter stems from plaintiffs' failure to call a special meeting at which some of the defendants can present charges of malfeasance and misconduct against COBA'S entire Executive Board, including its president Norman Seabrook. Following a series of letters between defendant LaSonde and the Union's Recording Secretary

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

Karen Belfield, on February 1, 2010 a federal lawsuit was commenced against Mr. Seabrook, COBA and others. This federal claim was dismissed with prejudice and any state claims were dismissed without prejudice. By letters dated August 17, 2010, September 24, 2010 and October 13, 2010 to Ms. Belfield, Ms. LaSonde again requested a special meeting. By letter dated March 10, 2011 Ms. Belfield responded and stated that the charges contained in Ms. LaSonde's letters dated August 17, 2010, September 24, 2010 and October 13, 2010 would not be presented to a special meeting.

On November 8, 2010 Ms. LaSonde commenced an Article 78 proceeding seeking an order directing COBA, Mr. Seabrook and COBA'S Executive Board to schedule a special meeting to consider the charges brought against Mr. Seabrook and the Executive Board. Supreme Court, Alice Schlesinger, J., determined that COBA's constitution and bylaws mandated that a special meeting be called promptly to resolve the charges made against an Executive Board Member and the Executive Board and directed that COBA's Executive Board promptly call a special meeting to resolve the charges. The Executive Board did not call a meeting but instead appealed Justice Schlesinger's decision.

By decision dated November 3, 2011 the Appellate Division First Department in an opinion by justice Rolando T. Acosta, unanimously affirmed Justice Schlesinger's decision. The court found that " the right of union members to secure the Union's compliance with its constitution and bylaws is enforceable in the courts of this state through an Article 78 Proceeding... [that]Supreme Court was correct in finding that respondent's refusal to call a special meeting violated COBA's constitution and bylaws, was arbitrary, capricious and an abuse of discretion" (See LaSonde v. Seabrook, 89 A.D. 3d 132, 933 N.Y.S. 2d 195 [1st. Dept. 2011]). Following this decision Plaintiffs herein did not schedule the special meeting but instead appealed to the Court of Appeals which declined to hear the matter (See 2012 N.Y. Slip Op. 064374).

Defendants with three decisions in hand directing a special meeting without delay, two from Supreme Court Justice Schlesinger and one from the Appellate Division, held such meeting on January 18, 2012. At the meeting charges against Mr. Seabrook and the Executive Board were heard, Mr. Seabrook and the Board were found guilty as charged , removed from office and replaced with a new President and Executive Board. A controversy developed concerning notice of the meeting, location and quorum. This action was commenced by COBA and Mr. Seabrook, asserting the previously stated causes of action and seeking a declaratory judgment that the meeting held on January 18, 2012 is null and void and the incumbent Executive Board of COBA are the only individuals authorized to act on its behalf, and a permanent injunction.

Plaintiff's brought a motion seeking a preliminary injunction and This court by decision dated April 2, 2012 granted the motion, enjoined defendants from engaging in discussions with any persons where they claim to bind or speak on behalf of COBA or as Executive Board members pending the outcome of a properly conducted and documented special meeting, declared without force and effect the meeting of January 18, 2012, Ordered a special meeting in accordance with Not for Profit Corporation Law §603[c], Ordered that the notice of meeting comply with Not for Profit Corporation Law § 605[a], Ordered that the special meeting take place no later than May 30, 2012 and ordered that for purposes of the meeting quorum shall be no less than 100 members as stated in the Not for Profit Corporation Law § 608[b].

Defendants again noticed a special meeting but the notice provisions as ordered were not followed and by decision dated May 3, 2012 this court ordered defendants enjoined from holding a meeting until final determination of this action.

Defendants now move to dismiss the causes of action asserted in the complaint on the grounds that the complaint fails to state a cause of action. Plaintiffs oppose the motion, except for the motion dismissing the claim for Prima Facie Tort which plaintiffs consent to dismiss, and cross move for an order compelling defendants to provide discovery and for sanctions.

Plaintiffs' first cause of action is for breach of contract, that being the agreement between the union and its members. "A labor union's constitution and bylaws constitute a contract between the union and its members and define not only their relationship, but the privileges secured and duties assumed by those who become members, unless contrary to public policy (LaSonde v. Seabrook, 89 A.D. 3d 132, 933 N.Y.S. 2d 195, Supra; Ballas v. Mckiernan, 41 A.D. 2d 131, 341 N.Y.S. 2d 520 [1973]). Plaintiff claim that in holding the meetings defendants have breached the contract with the union because these were held in violation of the union bylaws.

The elements of a cause of action for breach of contract are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, and (4) resulting damage (Furia v. Furia, 116 A.D. 2d 694, 498 N.Y.S. 2d 12; Ascoli v. Lynch, 2 A.D. 3d 553, 769 N.Y.S. 2d 567). It implies that without any fault on the part of plaintiff, defendant has failed to perform on the contract. However, the facts herein show that plaintiff was under an obligation to hold the same special meeting -as directed by two court orders from Justice Schlesinger and one from the Appellate Division First Department- that it accuses defendants of holding. It was due to Plaintiff's inaction and at the direction of the courts that defendants scheduled and conducted the special meetings. What defendants failed to do was to notice the meetings in accordance with the Non-Profit Corporation Law and to have a necessary quorum. Had these two items been properly observed the meetings and its results would have been valid.

Defendants' holding of a meeting due to plaintiff's inaction, after plaintiff had been directed by the courts to do the same is not a breach of the contract between the union and its members. Defendants are correct in that what the pleadings allege are internal union matters (see Matter of Gilheany v. Civil Service Employees Association, 59 A.D. 2d 834, 395 N.Y.S. 2d 717; Seabrook v. Israel, 215 A.D. 2d 312, 627 N.Y.S. 2d 25).

Plaintiff's second cause of action is for a violation of the Not for Profit Corporation Law, this claim is not actionable in this context. Plaintiff claims that defendants violated those provisions of the law that address the calling of meetings, notice of meetings, quorum and proxies. This court has already determined that the meetings held by defendants and the decisions taken at those meetings were invalid as they did not conform to the requirements in the law. These meetings were held in haste due to plaintiffs' unwillingness to hold the special meeting as directed by Supreme Court and the Appellate Division. Any violation of the Not for Profit Corporation law with respect to the meetings is not compensable. Plaintiff has already been awarded its remedy in the court's annulment of the special meetings and the decisions taken thereat.

Plaintiff's third cause of action is for fraud. The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of its falsity with the intent to induce reliance thereon, justifiable reliance upon the misrepresentation and damages (Orchid Construction Corp., v. Gonzalez, 89 A.D. 3d 705, 932 N.Y.S. 2d 125 [2nd. Dept. 2011]). Accepting the facts as alleged in the complaint as true, and according the plaintiff the benefit of every favorable inference this cause of action must be dismissed. Plaintiff failed to plead the circumstances of the fraud and the elements of misrepresentation of a material fact and justifiable reliance with specificity (see CPLR § 3016 (b); Buraldi v. Iberia, 79 A.D. 3d 959, 913 N.Y.S. 2d 753; Couri v. Westchester Country Club, 186 A.D. 2d 712, 589 N.Y.S. 2d 491). " A cause of action alleging fraud does not lie where the fraud claim relates to a breach of contract" (J.M. Builders & Associates, Inc., v. Lindner, 67 A.D. 3d 738, 889 N.Y.S. 2d 60 [2nd. Dept. 2009]).

Plaintiff's fourth cause of action is for Prima-facie Tort. Plaintiff has consented to the dismissal of this cause of action, but even if they had not consented the cause of action had to be dismissed for failure to state a cause of action. "A Prima facie tort is the infliction of intentional harm, resulting in damage, without excuse or justification, by an act or series of acts which would otherwise be lawful. By definition it is an act that does not fall within the categories of the traditional torts. It would be unwise to allow every unrealized cause of action to be tortured into a prima facie tort action by the liberal application of 'malicious' to the motives of the disappointed plaintiff, thus affording a form for never-ending source of new litigation." (Belsky v. Lowenthal, 62 A.D. 2d 319, 405 N.Y.S. 2d 62 [1st. Dept. 1978]). "The essential ingredient of prima facie tort is an allegation that defendant's sole motivation was disinterested malevolence. It is 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 cannot stand on its own legs." (Bassim v. Hassett, 184 A.D. 2d 908, 585 N.Y.S. 2d 566 [3rd. Dept. 1992]).

Plaintiff's Fifth cause of action is for Tortious Interference with Contract. The elements of a cause of action for Tortious interference with a contractual relation is (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 (M.J. & K. Co., Inc., v. Matthew Bender and Company Inc., 220 A.D. 2d 488, 631 N.Y.S. 2d 938 [2nd. Dept. 1995]; Barns & Farms Realty LLC, v. Novelli, 82 A.D. 3d 689, 917 N.Y.S. 2d 691 [2nd. Dept. 2011]). "To avoid dismissal of a Tortious interference with contract claim, a plaintiff must support his claim with more than mere speculation."(Ferrandino & Sons, Inc., v. Wheaton Builders, Inc., LLC, 82 A.D. 3d 1035, 920 N.Y.S. 2d 123 [2nd. Dept. 2011]). Finally, there must be an actual breach of contract in order for the complaint to state a cause of action for tortious interference with contract (NBT Corp., Inc., v. Fleet/Norstar Financial Group, Inc., 87 N.Y. 2d 614, 664 N.E. 2d 492, 641 N.Y.S. 2d 581; Davis v. Williams, 59 A.D. 2d 660, 398 N.Y.S. 2d 281).

Construing plaintiffs' complaint liberally, accepting the facts as alleged by plaintiffs as true and affording every favorable inference plaintiffs' complaint fails to state a cause of action.

Accordingly, it is ORDERED, that the motion is granted the complaint is dismissed.

The cross-motion is denied as moot.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: December 5, 2012

Manuel J. Mendez
J.S.C.

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE