

Aramid Entertainment Fund, LTD. v Wimbledon Fin. Master Fund, LTD
2012 NY Slip Op 33189(U)
February 8, 2012
Supreme Court, New York County
Docket Number: 651532/2011
Judge: Melvin L. Schweitzer
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZERPART 45

Justice

ARADID ENTERTAINMENT FUND, LTD. et al INDEX NO. 651532/2011

MOTION DATE _____

MOTION SEQ. NO. 005- v -
WIMBLEDON FINANCING MASTER FUND,
LTD. et al

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 ...

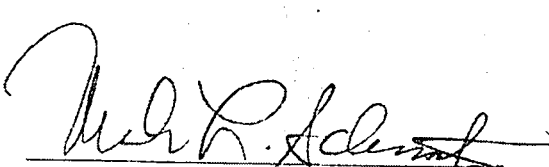
Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion *to dismiss the complaint*
is GRANTED per the attached
Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):Dated: February 8, 2012

 MELVIN L. SCHWEITZER
 J.S.C.
Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITIONCheck if appropriate: ☐ DO NOT POST ☐ REFERENCE☐ SUBMIT ORDER/JUDG.☐ SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

-----X
ARAMID ENTERTAINMENT FUND, LTD., ARAMID :
CAPITAL PARTNERS LLP, SCREEN CAPITAL :
INTERNATIONAL CORP., :
:

Plaintiffs, :

-against- :

WIMBLEDON FINANCING MASTER FUND, LTD., :
WFM HOLDINGS LTD., STILLWATER CAPITAL :
PARTNERS, INC., STILLWATER MARKET NEUTRAL :
FUND III SPC, GEROVA FINANCIAL GROUP, LTD., :
FORTIS BANK CAYMAN, LTD., JOSEPH BIANCO, :
DAVID BERGSTEIN, CHARLES, FREDERIC & CO., :
and JOHN DOES 1-10, :

Defendants. :
-----X

Index No. 651532/2011

DECISION AND ORDER

Motion Sequence No. 005

MELVIN L. SCHWEITZER, J.:

Defendants have filed a motion to dismiss the complaint pursuant to CPLR 3211 (a) (7).

Background

This dispute is fundamentally a claim of tortious interference with a proposed transaction between the primary plaintiff, Aramid Entertainment Fund, Ltd. (Aramid), and a third party, ABRY Partners (ABRY). The primary defendants are Gerova Financial Group, Ltd. (Gerova) and its former CEO, Joseph Bianco (Mr. Bianco). Additional plaintiffs are Aramid Capital Partners (TSP), which provides technical services to and holds the voting shares of Aramid, and Screen Capital International Corp. ("SCI"), a finance specialist which provides advisory services to Aramid.

In early 2010 Aramid sought to sell its asset portfolio. Gerova, a shareholder of Aramid, presented a proposal in which Aramid's portfolio would be purchased in exchange for restricted

common shares of Gerova stock. In June 2010, Aramid's shareholders rejected this offer and instead authorized Aramid's Board of Directors to pursue a transaction with a third party, ABRY.

In June of 2010, ABRY tendered an offer to purchase Aramid's assets for \$130 million. At the request of the Aramid Board, ABRY revised this offer to provide more favorable terms and resubmitted it in July of 2010. The offer was subject only to specific confirmatory diligence and the approval of the Aramid Board and voting shareholders.

Plaintiffs allege that in August 2010 Mr. Bianco participated in email and online discussions with Aramid shareholders in which he claimed that Aramid's assets were overvalued and that the shareholders were being defrauded. Plaintiffs allege that Mr. Bianco did this "in order to deliberately create discord within plaintiffs' relationships with its shareholders" in revenge for the rejection of his proposal. However, the amended complaint also alleges that Mr. Bianco did this "to acquire Aramid's diverse and valuable portfolio of entertainment assets 'on the cheap.'"

Plaintiff TSP is the sole holder of the voting shares of Aramid. After the interactions between Mr. Bianco and other Aramid shareholders, TSP concluded that "because of shareholder turmoil, and the very real possibility of shareholder lawsuits . . . TSP was unable to approve the ARBY offer." It seems from the complaint that ARBY did not withdraw the offer; instead, plaintiffs declined it and then chose to sue for tortious interference.

The complaint is significantly complicated by the inclusion of many other defendants and an alleged connection between the events recited above and an unrelated bankruptcy filing. In March 2010, plaintiffs allege that Aramid led a group of creditors in forcing five holding companies into involuntary bankruptcy. These companies were controlled by defendant David

Bergstein (Mr. Bergstein), allegedly a business confederate of Mr. Bianco. Plaintiffs claim that this bankruptcy filing was an additional reason Mr. Bianco sought revenge on Aramid, and allege that Mr. Bergstein made several threatening statements to David Molner, a principal of TSP and SCI, and made false statements about the financial health of Aramid to the entertainment industry press. Additionally, plaintiffs base their claims against Mr. Bianco on a declaration he made in the bankruptcy proceeding in which he claimed that Aramid was in financial distress.

Additional defendants include Wimbledon Financing Master Fund, Ltd., WFM Holdings Ltd., Stillwater Capital Partners, Inc., and Stillwater Market Neutral Fund III SPC. Plaintiffs allege that these entities held non-voting shares of Aramid and merged with Gerova during 2010. Also named as defendants are Fortis Bank Cayman Ltd. and Charles, Frederick & Co., registered custodians for Wimbledon Financing Master Fund and Stillwater Market Neutral Fund, respectively, and John Does 1-10, which are not mentioned in the complaint. The purported basis for any of these entities' liability is not clear.

Plaintiffs have alleged causes of action for tortious interference with prospective economic advantage, prima facie tort, and willful misconduct. Defendants move to dismiss pursuant to CPLR 3211 (a) (7).

Discussion

Plaintiffs' first claim is for tortious interference with prospective economic advantage. A tortious interference claim requires that plaintiffs allege that defendants' actions *caused* economic harm to the plaintiffs. Plaintiffs must allege that they would have received some economic advantage "but for" the interference of defendants. *See Gebbia v Toronto-Dominion Bank*, 306 AD2d 37, 38 (1st Dept 2003) (dismissing a claim because there was no sufficient

allegation that a contract would have been entered into but for defendant's interference); *Risley v Rubin*, 272 AD2d 198, 199 (1st Dept 2000) (dismissing a claim because plaintiff did not demonstrate he would have received economic advantage but for the interference). Plaintiffs do not allege that Mr. Bianco's actions caused the failure of the deal between Aramid and ABRY. Instead, the complaint admits that one of the plaintiffs, TSP, voluntarily chose not to accept ABRY's offer. While this choice may have been motivated by shareholder dissent, plaintiffs do not allege that any of the defendants took actions which caused ABRY to withdraw the offer, or in any way made it impossible for TSP to accept the offer. Plaintiffs have not alleged causation.

Plaintiffs' second claim is for prima facie tort, which requires both special damages and the allegation that defendants were "solely motivated by malice or 'disinterested malevolence.'" *Golub v Esquire Pub. Inc.*, 124 AD2d 528, 529 (1st Dept 1986); *see also Posner v Lewis*, 80 AD3d 308, 312 (1st Dept 2010). Plaintiffs' claim fails on both fronts. Not only is there a plausible motivation, other than disinterested malevolence, for defendants' alleged behavior, plaintiffs themselves describe this economic motivation in the amended complaint. Plaintiffs also fail to allege special damages.

Finally, plaintiffs' third claim for willful misconduct is not a cause of action under New York law. Plaintiffs cite one case in support, *Coco Investments, LLC v Zamir Manager River Terrace LLC*. However, liability for "willful misconduct" in that case was established by contract. 2010 NY Slip Op. 50332U, at *6 (Sup. Ct. 2010). Furthermore, the specific definition of willful misconduct which plaintiffs cite is from Delaware law.

Conclusion

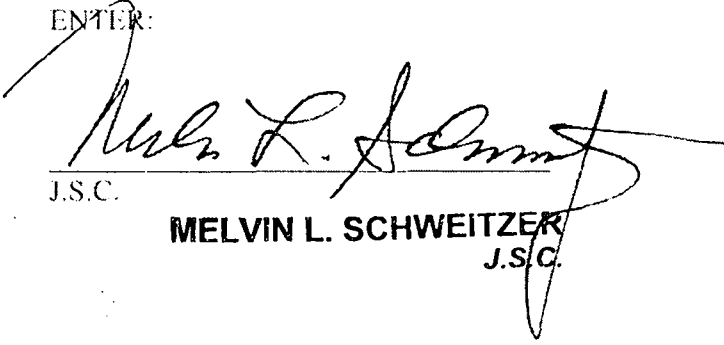
Plaintiffs have failed to state a cause of action for tortious interference, prima facie tort, or willful misconduct.

Accordingly, it is

ORDERED that all claims by plaintiffs are dismissed.

Dated: February 8, 2012

ENTER:


J.S.C.

MELVIN L. SCHWEITZER
J.S.C.