

Lalicata v Lalicata
2013 NY Slip Op 33297(U)
December 18, 2013
Supreme Court, New York County
Docket Number: 650582/13
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

PRESENT: _____
Justice

PART 61

Cardine Lolicata

S. Lolicata, et al.

INDEX NO. 650582-13

MOTION DATE _____

MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion to/for dismiss

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1

Answering Affidavits — Exhibits _____ No(s). 2

Replying Affidavits _____ No(s). 3

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed memorandum opinion.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 12/18/13

ACC
HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
CANDICE FEINBERG LALICATA,

Plaintiff,

DECISION AND
ORDER

-against-

Index No.
650582/13

STEVEN LALICATA, DIANA FERNANDEZ,
JAMES HART, BRIAN MARTINEZ, and
JOHN DOE 1,

Defendants.

-----X
HON. ANIL C. SINGH, J.:

Defendant Diana Fernandez moves pursuant to CPLR 3211(a)(7) for an order dismissing the causes of action against her for conversion, unjust enrichment, and false arrest, contending that she did not participate directly in a fraudulent scheme by the co-defendants to persuade plaintiff to withdraw large amounts of money from plaintiff's trust fund. Plaintiff opposes the motion.

The complaint alleges the following facts.

Plaintiff Candice Feinberg Lalicata is the daughter of a wealthy Manhattan businessman. When plaintiff turned 35-years-old, the corpus of a trust was made available to her.

On March 29, 2011, she married defendant Steven Lalicata.

In 2012, defendant Steven Lalicata, his cousin defendant James Hart, and his best friend defendant Brian Martinez concocted an elaborate scheme to steal large sums of money from plaintiff. Specifically, plaintiff alleges that her husband, Hart, and Martinez led plaintiff to believe that her husband owed large gambling debts to members of organized crime. Through a series of "coordinated communications," they convinced plaintiff that Steven Lalicata would be physically harmed if plaintiff did not make huge amounts of cash available to defendant Lalicata on short notice.

The complaint asserts that defendants' representations were pure fiction. Plaintiff's husband owed no gambling debts. Members of organized crime never threatened him. In reality, Steven Lalicata was allegedly engaged in an extramarital affair with defendant Diana Fernandez, and Steven Lalicata used money withdrawn from plaintiff's trust fund to support Ms. Fernandez.

With respect to defendant Diana Fernandez, the complaint states that Ms. Fernandez resides in Englewood, New Jersey. Plaintiff contends that her husband used a bank located in Englewood to withdraw funds that belonged to plaintiff.

The complaint alleges further that Steven Lalicata provided defendant Diana Fernandez with items purchased with plaintiff's money, including jewelry, luxury goods, home furnishings, and travel; Diana Fernandez traveled with the co-

defendants to Las Vegas and other places; and defendants Steven Lalicata and Diana Fernandez used plaintiff's money to take a vacation in the Dominican Republic (Complaint, p. 13, para. 67).

Finally, the complaint alleges that Diana Fernandez exchanged a series of e-mails with plaintiff; that Diana Fernandez made a complaint to the police department regarding claimed harassment by a private investigator hired by plaintiff; and that plaintiff was arrested and charged with aggravated harassment under Penal Law 240.30(1)(a) and (2) based on false allegations by Diana Fernandez.

The complaint asserts causes of action for fraud; aiding and abetting fraud; conversion; unjust enrichment; and false arrest.

Discussion

“On a motion to dismiss pursuant to CPLR 3211(a)(7), the court accepts as true the facts as alleged in the complaint and affidavits in opposition to the motion, accords the plaintiff the benefit of every possible favorable inference, and determines only whether the facts as alleged manifest any cognizable legal theory” (Elmaliach v. Bank of China Ltd., 110 A.D.3d 192 [1st Dept., 2013]).

After careful consideration, the Court finds that the facts alleged in the complaint against defendant Diana Fernandez are clearly sufficient at this early

stage of the litigation to state all of the elements of causes of action sounding in conversion, unjust enrichment, and false arrest.

Accordingly, it is

ORDERED that the motion is denied; and it is further

ORDERED that defendant Diana Fernandez is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 320, 80 Centre Street, on February 5, 2014, at 9:30 AM.

The foregoing constitutes the decision and order of the court.

Date: 12/18/13
New York, New York



Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE