

Rondeau v Houston

2013 NY Slip Op 33363(U)

April 17, 2013

Sup Ct, New York County

Docket Number: 650198/2011

Judge: Charles E. Ramos

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**SUPREME COURT OF THE STATE OF NEW YORK -
NEW YORK COUNTY**

PRESENT: RAMOS

PART 53

Justice

ARTHUR E. RONDEAU
Plaintiff,

INDEX NO. 650198/2011

MOTION DATE _____

- v -

**ALLAN HOUSTON, and NEW YORK
KNICKERBOCKERS, A DIVISION OF
MADISON SQUARE GARDEN, L.P.**
Defendant

MOTION SEQ. NO. 003

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 No(s) _____

Answering Affidavits - Exhibits No(s) _____

Replying Affidavits No(s) _____

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

*Motion is decided in accordance with
accompanying Memorandum Decision*

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

DATED: 4/12/13

HON. CHARLES E. RAMOS J.S.C.

1. CHECK ONE :

2. CHECK AS APPROPRIATE :

3. CHECK IF APPROPRIATE :

DO NOT POST

CASE DISPOSED
MOTION IS: GRANTED DENIED
 SETTLE ORDER
 FIDUCIARY APPOINTMENT

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER
 SUBMIT ORDER
 REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----X

ARTHUR E. RONDEAU,

Plaintiff,

-against-

Index No. 650198/2011

ALLAN HOUSTON, and NEW YORK
KNICKERBOCKERS, A DIVISION OF MADISON
SQUARE GARDEN, L.P.

Defendants.

-----X

ARTHUR E. RONDEAU,

Plaintiff,

-against-

Index No. 151202/2012

NEW YORK KNICKERBOCKERS, A DIVISION OF
MADISON SQUARE GARDEN, L.P., ALLAN
HOUSTON, CYNTHIA ARATO, ESQ., ALAN
MILSTEIN, ESQ., JAMES DARROW, ESQ.,
SHAPIRO, ARATO & ISSERLES LLP, and
SHERMAN, SILVERSTEIN, KOHL, ROSE &
PODOLSKY, P.A.

Defendants.

-----X

Hon. Charles E. Ramos, J.S.C.

Motion sequences 003, 004, and 005 of the action bearing
Index number 650198/2011 and motion sequence 001 of the action
bearing Index number 151202/2012 are consolidated for
disposition.

In motion sequence 003 of the action bearing Index number
650198/2011, the defendants Allan Houston ("Houston") and the New

York Knickerbockers (the "Knicks") move this Court pursuant to CPLR 3211(a)(7) to dismiss the second amended complaint (the "Second Amended Complaint") in its entirety. In motion sequence 004, the plaintiff Arthur Rondeau ("Rondeau") moves this Court pursuant to 22 NYCRR § 130-1.1(c)(3) to issue an order imposing sanctions on defendants and denying the motion to dismiss. In motion sequence 005, Rondeau moves pursuant to CPLR 2221 to reargue and renew a previously dismissed claim for fraud.

In motion sequence 001 of the action bearing Index number 151202/2012, the Knicks, Houston, Cynthia Arato ("Arato"), Alan Milstein ("Milstein"), James Darrow ("Darrow"), Shapiro, Arato & Isserles, LLP ("Shapiro LLP"), and Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. ("Sherman PA") (collectively, the "Defendants") move this Court pursuant to CPLR 3211 to dismiss the complaint in its entirety.

Background

The allegations set forth below are taken from the complaint, and are assumed to be true for the purposes of disposition.

This action arises from a failed business relationship between Houston and Rondeau. Houston is a former shooting guard and current Assistant General Manager for the Knicks. Rondeau is a self-described "peak performance" and free throw shooting coach. Rondeau also works or has worked as an informational

technology ("IT") consultant.

From April 1999 through early 2000, Houston utilized Rondeau's coaching services with the aim of improving his free throw shooting. In exchange for his coaching services, Houston allegedly agreed to pay Rondeau an unspecified amount and to "publically acknowledge Rondeau by name if he realized positive results through working with Rondeau" (Second Amended Complaint ¶ 17). In October 1999, Rondeau presented Houston with a written agreement for future coaching, but the parties did not negotiate or execute the agreement.

After a time, communication between the men became strained and Houston eventually ceased all communication with Rondeau. In the years that followed, Rondeau made repeated attempts to communicate with Houston, to no avail. He also unsuccessfully sought employment as a performance coach with other NBA teams and made several attempts to have positive newspaper and internet articles printed about his coaching methods and work with Houston.

Eventually, Rondeau retained legal counsel who arranged a meeting between Rondeau and Houston. This meeting took place in November 2008. At that meeting, Houston allegedly "represented to Rondeau that he would assist [him] with obtaining a peak performance coaching position in the NBA if and when such opportunities arose" (Second Amended Complaint ¶ 131).

In February 2009, Rondeau met with Glenn Grunwald ("Grunwald"), Senior Vice President for Basketball Operations for the Knicks, and Jamie Matthews ("Matthews"), Vice President for Basketball Operations for the Knicks, to discuss employment opportunities with the Knicks (the "2009 Meeting"). In March 2009, Grunwald informed Rondeau that the Knicks would not be making him an offer of employment. Rondeau alleges that the Knicks did not offer him a position with the team because Houston "did not support Rondeau's hire" (Second Amended Complaint ¶ 143).

In a letter dated June 10, 2009 (the "2009 Letter"), Rondeau made "a final attempt to get Houston to discuss and resolve their issues privately" (Second Amended Complaint ¶ 145). In the 2009 Letter, Rondeau outlined the many wrongs he alleges that Houston committed in the course of their dealings and threatened to damage Houston's reputation by "mak[ing] this matter public immediately" if he did not receive a response to the 2009 Letter by June 19, 2009 (Reply, Ex. A) (See this Court's order dated December 15, 2011 [NYSCEF docket #50] finding that the 2009 Letter was of a threatening nature and dismissing the causes of action set forth in the first amended complaint (the "First Amended Complaint") for slander and slander per se on the grounds that Houston had properly asserted the defense of truth).

When Houston did not respond to his letter, Rondeau

contacted Marc Berman ("Berman"), a sportswriter for the New York Post (the "Post"), in an attempt to persuade Berman to write a positive article about Rondeau's work with Houston. Berman expressed interest in writing an article, "probably about the Knicks stating that Rondeau's program was not compatible with the Knicks direction and their subsequent plummet in the standings" (Second Amended Complaint ¶ 147). In early July 2009, Berman told Rondeau that he was working on the article and would seek comment from Houston.

On July 14, 2009, Berman informed Rondeau that he had contacted Houston who told him that Rondeau was trying to blackmail him and that "he would put the 'blackmail' comment on the record if Berman published his article" (Second Amended Complaint ¶ 148). Berman also told Rondeau that members of the Knicks' public relations department had discouraged him from publishing the article. Rondeau made several additional attempts to persuade Berman to publish the article, but was unsuccessful. The article was never published.

In November 2009, Rondeau sent an article that he drafted to Berman and requested that Berman have the article published in the Post. In December 2009, Berman sent Rondeau an email stating that he would not publish the article because Houston said that Rondeau was trying to blackmail him.

On January 24, 2011, Rondeau commenced the action bearing

the index number 650198/2011 by filing a summons and complaint. The Defendants filed a motion to dismiss on March 25, 2011. On November 21, 2011, Rondeau, acting pro se, filed the "First Amended Complaint". Each complaint asserts claims for fraud, fraudulent misrepresentation, slander, and slander per se against Houston, tortuous interference with prospective business advantage against Houston and the Knicks, and vicarious liability against the Knicks.

This Court heard oral argument on the motion to dismiss on December 15, 2011. At the oral argument and in a subsequent order dated January 10, 2012, this Court dismissed all claims with leave to amend and re-plead the first cause of action as a claim for breach of contract, and to re-plead the cause of action asserted against Houston for tortuous interference related to Rondeau's potential employment with the Knicks and the cause of action for vicarious liability.

This Court did not grant leave to amend the tortuous interference claims arising from the potential Post article or the claims for slander and slander per se. Nonetheless, on February 10, 2012, Rondeau filed a second amended complaint (the "Second Amended Complaint") that asserts causes of action for breach of contract, slander and slander per se against Houston, tortuous interference with prospective business advantage against Houston and the Knicks, and vicarious liability against the

Knicks.

On March 15, 2012, Houston and the Knicks filed the present motion to dismiss. On July 18, 2012, Rondeau filed the motion for sanctions. On November 28, 2012, Rondeau filed the motion to renew and reargue.

On March 30, 2012, Rondeau commenced the action bearing index number 151202/2012 by filing a summons and complaint. On May 1, 2012, the Defendants filed the motion to dismiss.

Standard of Review

Dismissal under CPLR 3211(a)(7) is warranted where the pleadings fail to state a cause of action upon which relief may be granted. The motion must be denied if from the pleadings' four corners "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (511 W. 232nd Owners Corp., 98 NY2d 144, 152 [2002]). The Court must afford the pleadings a liberal construction, giving the plaintiff the benefit of every possible favorable inference and accept as true the facts alleged in the complaint and any admissions in opposition to the dismissal motion (*id.*). Conclusory allegations, claims consisting of bare legal conclusions with no factual specificity, are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]).

Discussion

Index Number 650198/2011

A. Contract Claims

Rondeau alleges that he and Houston "entered into a contract...pursuant to which Houston agreed to make reasonable efforts to assist Rondeau in obtaining a peak performance coaching work in the NBA which opportunities arose" (Second Amended Complaint ¶ 173) In consideration, Rondeau allegedly agreed "not to revisit Houston's past misconduct and in acknowledgment of the \$5,000 payment...that Houston withheld in June 2000" (*id.*). Rondeau asserts that Houston breached this agreement because he failed to provide the promised assistance after Rondeau's 2009 meeting with Grunwald and Matthews, resulting in Rondeau not receiving a coaching position with the Knicks.

The Defendants argue that Houston's alleged promise to "assist" Rondeau with "obtaining a peak performance coaching position in the NBA if and when such opportunities arose" is so vague as to be unenforceable, that Rondeau has failed to demonstrate that there was a meeting of the minds sufficient to elevate the alleged promise into a binding agreement, and that Houston did not have the authority to make this promise to bind the Knicks in such a manner as to make the team vicariously liable for the agreement.

"Few principles are better settled in the law of contracts than the requirement of definiteness... [i]f an agreement is not

reasonably certain in its material terms, there can be no legally enforceable contract" (*Cobble Hill Nursing Home & Warren Corp.*, 74 NY2d 475, 482 [1989]). If the court cannot reasonably determine what the parties agreed to and whether the terms have been breached, the agreement is unenforceable. There must be a manifestation of mutual assent to essential terms (*id.*).

With respect to Houston's alleged promise to "assist" Rondeau, there is no indication what efforts would be considered "reasonable," what would qualify as "opportunities", or how long Houston would be bound to provide assistance. Rondeau alleges that Houston would be bound until he had "rendered his full assistance in good faith and/or the result of Houston's assistance was that Rondeau was working in a peak performance coaching position with an NBA team" (Pl. Mem. at 5). Yet Rondeau has provided no information that would allow this Court to determine what "full assistance" would entail and has made no showing that Houston agreed to be bound to "assist" until Rondeau had acquired a position with the NBA. It is, therefore, the determination of this Court that the alleged promise is not sufficiently definite as to create an enforceable agreement and lacks mutual assent.

Turning to the vicarious liability claim against the Knicks, which this Court will construe as an agency claim, Rondeau does not allege that Houston had the authority to bind the Knicks with

respect to the alleged agreement. Furthermore, without an enforceable agreement, Rondeau's claim for vicarious liability fails.

B. Tortuous Interference

The Second Amended Complaint alleges two causes of action for interference with prospective economic advantage against Houston on the grounds that he allegedly "actively and maliciously opposed Rondeau's prospective employment with the Knicks" following Rondeau's 2009 meeting with Grunwald and Matthews, thereby preventing Rondeau from being hired by the Knicks (Second Amended Complaint ¶ 181-182) and "actively dissuad[ed] Berman from writing an article about Rondeau's unique coaching methods...by saying that Rondeau was trying to blackmail him" (Second Amended Complaint ¶ 187).

To establish a claim for tortuous interference with prospective economic advantage, a plaintiff must demonstrate that the defendant intentionally interfered with the plaintiff's business relationships, acting solely to harm plaintiff by unlawful means beyond mere self-interest or other economic considerations, and that the defendant's actions damaged the plaintiff (*Philips v Carter*, 58 AD3d 528 [1st Dept 2009]).

To support his first cause of action for tortuous interference against Houston, Rondeau presents only conclusory and speculative allegations that Houston "actively and

maliciously opposed" Rondeau's employment with the Knicks. Rondeau fails to allege that he had any outstanding offer or prospective offer of employment with the Knicks or any NBA team. He also fails to allege any facts that demonstrate Houston acted solely to harm the plaintiff. Rather, Rondeau, alleges that Houston acted within the scope of his employment.

With respect to Berman and the prospective newspaper article, Rondeau alleges only that Houston "dissuaded" Berman from publishing the article by "accus[ing] Rondeau of trying to 'blackmail' him," the basis of Rondeau's slander claims which this Court previously dismissed on the grounds that Houston has adequately asserted the affirmative defense of truth.

Rondeau's fifth cause of action alleges that the Knicks "maliciously and intentionally interfered with Rondeau's prospective business advantages by using their public relations department to prevent the publication of the Berman article" (Second Amended Complaint ¶ 192). He further alleges that the Knicks did so "solely for the purpose of harming Rondeau" (*id.* at 193).

Once again, Rondeau's claims rely solely on conclusory and vague allegations and fail to plead facts which indicate the Knicks acted solely to harm Rondeau, rather than in pursuing its economic self interest. It is therefore the determination of this Court that Rondeau cannot support his claims for tortious

interference with prospective economic advantage against Houston or the Knicks.

C. Slander

Rondeau's claims for slander and slander per se are identical to those asserted in his initial complaint and First Amended Complaint. Therefore, this Court affirms its prior determination that Houston has asserted a viable defense of truth for these claims and they remain dismissed.

D. Motion for Sanctions

In motion sequence 004, Rondeau moves this Court to issue an order imposing sanctions on the Defendants on the grounds that the Defendants have made "numerous false assertions of material fact [that] are frivolous and/or an attempt to deceive and/or mislead the Court" (Pl. Mem. at 2). Specifically, Rondeau contends that the Defendants have mischaracterized his 2009 Letter as threatening, that the Defendants assert material factual statements that are false in their memorandum of law, and that, in making their legal arguments, the Defendants "ignore" material facts. As this Court has previously determined, the 2009 Letter was of a threatening nature. This Court has reviewed the record and found no evidence that the Defendant's made any material misrepresentations or omissions of fact to this Court in the course of this litigation. Rondeau's arguments to the contrary are unproven.

E. Motion to Reargue/Renew

In light of Rondeau having filed the Second Amended Complaint, the motion to reargue and renew the prior motion to dismiss is moot.

Index Number 151202/2012

In the action bearing the index number 151202/2012, Rondeau asserts claims for libel, libel per se, and vicarious liability against Houston, the Knicks, and their counsel in the related action. In essence, Rondeau objects to the Defendants' characterization of his character and the merits of his claims in the related action. This Court has fully reviewed Rondeau's arguments and found the allegations to be vague, conclusory, and duplicative of the slander and slander per se causes of action asserted in the related case. Therefore, it is the finding of this Court that the action bearing index number 151202/2012 is without legal merit.

This Court, in both actions, has sought to determine if the plaintiff acting pro se had actionable claims but merely failed to properly articulate them. He is not an attorney and, therefore, his lack of technical legal sophistication is assumed. However, not every wrong, real or perceived, has a legal remedy. The fact that the allegations in these actions fail to give the plaintiff a basis for a recovery should not be a reflection on him or the manner in which he was dealt with.

In addition, negotiations and business dealings, such as those that are alleged in these actions, need to satisfy legal requirements which persons without legal training are generally unaware. The plaintiff, and many others, seek to rely on personal relationships and trust in circumstances where the law requires much more. In most instances, their claims also fail.

Accordingly, it is

ORDERED that the Defendants' motion to dismiss, motion sequence 003 of the action bearing index number 650198/2011, is granted and the complaint is dismissed with prejudice; and it is further

ORDERED that the plaintiff Arthur Rondeau's motion for sanctions is denied; and it is further


ORDERED that the plaintiff Arthur Rondeau's motion to reargue and renew is denied; and it is further

ORDERED that the motion to dismiss in the action bearing the index number 151202/2012 is granted and the complaint is dismissed in its entirety with prejudice; and it is further

ORDERED that the clerk of the court is directed to enter judgment in favor of the defendants in both actions.

Dated: April 17, 2013

ENTER:



J.S.C.