Lion's Prop. Dev. Group LLC v New York City Regional Ctr., LLC
2013 NY Slip Op 33374(U)
March 15, 2013
Sup Ct, New York County
Docket Number: 651016/11
Judge: Shirley Werner Kornreich
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: SHIRLEY WERNER KORNREICH J.S.C.
Justice

PART 54

Index Number : 651016/2011
LION'S PROPERTY DEVELOPMENT
VS.
NEW YORK CITY REGIONAL
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. ______
MOTION DATE ______
MOTION SEQ. 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). 15, [illegible], 62-112

Answering Affidavits — Exhibits ______ | No(s). 114, 115

Replying Affidavits ______ | No(s). 134, 135

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision/order.

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

Dated: 2/15/13

SHIRLEY WERNER KORNREICH, J.S.C.
J.S.C.

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

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

---X

LION'S PROPERTY DEVELOPMENT GROUP LLC,

Plaintiff,

-against-

Index No.: 651016/11

NEW YORK CITY REGIONAL CENTER, LLC,
HOCHE PARTNERS CAPITAL LLC, and
GREGG D. HAYDEN,

JUDGMENT

Defendants.

---X

SHIRLEY WERNER KORNREICH, J.:

Motion sequence numbers 001 and 002 are consolidated for disposition.

In motion sequence 001 plaintiff, Lion's Property Development Group LLC (Lion's), moves, pursuant to CPLR 3212, for summary judgment on the first cause of action alleging breach of contract. In motion sequence number 002, defendants New York City Regional Center, LLC (NYCRC), Hoche Partners Capital LLC (Hoche) and Gregg D. Hayden (collectively Defendants) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint in its entirety.

I. Background

NYCRC is a participant in a United States government approved program known as the EB-5 Program, which is overseen by the United States Citizen and Immigration Service (USCIS), a division of the Department of Homeland Security. The EB-5 program was established to help stimulate economic development in areas of high unemployment in the United States by using foreign investments to spur job creation while simultaneously giving eligible foreign investors the opportunity to become lawful permanent residents of the United States.

Under the EB-5 Program, companies, such as NYCRC, receive approval from USCIS, to

operate as regional centers, and as such, they are permitted to seek foreign investments from individuals who are willing to invest a minimum of $500,000 in projects that will create at least 10 permanent jobs for U.S. workers. In return, the approved foreign investor is granted permanent residency in the United States.

In October 2008, NYCRC was approved as a regional center for EB-5 projects in New York, Brooklyn, Queens and the Bronx[1]. NYCRC believed that China would become a significant market through which it would obtain EB-5 investors. To this end, it sought to develop relationships with companies in China that had experience with the EB-5 program and/or had relationships with wealthy Chinese investors.

According to the complaint, Lion's, which is owned and managed by Chaim Katzap, is primarily involved in "providing high-end real estate development services and investment services both in New York and abroad" (Cmplnt, ¶ 5). In 2007, Lion's opened an office in Beijing, China to market business and real estate opportunities in the United States to Chinese investors. In 2009, Katzap contacted NYCRC and represented that Lion's had substantial experience in the EB-5 program and had been highly successful in selling high-end New York City real estate to wealthy Chinese investors.

Katzap had several meetings and email exchanges with George Olsen, NYCRC's principal, and on July 9, 2009, NYCRC and Lion's entered into a written referral agreement (the Referral Agreement). The Referral Agreement set forth the terms under which Lion's, as agent, would earn commissions for the referral of investors to NYCRC. It provides, in pertinent part:

---

[1]NYCRC has provided funding for the redevelopment of the Brooklyn Navy Yard, the Steiner Studio Expansion and Barclay's Arena.

[* 4]

> 1. **Representations of Agent**. Agent represents and warrants and for the benefit of and agrees with, NYCRC as follows:
>
> * * * *
>
> The Agent will contact potential investors and, in rendering Services, the agent may meet with representatives of or directly with potential investors and provide such Representatives or potential investors with information about NYCRC as may be reasonably appropriate and acceptable to NYCRC . . ..
>
> 2. **Compensation**
>
> (a) A potential investor that has been introduced to NYCRC by Agent and approved by NYCRC is hereafter referred to as Agent's "Prospective Client". Any other potential investors that have been introduced to NYCRC by Agent's Potential Clients shall be considered and treated by NYCRC as Agent's Potential Clients. NYCRC agrees to pay Agent the referral amounts set forth in Schedule A hereto for Prospective Clients that qualify for an Investment Project, are accepted for investment by NYCRC in such Investment Project and invest in the Investment Project; . . ..
>
> (b) Any dispute between two or more selling or referral agents shall be conclusively resolved by NYCRC, who will endeavor to act fairly in resolving any such dispute.

(Heisenberg Aff., Ex. 20)

Schedule A, annexed to the Referral Agreement provides, in relevant part:

> 1. For each foreign investor referred to NYCRC and accepted by NYCRC the agent shall be entitled to a fee of $30,000.00 US for each investor . . . .

(*Id.*)

It is undisputed that NYCRC signed similar referral agreements with other agents, including defendant Hayden, through his company HP Lux, and that throughout the relevant time

period, those agents were actively seeking individual Chinese investors to refer to NYCRC. Indeed, the documentary evidence establishes that in August 2009, HP Lux and plaintiff were contacting the same Licensed Chinese Immigration Companies (LCICs) to see if they could establish contractual relationships with them (Def. Exs. I, J, K and Y). LCIC's are licensed by the government of China to seek investors for EB-5 offerings and to assist those investors with document preparation. For the most part, Chinese law requires that anyone promoting EB-5 investments in China to Chinese citizens must work with a licensed company or individual who has an immigration license in China (Joint Statement, ¶ 24).

The evidence also establishes that, from the outset, plaintiff and Hayden, through his company HP Lux, were submitting the names of various LCICs to NYCRC and were asking for exclusive rights with respect to those LCIC's (Joint Statement, ¶¶ 43, 46). NYCRC told plaintiff and HP Lux that they did not have exclusive rights in any LCIC, but if any LCIC agreed to work as their sub-agent and share commissions, NYCRC would recognize a written sub-agency agreement (Joint Statement ¶¶ 47-49, 58 and Defendants' Ex. T, Joint Statement, ¶ 62. Defendants' Ex. CC).

The documentary evidence establishes that Lion's prepared a "Cooperating Marketing Representative Agency Agreement" (Cooperating Agreement) that would govern its relationship with the LCICs. The document provided that the LCIC would serve as Lion's' "cooperating EB-5 agent and provide assistance to [Lions] with marketing and consulting services to clients for EB-5 projects" and that, for such assistance, the LCIC would receive 50% of Lions's commission (Defendants' Ex. M). After Katzap received NYCRC's communication regarding its willingness to honor sub-agency agreements, he emailed his staff in Beijing, stating,

[* 6]

> [w]e must rush to sign agreements with as many Immigration Consultants ("IC") as possible. Apparently, a couple of them on our short list have been identified by others as well. NYCRC (George Olsen just called me) may not be able to protect us w/o written agreements . . .

(Defendants' Ex. L).

The plaintiff admits that it submitted the Cooperating Agreement to four LCICs–QW, Well Trend, Henry Global and Cansine. QW, Well Trend and Cansine refused to sign the Cooperating Agreement;

Henry Global signed, but subsequently revoked its acceptance (Katzap Dep., at 234-235; Defendants' Exs. DD and EE).

According to NYCRC, in late 2009, it became aware that the large LCICs, like QW, Henry Global, Cansine and Well Trend, were not willing to work as "sub-agents". Rather, those LCICs sought a direct relationship with NYCRC where they would make direct referrals of eligible investors and receive the full commission for such referrals. Thereafter, NYCRC did enter into agreements to work directly with QW, Henry Global, Cansine and Well Trend, and it paid those entities commissions for each qualified investor the LCIC referred.

Indeed, Hayden states that even though he put in a great deal of effort trying to arrange exclusive agreements with various LCICs, in the fall of 2009, it became clear to him that the major LCICs would not work through U.S. referral agents or share commissions. Based on this realization, he accepted NYCRC's offer to work as its general manager and terminated his referral agreement with NYCRC (Hayden Aff., ¶ 9)

Plaintiff commenced this action in 2011 alleging that NYCRC breached its contract with plaintiff and that NYCRC, Hoche and Hayden tortiously interfered with Lion's's contracts with

the LCIC's by contacting LCICs that plaintiff had identified in an email to NYCRC and, without justification, inducing those LCICs to breach their obligations to plaintiff. The complaint also alleges tortious interference with prospective business relations against all of the defendants, breach of confdence/fiduciary duty against NYCRC, unjust enrichment against NYCRC and Hoche and trade defamation against NYCRC.

II. Discussion

Summary judgment will be granted if it is clear that no triable issue of fact exists (*Alvarez v Prospect Hosp.,* 68 NY2d 320, 324 [1986]). The burden is on the moving party to make a prima facie showing of entitlement to summary judgment as a matter of law (*Zuckerman v City of New York,* 49 NY2d 557, 562 [1980]; *Friends of Animals v Associated Fur Mfrs.,* 46 NY2d 1065, 1067 [1979]). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of a triable issue of fact (*Alvarez v Prospect Hosp.,* 68 NY2d at 324; *Zuckerman v City of New York,* 49 NY2d at 562). Mere conclusions, unsubstantiated allegations or expressions of hope are insufficient to defeat a summary judgment motion (*Zuckerman v City of New York,* 49 NY2d at 562; *see also Ellen v Lauer,* 210 AD2d 87, 90 [1st Dept 1994][it "is not enough that the party opposing summary judgment insinuate that there might be some question with respect to a material fact in the case. Rather, it is imperative that the party demonstrate, by evidence in admissible form, that an issue of fact exists . . . [citations omitted]").

A. Motion Sequence 001 (Breach of Contract, 1st Cause of Action)

In support of its motion for summary judgment on the first cause of action for breach of contract, plaintiff argues that it is entitled to payment under the unambiguous language of the

Referral Agreement which provides that the investment opportunity may be presented to either the investors or their representatives. Plaintiff takes the position that the LCICs qualify as representatives of the investors and that the contact it made with the LCIC's entitles it to commissions on all clients referred by the LCICs. Alternatively, it contends that even if the LCICs are not deemed the investors' representatives, it is entitled to commissions because the contract provides for compensation where the investors learn of the project through an LCIC, which, in turn, learned of the investment opportunity through Lion's. Finally, plaintiff argues that it is entitled to commissions because it was the exclusive broker for the immigration consultant agencies.

In opposition to summary judgment and in support of its separate motion for summary judgment dismissing the breach of contract claim, NYCRC argues that the unambiguous provisions of the final referral agreement establish that the agreement is non-exclusive and does not provide compensation for introductions to LCICs. It contends that the compensation provision in the Referral Agreement provides for payment only where a potential investor was introduced to NYCRR by Lion's, as agent, and the investor is approved by NYCRC.

Plaintiff has failed to make a prima facie showing that, according to the express language of the contract, it is entitled to judgment as a matter of law on the breach of contract claim.

The fundamental rule of contract interpretation is that agreements are construed in accord with the parties' intent (*see Slatt v Slatt,* 64 NY2d 966, 967 [1985]). "The best evidence of what parties to a written agreement intend is what they say in their writing" (*Slamow v Del Col*, 79 NY2d 1016, 1018 [1992]). Thus, a written agreement that is clear and unambiguous on its face must be enforced according to the plain meaning of its terms; extrinsic evidence of the parties'

intent may be considered only if the agreement is ambiguous (*see e.g. W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 162 [1990]).

A contract is unambiguous if "on its face [it] is reasonably susceptible of only one meaning" (*Greenfield v Phillies Records*, 98 NY2d 562, 570 [2002]). Parol evidence cannot be used to create an ambiguity where the words of the parties' agreement are otherwise clear and unambiguous (*Innophos, Inc. v Rhodia, S.A.*, 38 AD3d 368, 369 [1st Dept 2007], affd, 10 NY3d 25 [2008]). Conversely, "[a] contract is ambiguous if the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings" (*New York City Off-Track Betting Corp. v Safe Factory Outlet, Inc.*, 28 AD3d 175, 177 [1st Dept 2006][internal quotation marks omitted]). Whether a contract is ambiguous presents a question of law for resolution by the court (*Kass v Kass*, 91 NY2d at 566). "Mere assertion by one that contract language means something to him, where it is otherwise clear, unequivocal and understandable when read in connection with the whole contract, is not, in and of itself enough to raise a triable issue of fact" (*Kasowitz, Benson, Torres & Friedman, LLP v Duane Reade*, 98 AD3d 403, 406 [1st Dept 2012][internal quotation marks and citations omitted]).

Consequently, where the parties dispute the meaning of particular contract terms, the court's job is to determine whether the terms are ambiguous (*see Van Wagner Adv. Corp. v S & M Enters.*, 67 NY2d 186, 191 [1986]) . The existence of ambiguity is determined by examining the "'entire contract and consider[ing] the relation of the parties and the circumstances under which it was executed'" with the wording viewed "'in the light of the obligation as a whole and the intention of the parties as manifested thereby'" (*Kass v Kass*, 91 NY2d 554, 566 [1998] quoting *Atwater & Co. v Panama R.R. Co.*, 246 NY 519, 524 [1927]).

Here, all the parties assert that the contract is unambiguous. Plaintiff correctly asserts that under section 1(a) of the Referral Agreement it can meet with representatives of investors and provide those representatives with information about NYCRC. However, plaintiff's interpretation of the contract to mean that it earns commissions merely by its contacts with the LCICs is belied by the clear and unequivocal language of the contract itself. Section 2 (a) of the Referral Agreement states that the agent, Lion's, will be paid "the referral amounts set forth in Exhibit A hereto for Prospective Clients that qualify for an Investment Project, are accepted for investment by NYCRC in such Investment Project and invest in the Investment Project." The prospective client is defined earlier in the paragraph as a potential investor. Thus, even though the agreement permits Lion's to meet with and provide information to a potential investor's representative, plaintiff is only compensated for procuring individual investors.

Contrary to Lion's argument, its contact with the LCICs was insufficient to earn it commissions. LCICs do not invest their own money in EB-5 projects and, therefore, are not potential investors, prospective clients or potential clients as those words are used in the Referral Agreement. Plaintiff and NYCRC negotiated the language in the Referral Agreement (Heisenberg Aff., Exs. 18-21). If plaintiff wanted to make sure that it would receive full commissions for all potential investors who were referred by LCICs it had contacted, it "should have explicitly written such in its [agreement]" (*see Kasowitz, Benson, Torres & Friedman, LLP v Duane Reade*, 98 AD3d at 406).

Moreover, it is settled law that, as a finder, it was Lion's job to introduce and bring the parties together in order to earn its fee (*see Northeast Gen. Corp. v Wellington Adv.*, 82 NY2d 158, 163 [1993]). Here, the parties to the investment opportunity were the individual investor and

NYCRC. The LCICs were not investors. Nor were they party to any of the investment contracts. As a result, Lion's is not eligible to earn a fee for introducing the LCIC to NYCRC.

As to Lion's contention that it was an exclusive agent, section 2 (b) of the Referral Agreement explicitly contemplates that more than one selling or referral agent may pursue the same potential investors. The section provides that NYCRC will conclusively resolve any dispute between two or more selling or referral agents (*see also*, Joint Statement of Undisputed Facts). Hence, the branch of plaintiff's motion that seeks summary judgment on its breach of contract claim is denied and the branch of defendants' motion (sequence 002) that seeks summary judgment dismissing the breach of contract claim is granted.

B. Motion Sequence 002

Defendants contend that the claim for tortious interference with contractual relations fails because plaintiff had no contracts with any of the referring LCICs. Further, it argues that the cause of action for tortious interference with prospective business relations fails because NYCRC advanced its own interests and was not acting solely to harm plaintiff by contracting directly with the LCICs. Defendants also argue that the breach of confidence claims must be dismissed because the names of the LCICs operating in China are common knowledge and the documentary evidence reveals that even before NYCRC received the plaintiff's "short list, Hayden was aware of and dealing with the same companies."

In opposition, Lion's argues that it had oral understandings that it would share commissions with three of the major LCICs and had a written agreement with Henry Global to share commissions for referrals. It further contends NYCRC induced the LCICs to deal with it directly and breach these agreements. Finally, it claims NYCRC tortiously interfered with Lion's

prospective business relations by misusing Lions proprietary information to disrupt Lion's relations with the four LCICs.

1. Unjust Enrichment & Trade Defamation

Plaintiff has not proffered any proof, arguments or objections sufficient to raise a triable issue of fact regarding the branches of defendants' motion that seek to dismiss the unjust enrichment and trade defamation claims. Therefore, those claims are dismissed (*see e.g. Matter of Crane,* 100 AD3d 626, 629 [2d Dept 2012]).

2. Tortious Interference with Contract

The elements of a claim for tortious interference with contract are: (1) the existence of a contract between plaintiff and a third-party; (2) the defendant's knowledge of the contract; (3) the defendant's intentional inducement of the third-party to breach the contract or otherwise render performance impossible, without justification; (4) actual breach; and (5) damages (*Lama Holding Co. v Smith Barney, Inc.*, 88 NY2d 413, 424 (1996); *Burrowes v Combs*, 25 AD3d 370, 373 [1st Dept 2006]). The defendant's conduct need not be the sole proximate cause of the alleged harm. (*Havana Central NY2 LLC v Lunncy's Pub., Inc.*, 49 AD3d 70, 72 [1st Dept 2007]).

Here, defendants have presented a prima facie case for dismissal by demonstrating, through admissible evidence, that plaintiff did not have agreements with QW, Cansine and Well Trend, three of the LCICs, and that the fourth LCIC, Henry Global, breached its November 3, 2009 agreement because it was unwilling to accept the commission split that plaintiff was offering, not because NYCRC induced it to breach (Def.'s Ex. KK, Katzap Dep. at 99, 101, 130, 141 and Def. Ex. EE). However, since defendants conduct need not be the sole proximate cause of the breach, Lion's has raised a triable issue of fact regarding Henry Global, as to whether, at the

time NYCRC was having discussions with Henry Global, NYCRC knew about plaintiff's contract with Henry Global and intentionally induced Henry Global to breach the contract. The November 19, 2009 email from Olsen to Katzap (Heisenberg Aff., Ex. 40) establishes that Olsen knew that Katzap claimed he had a contract with Henry Global but that Henry Global had a direct relationship with NYCRC. Accordingly, the branch of the motion seeking dismissal of the cause of action alleging tortious interference with contract is denied as to Henry Global.

3. Tortious Interference with Prospective Business Relations

The elements of a claim for tortious interference with prospective business relations are: (1) business relations with a third party; (2) defendants interference with those relations; (3) defendant acting with the sole purpose of harming plaintiff or using wrongful means; and (4) injury to the business relationship (*see Carvel Corp. v Noonan*, 3 NY3d 182, 190 [2004]). "Wrongful means include physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure; they do not, however, include persuasion alone although it is knowingly directed at interference with the contract" (*Guard-Life Corp. v S. Parker Hardware Mfg. Corp.*, 50 NY2d 183, 191 [1990][internal quotation marks and citations omitted]). Simple economic persuasion does not qualify as wrongful means (*id.*).

In this case, Lion's has failed to demonstrate Defendants used wrongful means to interfere with Lion's prospective business relations by allegedly providing its confidential list of LCICs to Hoche. Indeed, the evidence establishes that the LCICs advertised on the Internet and the names of the major LCICs operating in China were public information. As the Court of Appeals stated

in *Ashland Mgmt. v Janien* (82 NY2d 395, 407 [1993]), "a trade secret[2] must first of all be a secret." Moreover, on August 21, 2009, four days before Hoche allegedly received Lion's list of contacts, Hayden's assistant, Sun Bing, had identified several of the same LCICs that Lion's was pursuing (*see* Heisenberg Aff., Ex. 31; *see also* Joint Statement, ¶¶ 42, 45, 46, 47).

Additionally, a claim of tortious interference with prospective business relations must be dismissed "[i]f a defendant shows that the interference is intended, at least in part to advance its own interests, [...and] not acting solely to harm the plaintiff (*Anesthesia Assoc. of Mount Kisco, LLP v Northern Westchester Hosp. Ctr.,* 59 AD3d 473, 477 [2d Dept 2009]). Here, NYCRC has established that the LCICs were unwilling to work through agents and split their commissions (*see* Defendants' Motion for Summary Judgment, Ex. EE) and that NYCRC was seeking to advance its own interests when it entered into direct referral agreements with the LCICs. Thus, the branch of defendants' motion which seeks dismissal of the cause of action for tortious interference with prospective business advantage is granted.

4. Breach of Confidence

The cause of action for breach of confidence alleges that: Lion's prepared a list of LCICs based on its unique access and experience in China; it provided the list to NYCRC in confidence; and NYCRC used the information "in a manner that breached the duty of fidelity owed to the plaintiff by the defendants by reason of a relation of confidence existing between them" (Cmplnt, ¶ 162). As stated above, the evidence in this case establishes that the names of the LCIC's operating in China was public information and that Hayden had identified many of the firms on

---

2 A trade secret is defined, in section 757 of the Restatement of Torts, comment b, as, "any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it."

plaintiff's list before NYCRC allegedly shared Lion's list with Hayden.

Also, here, there is no evidence that there was a relationship of confidence between the parties or that NYCRC owed Lions a fiduciary duty or duty of fidelity. Rather, this was an arms length transaction between sophisticated businessmen. There was no special relationship between NYCRC and Lions which would give rise to a fiduciary or confidential relationship (*see* 37 Am Jur Fraud and Deceit § 32; *Sebastian Holdings, Inc. v Deutsche Bank, AG,* 78 AD3d 446, 447 [1st Dept 2010]). The branch of the motion that seeks summary judgment dismissing the breach of confidence claim is granted.

4. *Claims Against Hoche Partners*

Plaintiff's claims against Hoche Partners are dismissed. The evidence demonstrates that in July 2009, Hayden, through HP Lux, initially competed with plaintiff to establish relationships with the same large LCICs that plaintiff was pursuing (Hayden Aff., ¶ 13). Hoche is a separate company that was not involved in the transactions at issue (*id.*). Accordingly, it is

ORDERED that plaintiff Lion's Property Development Group, LLC's motion for summary judgment on the first cause of action for breach of contract is denied (motion seq. 001); and it is further

ORDERED that defendants', New York City Regional Center, LLC, Hoche Partners Capital LLC and Gregg D. Hayden's, motion for summary judgment dismissing the complaint is granted to the extent that the cause of action alleging breach of contract against NYCRC (1st cause of action), breach of confidence against NYCRC (4th cause of action), unjust enrichment against NYCRC and Hoche (5th cause of actin), and trade defamation against NYCRC (6th cause of action) are dismissed; and it is further

ORDERED that the branch of the motion which seeks summary judgment dismissing the action in its entirety against defendant Hoche Partners Capital LLC is granted, and the complaint is dismissed in its entirety against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly; and it is further

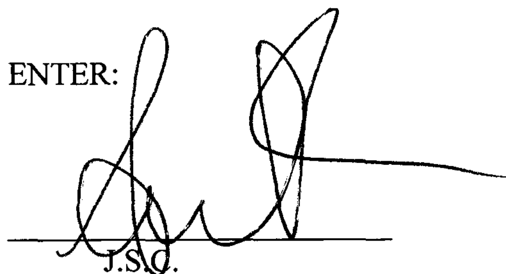
ORDERED that the cause of action alleging tortious interference with contract (2d cause of action) is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all papers filed with the court bear the amended caption; and it is furthe r

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the Trial Support Office, who are directed to mark the court's records to reflect the change in the caption herein.

DATE: March 15, 2013

ENTER:



J.S.C.