Saxon Tech., LLC v Wesley Clover Solutions-N. Am., Inc.
2014 NY Slip Op 30002(U)
January 2, 2014
Supreme Court, New York County
Docket Number: 652169/2013
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH PART 54
Justice

Index Number : 652169/2013
SAXON TECHNOLOGIES, LLC
vs.
WESLEY CLOVER SOLUTIONS
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE 12/17/13
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). 7-12
Answering Affidavits — Exhibits _____ | No(s). 13-19
Replying Affidavits _____ | No(s). 21

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

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER.

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

Dated: 1/3/14

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

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITI(
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHI
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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SAXON TECHNOLOGIES, LLC,

Index No.: 652169/2013

Plaintiff,

DECISION & ORDER

-against-

WESLEY CLOVER SOLUTIONS – NORTH AMERICA, INC., and THE SEAPORT GROUP LLC,

Defendants.

----------X

SHIRLEY WERNER KORNREICH, J.:

Defendant The Seaport Group LLC (Seaport) moves to dismiss the first, fifth, seventh, and ninth causes of action in the Complaint pursuant to CPLR 3211. Defendant's motion is granted in part and denied in part for the reasons that follow.

I. Factual Background & Procedural History

As this is a motion to dismiss, the facts recited are taken from the Complaint.

Plaintiff Saxon Technologies, LLC (Saxon) is a communications consulting firm. Complaint ¶ 8. Saxon advises businesses on how to set up their communications systems, such as telephone and internet networks, and connects them with vendors to install, provide, and maintain such systems. ¶ 9. Saxon's clients pay Saxon directly, and Saxon remits payment to the vendors. *Id.* The clients' communication with vendors is limited to maintenance, such as calling a help desk to solve problems as they arise. *Id.* Saxon structures its relationship with it clients and vendors in this way to avoid being cut out of the process, which would deprive Saxon of its revenue stream. ¶ 10. To guard against this possibility, Saxon includes language in its

client and vendor contracts to protect its rights. ¶ 11. Breach of such language is what is at issue in this case.

In 2009, Saxon was hired by Seaport, an investment bank, to provide communications consulting services. ¶ 10. After determining Seaport's needs and considering various bids, Saxon contracted with defendant Wesley Clover Solutions – North America, Inc. (WCS) to install and service WCS's proprietary communications systems in Seaport's office. ¶ 14. On May 12, 2009, Saxon and WCS entered into a Contractor Agreement governing the services WCS was to provide to Seaport and how WCS would be paid by Saxon. ¶ 16. The Contractor Agreement contained Confidentiality and Non-Solicitation clauses, which the court will not discuss in detail in this decision.[1] ¶¶ 17-18. The Contractor Agreement was renewed annually until it expired on September 30, 2012. ¶¶ 19, 27, 33.

The contract between the parties to the instant motion, Saxon and Seaport, was signed on October 1, 2010 (the Seaport Contract). The Seaport Contract "acknowledges and agrees that Saxon will engage third-party vendor [WCS], to provide Maintenance and Support Services pursuant to this Agreement." ¶ 23. The Seaport Contract also contains a "Non-Circumvention" clause, which provides:

> [Seaport] hereby agrees ... that it will not, directly or indirectly, contact, deal with or otherwise become involved with any entity introduced, directly or indirectly, by or through Saxon, its officers directors, agents or associates for the provision of Maintenance Services. [Seaport] agrees to notify Saxon and obtain

[1] WCS has not moved to dismiss. However, after the instant motion was fully submitted, WCS filed a summary judgment motion. The issues on that motion are distinct because the terms of Saxon's contracts with Seaport and WCS differ. For this reason, in this decision, the court only recites the facts relevant to the claims against Seaport. The summary judgment motion will address Saxon's allegation that WCS breached the Contractor Agreement and that Seaport tortiously induced that breach.

> prior written consent before making contact of any kind with any entity who was introduced directly or indirectly, by Saxon to [Seaport].

¶ 25. The Seaport Contract was renewed, with an identical Non-Circumvention clause, to run through September 30, 2012. ¶¶ 30-33.

When defendants' contracts with Saxon expired at the end of September 2012, they did not renew. ¶ 44. Yet, plaintiffs allege that WCS and Seaport continued doing business with each other directly, cutting out Saxon, the middleman. ¶ 46. Saxon contends that doing so expressly breached their contracts' Non-Circumvention clauses.

Saxon commenced this action on June 19, 2013. The Complaint lists eight causes of action, four of which are asserted against Seaport: (1) breach of contract (first cause of action); (2) tortious interference with contract (fifth cause of action); (3) tortious interference with prospective economic advantage (seventh cause of action); and (4) unjust enrichment (ninth cause of action).

II. Discussion

On a motion to dismiss, the court must accept as true the facts alleged in the complaint as well as all reasonable inferences that may be gleaned from those facts. *Amaro v Gani Realty Corp.*, 60 AD3d 491 (1st Dept 2009); *Skillgames, L.L.C. v Brody*, 1 AD3d 247, 250 (1st Dept 2003), citing *McGill v Parker*, 179 AD2d 98, 105 (1992); *see also Cron v Harago Fabrics*, 91 NY2d 362, 366 (1998). The court is not permitted to assess the merits of the complaint or any of its factual allegations, but may only determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action. *Skillgames*, *id.*, citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977). Deficiencies in the complaint may be

remedied by affidavits submitted by the plaintiff. *Amaro*, 60 NY3d at 491. "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration." *Skillgames*, 1 AD3d at 250, citing *Caniglia v Chicago Tribune-New York News Syndicate*, 204 AD2d 233 (1st Dept 1994). Further, where the defendant seeks to dismiss the complaint based upon documentary evidence, the motion will succeed if "the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law." *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 (2002) (citation omitted); *Leon v Martinez*, 84 NY2d 83, 88 (1994).

A. Breach of Contract

Saxon alleges that Seaport breached the Seaport Contract by improperly negotiating with WCS to contract directly. For the purposes of this motion, the court assumes such conduct breached the Seaport Contract's Non-Circumvention clause. However, a breach alone does not entitle a plaintiff to recover; there must be non-speculative damages resulting from such breach. *See Harris v Seward Park Housing Corp.*, 79 AD3d 425, 426 (1st Dept 2010).

Here, Seaport was under no obligation to renew its contract with Saxon. This is undisputed. Rather, Saxon contends that, had Seaport not sought to contract with WCS directly, it would have renewed, thereby generating more fees for Saxon. This is speculative. Moreover, even if Seaport's renewal was not speculative, the amount of damages is, since there is no way to know for how many more years Seaport would have renewed or what the fees would have been.

B. Tortious Interference With Contract

"Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional

procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom." *Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 424 (1996). When a defendant has an economic interest in the contract with which he allegedly interfered, it is not liable "absent allegations of malice or fraudulent or illegal means." *Hirsch v Food Resources, Inc.*, 24 AD3d 293, 297 (1st Dept 2005). In other words, "[a] defendant may assert ... 'that it acted to protect its own legal or financial stake in the breaching party's business.'" *Savage v Galaxy Media & Marketing Corp.*, 2012 WL 2681423, at *8 (SDNY 2012), quoting *White Plains Coat & Apron Co., v Cintas Corp.*, 8 NY3d 422, 426 (2007).

Saxon alleges that Seaport interfered with the Contractor Agreement (Saxon's contract with WCS). To prevail on this claim, Saxon would have to prove that: (1) WCS breached; (2) WCS would not have breached but for Seaport's actions; and (3) Saxon suffered resulting non-speculative damages. The first two questions cannot be resolved on this motion. It should be noted, however, that unlike with the Seaport Contract, Saxon has alleged non-speculative damages. Since Saxon alleges that Seaport continues to use WCS's services, Saxon has identified a specific loss that it is contractually entitled to recover.

Nonetheless, Seaport argues that the economic interest doctrine precludes this claim. Seaport is wrong. The economic interest doctrine applies when the defendant tries "to protect *its own* legal or financial stake in *the breaching party's business*." *White Plains*, 8 NY3d at 426 (emphasis added). For instance, if Seaport had an equity stake in WCS, the defense would apply. However, the Court of Appeals unequivocally stated that "[a] defendant who is simply plaintiff's competitor and knowingly solicits its contract customers is not economically justified in procuring the breach of contract. In other words, mere status as plaintiff's competitor is not a

legal or financial stake in the breaching party's business that permits defendant's inducement of a breach of contract." *Id.* Ergo, you cannot gain an economic advance from a breach of contract which you caused.

The instant case is an instructive illustration of this principle. Here, Seaport knew that WCS was contractually prohibited from doing business with Seaport without Saxon's involvement. Indeed, though Seaport was free not to renew its contract with Saxon and to contract with another vendor, Seaport was well aware that the only way to save money on the WCS deal was by getting WCS to breach the Contractor Agreement. That is what it allegedly did. This type of misconduct is precisely what this cause of action was designed to prevent. That being said, the merits of this claim have yet to be determined. But, for now, and for the reasons discussed below, this tortious interference claim is the only basis under which Saxon might recover against Seaport.

B. Tortious Interference With Prospective Economic Advantage

"To prevail on a claim for tortious interference with business relations in New York, a party must prove: (1) that it had a business relationship with a third party; (2) that the defendant knew of that relationship and intentionally interfered with it; (3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and (4) that the defendant's interference caused injury to the relationship with the third party." *Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47 (1st Dept 2009). This claim is duplicative because the only business relations interfered with are the subject contracts themselves. In any event, no tort independent of the contract breaches is alleged. This claim, therefore, is dismissed.

C. Unjust Enrichment

Finally, the unjust enrichment claim is dismissed because, as a claim for quasi-contract, it is precluded by the governing written contracts. *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561 (2005), accord *Clark-Fitzpatrick, Inc. v Long Island R.R. Co.*, 70 NY2d 382, 388 (1987). Accordingly, it is

ORDERED that the motion by defendant The Seaport Group LLC is granted on the first (breach of contract), seventh (tortious interference with prospective economic advantage), and ninth (unjust enrichment) causes of action, which are hereby dismissed, and denied on the fourth cause of action (tortious interference with contract); and it is further

ORDERED that the parties are to appear in Part 54, Supreme Court, New York County, 60 Centre Street, Room 228, New York, NY, for a preliminary conference on January 30, 2014 at 10:30 in the forenoon.

Dated: January 2, 2014

ENTER:

J.S.C.