Pezhman v Chanel, Inc.
2014 NY Slip Op 31178(U)
April 28, 2014
Supreme Court, New York County
Docket Number: 104778/2011
Judge: Shlomo S. Hagler
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[* 1] SCANNED ON 5/7/2014

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

Present: Hon. Shlomo S. Hagler, Justice

IAS Part: 17

ANNA PEZHMAN,

Plaintiff,

- against -

CHANEL, INC., *et al*,

Defendants.

INDEX NO.: 104778/2011

MOTION SEQ. NO.: 005

DECISION and ORDER

Motion by plaintiff to renew or reargue Court's decision on the record on April 8, 2013 dismissing plaintiff's attempt to amend the action to add Lord & Taylor as a defendant and dismissing plaintiff's cause of action for tortious interference with employment contract.

FILED
MAY 07 2014
NEW YORK
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Plaintiff's Notice of Motion to Renew or Reargue	1
Affirmation of Plaintiff in Support of the Motion with Exhibits "A" through "C"	2
Defendants Chanel and Lord & Taylor's Memorandum of Law in Opposition to Plaintiff's Motion	3
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Cross-Motion: ☑ No ☐ Yes **Number of Cross-Motions:** Ø

~~Cross-Motion(s) by ______ for ______~~

Upon the foregoing papers, it is hereby ordered that this Motion is denied as set forth in the attached separate written Decision and Order.

Dated: April 28, 2014
New York, New York

Shlomo Hagler
J.S.C.

Hon. Shlomo S. Hagler, J.S.C.

Check one: ☐ **Final Disposition** ☐ **Non-Final Disposition**

Motion is: ☐ Granted ☐ Denied ☐ Granted in Part ☐ Other

~~Cross-Motion is: ☐ Granted ☐ Denied ☐ Granted in Part ☐ Other~~

Check if Appropriate: ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS Part 17

---X

ANNA PEZHMAN,

Plaintiff,

- against -

CHANEL, INC., DEBBIE DAYTON, DALINDA GRANELLI, ANTONETTE DEBLASE, and ROZ DEROSA, individually as well as employees of CHANEL,

Defendants.

---X

Index No.: 104778/2011

Motion Seq. No.: 005

DECISION & ORDER

FILED

HON. SHLOMO S. HAGLER, J.S.C.

Plaintiff Anna Pezhman ("Pezhman" or "plaintiff") moves, pursuant to New York Civil Practice Law and Rules ("CPLR") § 2221, to renew and reargue this Court's decision and order dated October 18, 2012, which dismissed the entirety of Pezhman's claims against Lord & Taylor, and dismissed her claim of tortious interference with prospective contract against Chanel, Inc. ("Chanel"). Defendant Chanel and Lord & Taylor oppose the motion on both substantive and procedural grounds.

Factual and Procedural Background

Retailer Lord & Taylor retained Pezhman as a seasonal employee of its store in Scarsdale, New York ("Scarsdale store") from June 2010 to September 10, 2010. Plaintiff worked in the cosmetics department at various counters as needed.

On or about June 1, 2010, plaintiff was tasked with assisting in the planning of Chanel's "OP event," an annual sales and marketing event. Dalinda Granelli ("Granelli"), the manager of the Chanel cosmetics counter at which plaintiff was working, asked plaintiff to recruit twenty

persons to attend the event. Pezhman allegedly recruited twenty customers before Granelli informed Pezhman that she was displeased with the clients Pezhman had recruited. When Granelli made a finalized list of attendees for the event, none of plaintiff's recruits were included, and plaintiff was informed that she was no longer invited to the event.

Pezhman then took the list of customers she had generated for the OP event to the staff at the Yves Saint Laurent ("YSL") counter to see if they were interested in planning an event with those customers. The manager of the YSL counter allegedly expressed interest and plaintiff began to plan an event.

After hearing that plaintiff had brought the list of twenty customers she had recruited for the OP event to the YSL counter, Granelli allegedly requested plaintiff return the list of customers to her. Plaintiff alleges that Granelli further stated that she would inform Deborah Dayton ("Dayton"), a Chanel representative whose territory included the Scarsdale store, that plaintiff had "run off with all [of] Chanel's clients." Plaintiff claims Granelli did, in fact, tell Dayton that plaintiff had run off with all of Chanel's clients and then, along with Roz DeRosa ("DeRosa") and Antonette DeBlase ("DeBlase"), other Lord & Taylor employees, allegedly informed "Blair," a "top executive" at Lord & Taylor, that plaintiff had misappropriated Chanel's book of clients. Plaintiff further alleges that Granelli, DeRosa, and DeBlase told other employees of the cosmetics department, as well as an outside vendor, that plaintiff had taken Chanel's client list. Plaintiff then worked at the Clarins and Estee Lauder counters before terminating her summer employment. Plaintiff returned to work during the winter intersession, but was denied employment by Lord & Taylor for the summer of 2011.

On or about April 11, 2011, plaintiff filed her original complaint against Chanel, and named Dayton, Granelli, DeRosa, and DeBlase both individually and as employees of Chanel.

However, Pezhman only served her original complaint on Chanel, which answered on or about May 17, 2011. Plaintiff did **not** serve Dayton, Granelli, DeRosa, DeBlase, or Lord & Taylor with the original complaint. On or about September 29, 2011 and June 29, 2012, plaintiff requested leave to serve a first and second amended complaint on Chanel within thirty days, which leave was granted on or about October 18, 2012. On or about November 3, 2012, plaintiff filed her "Second Amended Complaint" which amended the caption of this action but also added defendants Lord & Taylor and Joanne Stathos as defendants without permission of the court. Plaintiff's claims against Lord & Taylor and her claim for tortious interference with prospective contract against Chanel were dismissed after oral argument on April 8, 2013. Plaintiff moved to renew and reargue on or about April 15, 2013 [1] with oral argument on this motion held May 13, 2013.

DISCUSSION

Initially, it should be noted that Pezhman, the self-represented plaintiff in this action, submitted an unnotarized affirmation instead of an affidavit in support of her motion. Since Pezhman is a party to this action, and her affirmation includes statements of facts in addition to purely legal arguments, an affidavit or notarized affirmation is required under CPLR § 2106. (*Slavenburg Corp v Opus Apparel*, 53 NY2d 799, 801 n [1981]; *LaRusso v Katz*, 30 AD3d 240, 243 [1st Dept 2006]; *DeLeonardis v Brown*, 15 AD3d 525 [2d Dept 2005].) Furthermore, defendants raised this objection in their timely opposition papers.[2] However, as plaintiff could

1. Although plaintiff's Notice of Motion to renew or reargue was dated April 25, 2013, it was stamped as received and fee paid on April 15, 2013 and was made returnable on April 25, 2013.

2. Defendants also object that plaintiff's motion is premature since the Court's April 8, 2013 ruling from the bench had not yet been reduced to a written order. However, since the Court has a certified transcript of the April 8, 2013 proceeding, the Court will entertain plaintiff's motion.

simply resubmit her motion with a proper affidavit, this Court will address plaintiff's motion on the merits in the interests of judicial economy.

Statutory Standard to Renew and Reargue

CPLR § 2221(f) provides, in pertinent part, that "[a] combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought." Plaintiff has wholly failed to satisfy this requirement. She has neither separately identified which claims she sought to renew, nor those which she sought to reargue. The inclusion of "shall" in the statutory language, as opposed to the more permissive "may," makes the actions under the statute mandatory, though it can be read as merely directory, "where it is evident from the entire act . . . that it was not intended to receive a peremptory construction" (*City of New York v Novello*, 65 AD3d 112, 118-119 [1st Dept 2009]). A plaintiff bears the burden of proving that the statutory language should not be read as peremptory (*id.*). In this matter, Pezhman has failed to do so. Therefore, plaintiff was required to separately identify and support each item of relief sought. Plaintiff's failure to comply with the terms set forth in the statue compels the denial of her motion.

Even had plaintiff complied with the statutory requirement that she separately identify and support each item of relief sought, she has provided insufficient support for a motion to either renew or reargue the purportedly incorrect dismissal of any and all claims against Lord & Taylor, or for a motion to renew or reargue the dismissal of her claim for tortious interference with prospective contract.

Plaintiff has entirely failed to satisfy the prerequisites to a successful motion to renew contained in CPLR § 2221(e)(2), namely the presentation of "new facts not offered on the prior

motion that would change the prior determination" or "[changes] in the law that would change the prior determination." No reasonable reading of her claims could support a finding that plaintiff has presented new facts or changes in the law. Thus, plaintiff's motion must be for reargument.

Plaintiff has failed to demonstrate the existence of "matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" as must be included in a motion to reargue, pursuant to § 2221(d)(2). Reargument will not be granted simply because plaintiff desires to "argue once again the very questions previously decided" (*Mangine v Keller*, 182 AD2d 476, 477 [1st Dept 1992]). The deficiencies present in plaintiff's motion to reargue warrant its dismissal (*Foley v Roche*, 68 A.D.2d 558, 567-568 [1st Dept 1979]).

Dismissal of the Claims against Lord & Taylor

In plaintiff's motion to reargue the court's dismissal of all claims against Lord & Taylor, she has failed to show that the court misapprehended the law or facts surrounding the dismissal. The court dismissed the claims against Lord & Taylor as time barred and held that the claims did not relate back. Plaintiff claims a misapprehension of facts led to the dismissal because the court impliedly allowed her, in addition to amending her deficient pleading, to amend the caption and serve a new summons and complaint on Lord & Taylor. In reality, the court only allowed plaintiff to re-plead her complaint with specificity, and to correct the portion of the caption that incorrectly stated that the individual defendants were employees of Chanel when, in reality, they were employees of Lord & Taylor. Plaintiff's contention that the court allowed her to serve Lord & Taylor when it allowed her to re-plead her complaint with specificity is patently incorrect. Since plaintiff was never granted court permission to amend the caption to include

Lord & Taylor or to serve a new summons and complaint on it, any claims she brought against Lord & Taylor fell outside the one-year statute of limitations for slander,[3] and thus are time-barred.

Further, plaintiff's claims against Lord & Taylor can not be saved by the "relation back doctrine." The "relation back doctrine" allows a plaintiff to correct a pleading error by either adding a new claim, or a new party, to claims previously asserted against a defendant where the new claims or bringing claims against the new parties would otherwise be time barred under certain, limited circumstances (*Buran v Coupal*, 87 NY2d 173, 177 [1995]). The doctrine permits the court to exercise its "sound judicial discretion to identify cases that justify relaxation of limitations strictures to facilitate decisions on the merits if the correction will not cause undue prejudice to the plaintiff's adversary" (*id* at 178). Since the relation back of amendments that add new plaintiffs more seriously implicates the policy concerns innate in the relation back doctrine, the movant bears the burden of proving that new claims or new parties satisfy three requirements in order for the claims to relate back (*id.*). The plaintiff must prove:

> (1) both claims arose out of the same conduct, transaction or occurrence, (2) the new party is 'united in interest' with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him as well. [4]

Id.

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3. The alleged slanderous statements occurred between June 1, 2010 and mid-September, 2010 and plaintiff served her second amended complaint on November 3, 2012.

4. That the mistake be excusable is no longer a requirement under New York law pursuant to *Buran v Coupal* (87 NY2d at 178). The court's focus should properly be trained on whether or not the new party (here Lord & Taylor) had actual notice of the claim (*id.* at 180).

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Plaintiff argues that the three requirements are satisfied because (1) all of her claims arose out of the planning of the "OP event" and all the parties are animated by malice, (2) the individual defendants, Lord & Taylor, and Chanel share common defenses, a judgment against either the individual defendants or Lord & Taylor will affect the other, and Lord & Taylor has vicarious liability over the individual defendants, and (3) Lord & Taylor knew or should have known plaintiff made a mistake because it was served with the same summons and complaint.

Though the claims against Chanel and Lord & Taylor may be tangentially related, it appears plaintiff has satisfied the first requirement of the relation back doctrine since plaintiff's claims arise out of her actions and the actions of her co-employees in planning Chanel's OP event at Lord & Taylor's Scarsdale store.

The second and third prongs of the test, however, remain unsatisfied, and thus plaintiff's claims were properly dismissed. Plaintiff's arguments that a judgment against either the individual defendants or Lord & Taylor will affect the other, that Lord & Taylor has vicarious liability over the individual defendants, and that Lord & Taylor and Chanel are united in interest are all novel to this motion.

Plaintiff cites *Donovan v All Weld Prods. Corp.*, (34 A.D.3d 257 [1st Dept 2006]) as evidence that if the defendants "stand or fall" together in litigation, they are united in interest and, as such, this unites in interest both Lord & Taylor and the individual defendants, and Lord & Taylor and Chanel. However, the defendants in *Donovan* were a parent company and its wholly owned subsidiary which frequently blurred the distinction between them (*id.* at 257). They were deemed united in interest in light of the vicarious liability the parent company had over its subsidiary. Here, there is no alleged parent and subsidiary relationship between Chanel

and Lord & Taylor, which are two individual and distinct entities. Therefore, the plaintiff's reliance on that citation is inappropriate and unpersuasive.

Plaintiff's claim that a judgment against Chanel or the individual defendants will affect Lord & Taylor and that, therefore, all these parties are united in interest is incorrect and fails to satisfy the second prong of the three part test. It is of no import that Lord & Taylor may be vicariously liable for the individual defendants. In the original pleadings, plaintiff filed suit against Chanel, Inc. and against the individual defendants *as employees of Chanel.* As such, Lord & Taylor could not have been on notice of the claims unless it is vicariously liable for the acts or omissions of Chanel. At best, Lord & Taylor and Chanel may have a contractual relationship but this is insufficient to satisfy the "united in interest" prong of the relation back test (*Vanderburg v Brodman*, 231 AD2d 146, 147-148 [1st Dept 1997]). In light of plaintiff's failure to establish vicarious liability between Chanel and Lord & Taylor, or that they are united in interest, plaintiff fails to satisfy the second prong of the relation back test (*Mercer v 203 E. 72nd St. Corp.*, 300 AD2d 105, 106 [1st Dept 2002] ["Unity of interest will not be found unless there is some relationship between the parties giving rise to the vicarious liability of one for the conduct of the other . . . plaintiff was not entitled to rely on the relation-back doctrine for the additional reason that his failure to name the proposed defendant in the original summons and complaint was not attributable to mistake in identifying the proposed new defendant").

Plaintiff also argues that Lord & Taylor's late entry into the suit would not prejudice it, because it shares common defenses with Chanel; however, plaintiff fails to enumerate the defenses supposedly shared by the parties. Plaintiff has also failed to provide any controlling case law in which defendants were found to be united in interest simply because they shared common defenses. The plaintiff cites to *Connell v Hayden*, 83 AD2d 30 [2d Dept 1981] in

support of her position that a "unity of interest" will be found where the defenses of the defendants are identical. The *Connell* case presents a long and detailed discussion of the concept of "united in interest" as it regards the statute of limitations and the relation back doctrine (83 AD2d at 39-43). The *Connell* court concluded that:

> [T]he question of unity in interest is to be determined from an examination of (1) the jural relationship of the parties whose interests are said to be united and (2) the nature of the claim asserted against them by the plaintiff. In other words, when because of some legal relationship between the defendants they necessarily have the same defenses to the plaintiff's claim, they will stand or fall together and are therefore united in interest.

(*Id.* at 42-43.)

Moreover, the court in *Connell*, stated that where it is even possible that one defendant would have a defense different from that of the other, whether or not they assert it, the two parties are not united in interest (83 AD2d at 41). (*See also Can v Ward Trucking, Inc.*,68 AD3d 491 [1st Dept 2009] [where defendants have differing defenses to plaintiff's claims, they are not "united in interest" for purposes of the "relation back doctrine"].) Plaintiff has failed to bear the burden of proving that there is no defense available to one defendant that is not available to another.[5]

The *Connell* court also pointed out that defendants whose only relationship is that of joint tortfeasors (as is alleged between Chanel and Lord & Taylor in Pezhman's action) are **not** united

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5. In fact, Lord & Taylor has a viable defense which cannot be asserted by Chanel, in that a claim for tortious interference with prospective employment cannot be asserted against the employer, *i.e.*, Lord & Taylor, who was a party to the alleged contract (*see, e.g., Ahead Realty LLC v India House, Inc.*, 92 AD3d 424, [1st dept 2012] *citing Manley v Ponteix Press, Inc.*, 72 AD2d 452, 454 [1st Dept 1980] *lv dismissed* 49 NY2d 1046 [1980]; *Bugler v. Gurney*, 28 AD3d 258, 259 [1st Dept 2006]; *Kosson v Algaze*, 203 AD2d 112, 113 [1st Dept 1994] *affd* 84 NY2d 1019 [1995]; *Kore, Inc. v. Christian Dior, S.A.*, 161 AD2d 156, 157 [1st Dept 1990] *appeal denied* 76 NY2d 714 [1990])

in interest since, although their liability may be joint and several, neither is responsible for the acts or omissions of the other and either defendant could be held legally liable or not liable without the same finding as to the other defendant (*id.* at 44-45). In such a case, the defendants are not united in interest because each defendant will seek to show that they were not at fault and that it was the other defendant who caused the injury (*id.* at 45). Since Chanel and Lord & Taylor are not united in interest, Pezhman has thus failed to satisfy the requirements in *Connell* on which she relies.

Finally, Plaintiff has failed to satisfy the third prong of the relation back test, *i.e.*, that Lord & Taylor knew or should have known that, but for a mistake by plaintiff as to the identity of the proper parties, the action would have been brought against it as well. The only argument advanced by the plaintiff is that Lord & Taylor knew or should have known of the mistake on the part of the plaintiff because it was "actually served with the same *Summons* and *Complaint*" apparently referring to the amended summons and complaint which plaintiff served upon Lord & Taylor after the statute of limitations had run and more than 120 days after the filing of her initial summons and complaint. However, Lord & Taylor was not served with the original Summons and Complaint. As such this argument is wholly without merit and lends no support to plaintiff's contention that the third prong of the relation back test is satisfied.

Accordingly, the court did not overlook or misapprehend any facts when dismissing plaintiff's claims against Lord & Taylor, and plaintiff's motion for reargument is dismissed.

<u>Claim for Tortious Interference with Prospective Contract</u>

Plaintiff's motion to reargue the court's dismissal of her claim for tortious interference with prospective employment must similarly fail. Plaintiff again failed to demonstrate the

existence of "matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" (CPLR § 2221(e)(2); *Designees v Cornasesk House Tenants' Corp.*, 21 AD3d 715, 718 [1st Dept 2005]). Plaintiff claims the court erred in denying her claim for tortious interference with prospective contract. However, she failed to cite to any controlling case law in which a claim for tortious interference with prospective contract brought by an at-will employee was sustained.

Plaintiff directs the court's attention to three cases, *Baker v Guardian Life Ins. Co. of Am.*, 12 AD3d 285 (1st Dept 2004), *Lobel v Maimonides Med. Ctr.*, 39 AD3d 275 (1st Dept 2007), and *Kosson v Algaze*, 203 AD2d 112 (1st Dept 1994] *affd* 84 NY2d 1019 [1995]), which she suggests stand for the proposition that only claims brought by at-will employees against co-employees for tortious interference with prospective contract are barred and further suggests that because Dayton is a third party, not a co-employee, plaintiff's claim against her for tortious interference with prospective contract must lie. However, Dayton was a co-employee of Lord & Taylor, if for no other reason than because she and plaintiff both drew paychecks from Lord & Taylor.

In addition, plaintiff misconstrues all three cases. In none of the cases cited by plaintiff were the claims for tortious interference with prospective contract dismissed solely because the claims were brought specifically against a co-employee. In each case the claims were also dismissed because they were deficient. In *Baker*, the claims were dismissed not only because the claims were brought against a co-employee, but also because the plaintiff failed to identify a specific business relationship into which he was prevented entry as a result of the defendants' interference and he failed to adequately allege that the defendants acted with the sole purpose of harming him (*Baker*, 12 AD3d at 285-286). Similarly, in *Lobel*, the plaintiff's claims were

dismissed not only because the defendant was a co-employee against whom an at-will employee can not bring a claim for tortious interference with prospective contract, but also because plaintiff did not prove that the defendant was animated by a sole intent to harm her (*Lobel*, 39 AD3d at 276). Finally, *Kosson* did not involve a claim for tortious interference by co-employees with a prospective contract at all. First the court there found that there can be no liability for intentional interference with contract unless there was an actual contract, which did not exist in that case (203 AD2d at 113). Secondly, the court held that the tort of interference with contract cannot lie against the employer who was a party to the alleged contract (*id.*). Finally, the tort of interference with an employment contract also did not lie against the individual defendants, as employees and agents of the employer, absent a showing that they acted outside the scope of their authority (*id.*). (*See also Marino v Vunk*, 39 AD3d 339 [1st Dept 2007]. As such, the holdings of these three cases cited by plaintiff do not support plaintiff's argument but, in fact, refute plaintiff's position.

Assuming arguendo that the plaintiff were able to point to case law in which an at-will employee successfully brought a claim for tortious interference with prospective contract, she fails to point to any legal or factual elements overlooked or misapprehended by the court in dismissing her claim for tortious interference, and her claim of tortious interference with prospective contract is fatally deficient. In order to state a legally cognizable claim for tortious interference with prospective contract, plaintiff must prove she had a concrete offer of employment, that the defendant or defendants knew about the offer, and must further "allege, with specific factual support, that the defendant directly interfered with a third party, and that the defendant acted wrongfully, by the use of dishonest, unfair or improper means, or was motivated

solely by a desire to harm the plaintiff" (*Posner v Lewis*, 80 AD3d 308, 312 [1st Dept 2010]; *GS Plasticos Limitada v Bureau Veritas*, 88 AD3d 510, 510 [1st Dept 2011]).

Plaintiff had no firm offer of future employment. What she considers the offer of employment upon which her claim is based, a note written on a going away card that read, "[w]hen you are ready please come back," does not suffice to establish a firm employment offer. If a contract exists here at all, it is an informal one. For an informal contract to be binding and enforceable, (1) both parties must have the capacity to contract and objectively manifest an intent to be bound by the agreement, (2) the essential terms of the agreement must be sufficiently definite to be enforced, (3) there must be consideration, and (4) the subject matter of the agreement and its performance must be lawful. *See Omega Engineering, Inc. v Omega, S.A.*, 432 F3d 437 [2d Cir 2005]; *BAII Banking Corp. v UPG, Inc.*, 985 F2d 685 [2d Cir 1993]; *Thomas America Corp. v Fitzgerald*, 968 F Supp 154 [SDNY 1997]). Though the subject matter of the agreement and its performance are both lawful, it is unclear that the would-be offeror intended to be bound by what she wrote in the going away card, the terms are entirely indefinite, and there does not appear to have been any consideration. Where a plaintiff fails to identify any concrete potential employment or business relationship, a claim for tortious interference will be dismissed (*Baker*, 12 AD3d at 286; *Murphy v City of New York*, 59 AD3d 301, 302 [1st Dept 2009]). Plaintiff here failed to establish a concrete potential employment or business relationship and, as such, her claim was correctly dismissed.

Further, even had plaintiff proven the purported offer was a concrete offer of future employment, she has failed to prove defendants were animated by the sole intent to harm plaintiff and a failure to do so must result in a dismissal of the claim (*Schoettle v Taylor*, 282 AD2d 411, 411-412 [1st Dept 2011]; *Lobel*, 39 AD3d at 276). Plaintiff's allegations that

defendants acted with the sole purpose of getting her fired and eliminating the possibility of any future employment with Lord & Taylor is insufficient absent actual evidence that this was the case (*id.*). Plaintiff fails to provide such evidence, and in fact suggests that Dayton was animated by economic motives, namely her desire to stop plaintiff from intercepting potential Chanel customers. This negates any claim plaintiff might make that Dayton was motivated solely by the intent to harm her. Even had plaintiff alleged Chanel was motivated solely by an intent to harm her, she failed to provide "specific factual support" for the contention, and thus her claim was appropriately dismissed (*Posner*, 80 AD3d at 312).

Assuming, *arguendo*, that plaintiff had proven the existence of a concrete offer of future employment, her failure to bear the burden of proving Dayton or Chanel acted with the sole intent to harm her warrants a dismissal of the claim, unless she can prove defendants' conduct was independently wrongful (*Vigoda v DCA Prods. Plus Inc.*, 293 AD2d 265, 266 [1st Dept 2002]; *Snyder v Sony Music Entertainment*, 252 AD2d 294, 299-300 [1st Dept 1999]). " 'Wrongful means' include physical violence, fraud, misrepresentation, civil suits, criminal prosecutions, and some degree of economic pressure but more than simple persuasion is required" (*Snyder*, 252 AD2d at 300). Plaintiff pled that Dayton, only one of several defendants, engaged in defamation, and entirely fails to allege that any of the other defendants defamed her. This fails to constitute an allegation that Dayton engaged in wrongful means, and warrants the dismissal of plaintiff's claims (*NBT Bancorp Inc. v Norstar Financial Group, Inc.*, 87 NY2d 614, 625-626 [1996]).

Plaintiff further fails to allege any non-speculative damages arising from any alleged tortious interference with her prospective employment, and where a "claim for damages is entirely speculative, the cause of action for tortious interference with prospective business

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relations should be dismissed" (*IDX Capital, LLC v Phoenix Partners Group LLC*, 83 AD3d 569, 570 [1st Dept 2011]); *Am. Preferred Prescription, Inc. v Health Mgmt., Inc.*, 252 AD2d 414, 419 [1st Dept 1998]).

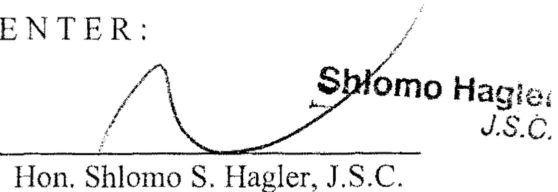
Conclusion

Accordingly, it is hereby

ORDERED that the motion to renew and reargue pursuant to CPLR § 2221 by plaintiff Anna Pezhman is hereby denied.

The foregoing constitutes the Decision and Order of this Court. Courtesy copies of this Decision and Order have been provided to the self represented plaintiff and counsel for the defendants.

ENTER:



Dated: April 28, 2014
New York, New York

Hon. Shlomo S. Hagler, J.S.C.

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