

**Spectrum Cos., Inc. v Patel**

2015 NY Slip Op 30965(U)

June 4, 2015

Supreme Court, New York County

Docket Number: 450094/2015

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: MANUEL J. MENDEZ

PART 13

Justice

SPECTRUM COMPANIES, INC.,  
Plaintiff,  
-against-

INDEX NO. 450094/2015  
MOTION DATE 05-27-2015  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

DIPAKKUMAR PATEL,  
SLG MESNE LEASE, LLC and  
SL GREEN REALTY CORP.,  
Defendants.

The following papers, numbered 1 to 10 were read on this motion to dismiss the complaint, cross-motion to dismiss the complaint.

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

PAPERS NUMBERED	
	<u>1- 3, 4 - 6</u>
	<u>7, 8,</u>
	<u>9, 10</u>

Answering Affidavits – Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

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

Upon a reading of the foregoing cited papers, it is Ordered, that defendants’ SLG Mesne Lease, LLC and SL Green Realty Corp.’s (collectively known herein as “SLG”) motion to dismiss the Third cause of action for conversion and the Fifth cause of action for breach of contract is granted, defendant Dipakkumar Patel’s motion to dismiss the complaint in its entirety is denied.

Spectrum Companies, Inc. (herein “Spectrum”) entered into a lease (herein “Lease”) with SLG for a commercial space at a building owned by SLG and located at 420 Lexington Ave, New York, N.Y. (herein “Premises”). SLG and Spectrum renewed the Lease various times, the most recent being October 1, 2009 (herein “Lease”). The Lease term ended on September 30, 2014 (see Complaint, PP. 10, Exhibit B).

The Complaint alleges that Spectrum reached out to the SLG property manager overseeing the Premises in June of 2014 in order to renew the Lease. Spectrum was advised by the property manager to contact the SLG’s general counsel. Spectrum claims that it reached out to SLG’s general counsel various times, but he was unable to communicate with SLG’s general counsel, and the general counsel never returned his calls. In the Fall of 2014, prior to the Lease’s expiration, Kumar Shingwani - Spectrum’s owner - visited India to attend to family business and he left his employee, defendant Patel, in charge of Spectrum’s business. Shingwani returned in October of 2014, after the Lease term had expired, and found that he was locked out of the Premises; that Spectrum’s merchandise was still in the Premises; and that Shingwani was running the Premises pursuant to a lease entered into with SLG that was negotiated and executed in June of 2014.

Spectrum commenced this action by summons and complaint dated November 10, 2014 asserting causes of action for tortious interference with a contract, unjust enrichment, and breach of fiduciary duty as against defendant Patel, and breach of contract as against SLG. The complaint also asserts a cause of action for conversion as against SLG and Patel.

SLG now moves, pre-answer, to dismiss the breach of contract and conversion causes of action asserted against SLG in the complaint. Patel cross-moves, pre-answer, to dismiss the causes of action for conversion, tortious interference with a contract, unjust enrichment, and breach of fiduciary duty asserted against him in the complaint. SLG and Patel move to dismiss pursuant to CPLR § 3211(a)(1) and (7).

In order to dismiss an action on documentary evidence, the documentary evidence must unequivocally contradict plaintiff's factual allegations and conclusively establish a defense as a matter of law, resolve all factual issues and conclusively dispose of plaintiff's claim (*Goshen v. Mutual Life Insurance Company of New York*, 98 N.Y.2d 314, 774 N.E.2d 1190, 746 N.Y.S.2d 858[2002]; *511 West 232<sup>nd</sup> Owners Corp., v. Jennifer Realty Co.*, 98 N.Y.2d 144, 773 N.E.2d 496, 746 N.Y.S.2d 131 [2002]; *Fortis Financial Services v. Fimat Futures USA*, 290 A.D.2d 383, 737 N.Y.S.2d 40 [1<sup>st</sup>. Dept. 2002]).

In order to dismiss a complaint for failure to state a cause of action there can be no legally cognizable theory that could be drawn from the complaint. The question is whether the complaint gives rise to a cognizable cause of action. The test of the sufficiency of a complaint is whether liberally construed it states in some recognizable form a cause of action known to the law (*Union Brokerage, inc., v. Dover Insurance Company*, 97 A.D. 2d 732, 468 N.Y.S.2d 885 [1<sup>st</sup>. Dept., 1983]). The sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail (*Quinones v. Schaap*, 91 A.D. 3d 739, 937 N.Y.S.2d 262 [2<sup>nd</sup>. Dept., 2012]). The complaint must be liberally construed, the factual allegations deemed to be true, and the non-moving party granted the benefit of every possible favorable inference.

SLG and Patel argue that they entered into a lease among themselves (herein "Patel Lease") in June of 2014 prior to Spectrum's Lease expiring, but that the Patel Lease did not commence until the expiration of Spectrum's Lease. SLG and Patel further contend that the Lease did not contain an option to renew, nor was SLG statutorily required to renew a commercial lease or commence a holdover proceeding to gain possession for a commercial space from a commercial tenant.

The Lease states, in relevant part, that:

"21. End of Term. Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease in good order and condition ... and Tenant shall remove all of its property ... Tenant therefore agrees that if possession of the Premises is not surrendered to Landlord on or prior to the expiration or sooner termination hereof, then Tenant will pay Landlord as liquidated damages for each month and for each portion of any month during which Tenant holds over in the Premises after the expiration or termination of the Term of this Lease. (see Moving Papers, Exhibi 4, Pg. 6).

The Complaint alleges that SLG breached the Lease by entering into the Patel Lease prior to the termination of the Lease without prior notice of termination; failing to provide Spectrum prior notice of an option to renew; and by failing to regain possession of the Premises from Spectrum in accordance with the Lease and New York's Real Property Actions and Proceedings Law.

The Lease does not require SLG to renew the Lease upon its termination. The Lease further states that the term ends on September 30, 2014, and does not require SLG to provide notice of the termination of the Lease. SLG is not prohibited in the Lease from negotiating and entering into a lease for the Premises with a party other than Spectrum. Article 21 of the Lease "simply describes the effect of occupation of the premises beyond the term and may not be construed as permitting such continued occupation" (Syracuse Assocs. v. Touchette Corp., 73 A.D.2d 813, 814, 424 N.Y.S.2d 72 [4<sup>th</sup> Dept., 1979]).

Dismissal of the breach of contract claim asserted against SLG is proper. The Lease does not create a contractual duty on SLG to give Spectrum notice of the termination of the Lease after the Lease term has ended. The complaint also fails to state a cause of action for breach of contract against SLG because the cause of action sounds in violation of the RPAPL and RPL, not breach of contract. In opposition to SLG's motion to dismiss, Spectrum argues that SLG violated RPAPL § 711 and Real Property Law § 232-a by improperly engaging in self-help by evicting Spectrum from the Premises without first securing a surrender of the Premises, which does not give rise to a cause of action for breach of contract.

Patel cross-moves to dismiss the causes of action for conversion, tortious interference with a contract, unjust enrichment, and breach of fiduciary duty pursuant to CPLR § 3211(1)and(7).

"[W]here there is an existing, enforceable contract and a defendant's deliberate interference results in a breach of that contract, a plaintiff may recover damages for tortious interference with contractual relations even if the defendant was engaged in lawful behavior. On the other hand, where there has been no breach of an existing contract, but only interference with prospective contract rights ... plaintiff must show more culpable conduct on the part of the defendant" (Steinberg v. Schnapp, 73 A.D.3d 171, 176 899 N.Y.S.2d 167, 170 [1<sup>st</sup> Dept., 2012] citing to, NBT Bancorp v. Fleet/Norstar Fin. Group, 87 N.Y.2d 614, 621, 641 N.Y.S.2d 581, 664 N.E.2d 492 [1996]).

The complaint alleges that Patel interfered with Spectrum's contract and subsequent negotiations by misrepresenting that he had authority to negotiate with SLG on behalf of Spectrum. The complaint further alleges that at the time Patel and SLG entered into the SLG Lease, Spectrum's Lease had not terminated. Dismissal of the cause of action for tortious interference with a contract is improper. The documentary evidence does not unequivocally contradict Spectrum's factual allegation, and the complaint states a cause of action for tortious interference with a contract.

**“Unjust enrichment is a quasi-contract theory of recovery, and is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned. The plaintiff must show that the other party was enriched, at plaintiff's expense, and that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered. Further, although privity is not required for an unjust enrichment claim, a claim will not be supported unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part” (Georgia Malone & Co., Inc. v. Ralph Rieder, 86 A.D.3d 406, 408, 926 N.Y.S.2d 494, 497 [1<sup>st</sup> Dept., 2011]).**

**The complaint alleges that Patel was a long time employee of Spectrum, and that Patel was in possession of the Premises while Spectrum's owner – Shingwani - was in India. The complaint further alleges that Patel is conducting business as Spectrum and is unjustly earning profits from the customers acquired by Spectrum over twenty years and exploiting Spectrum's good will. None of the documentary evidence submitted by Patel unequivocally contradict the complaint's factual allegation and the complaint states a cause of action for unjust enrichment. Dismissal as to the cause of action for unjust enrichment is denied.**

**“Conversion is the unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner's rights” (State of New York v. Seventh Regiment Fund, 98 N.Y.2d 249, 259, 746 N.Y.S.2d 637, 774 N.E.2d 702 [2002]). “Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights” (Pappas v. Tzolis, 20 N.Y.3d 228, 234, 958 N.Y.S.2d 656, 660, 982 N.E.2d 576, 580 [2012]).**

**The complaint alleges that after returning from India, Shingwani was not allowed to reenter the Premises and retrieve Spectrum's inventory, store records, checkbooks, cash, and previously installed fixtures. The complaint further alleges that Spectrum has a superior possessory right to the personal property, and that Patel is in possession of, and refuses to return said personal property. Issues of fact as to whether Spectrum abandoned the property when Shingwani left to India, or was wrongfully ousted and spectrum's personal property converted preclude dismissal based upon documentary evidence. The complaint sufficiently states a cause of action for conversion.**

**Dismissal is proper as to the conversion by acquiescence claim asserted against SLG. New York does not recognize a cause of action for conversion by acquiescence. The complaint also fails to state a cause of action for conversion against SLG.**

**“The elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct” (Rut v. Young Adult Institute, Inc. [2<sup>nd</sup> Dept., 2010]). “A cause of action sounding in breach of fiduciary duty must be pleaded with the particularity required by CPLR [§] 3016(b)” (Palmetto Partners, L.P. v. AJW Qualified Partners, LLC, 83 A.D.3d 804, 808, 921 N.Y.S.2d 260, 265 [2<sup>nd</sup> Dept., 2011]).**

The complaint alleges that Patel was an employee and manager for Spectrum for over twenty years, and that while Shingwani was in India, Patel ran the day-to-day operations of the Premises. The complaint further alleges that Patel knew that Spectrum had reached out to SLG in order to renew the Lease and that Patel breached his fiduciary duty owed to Spectrum by entering into the SLG Lease. Spectrum contends that Patel misused confidential Spectrum information in order to negotiate the SLG Lease and oust Spectrum from the Premises. Lastly, the complaint alleges damages resulting directly from Patel's alleged breach. Patel does not offer any documentary proof in support of dismissal pursuant to CPLR § 3211(a)(1), and the complaint states a valid cause of action for breach of fiduciary duty.

Accordingly, it is ORDERED, that defendants' SLG MESNE LEASE, LLC and SL GREEN REALTY CORP.'s motion to dismiss the complaint is granted, and it is further,

ORDERED, that the complaint is dismissed in its entirety as against defendants SLG MESNE LEASE, LLC and SL GREEN REALTY CORP., and it is further,

ORDERED, that defendant DIPAKKUMAR PATEL's cross-motion to dismiss the complaint is denied, and it is further,

ORDERED, that within 10 days from the date of entry the moving defendants serve a copy of this Order with Notice of Entry upon all parties, and upon the General Clerk's Office (Room 119), and it is further,

ORDERED, that within thirty (30) days from the date of service of a copy of this Order with Notice of Entry, defendant DIPAKKUMAR PATEL serve and file an Answer to the Complaint, and it is further,

ORDERED, that the Clerk of the Court enter judgment accordingly.

Enter: **MANUEL J. MENDEZ**  
**J.S.C.**

Dated: June 4, 2015

  
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**MANUEL J. MENDEZ**  
*J.S.C.*

Check one:  FINAL DISPOSITION      X NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST       REFERENCE