

90-67 Sutphin Blvd. Corp. v Metropolitan Natl. Bank
2015 NY Slip Op 30998(U)
May 11, 2015
Supreme Court, Queens County
Docket Number: 704939/2013
Judge: Orin R. Kitzes
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY
COMMERCIAL DIVISION

Present: HONORABLE ORIN R. KITZES
Justice

IA Part 17

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90-67 SUTPHIN BOULEVARD CORP., 245-02
MERRICK BLVD. LLC, and ROBIN ESHAGHPOUR,
individually and as nominee of 90-67
SUTPHIN BOULEVARD CORP. And 245-02
MERRICK BLVD LLC,

Index
Number 704939 / 2013

Motion
Date January 23, 2015

Plaintiffs,

Motion Seq. No. 3 & 4

-against-

METROPOLITAN NATIONAL BANK, TITAN
CAPITAL ID LLC and TITAN WILLARD, LLC,
individually and as nominee of TITAN
CAPITAL ID LLC,

Defendants.

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The following papers numbered E46 to E111 read on this motion by defendants Titan Capital ID, LLC (Titan Capital) and Titan Willard LLC, individually and as nominee of Titan Capital, for an order dismissing the complaint on the grounds of documentary evidence and failure to state a cause of action, pursuant to CPLR 3211(a)(1) and (7); and in the alternative cancelling the notice of pendency filed by plaintiffs against the real property known as 90-07 Sutphin Boulevard, Jamaica, New York, Block 9994, Lot 51, pursuant to CPLR 3211(a)(1)(7) and 6514(b), and awarding attorney's fees, costs and expenses pursuant to CPLR 6514(c). Defendant Metropolitan National Bank (MetBank), now known as Metropolitan Commercial Bank, separately moves for an order dismissing the complaint on the grounds of documentary evidence and failure to state a cause of action, pursuant to CPLR 3211(a)(1) and (7).

	Papers
	Numbered
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Upon the foregoing papers these motions are consolidated for the purpose of single decision and order, and are determined as follows:

On March 6, 2009, MetBank commenced a commercial mortgage foreclosure action against 245-02 Merrick Boulevard LLC, and others, including Robin Eshaghpour and Titan Capital, entitled *Metropolitan National Bank v 245-02 Merrick Boulevard LLC, et.al.*, Index No. 5360/2009 (Merrick), and filed a notice of pendency on the same date. The mortgaged premises, known as 245-02 Merrick Boulevard, Rosedale, New York and 245-16 Hook Creek Boulevard, Rosedale, New York are owned by 245-02 Merrick Boulevard LLC. Metropolitan National Bank (MetBank) had purchased the mortgage loans from Titan Capital, who retained a junior participation interest in said mortgage, pursuant to a separate participation agreement with MetBank. Robin Eshaghpour, a member and manager of 245-02 Merrick Boulevard LLC, had executed a guaranty in favor of Titan Capital with respect to the loan at issue in the Merrick foreclosure action

On April 27, 2012, MetBank, Titan Capital, 245-02 Merrick Boulevard LLC and Mr. Eshaghpour entered into a Repayment and Release Agreement, in the *Merrick* foreclosure action, whereby the parties settled said action. MetBank and Titan Capital agreed to accept a reduced sum in satisfaction of the mortgage loans and included releases from 245-02 Merrick Boulevard LLC and Titan Capital with respect to the subject loans and mortgages. MetBank, pursuant to said agreement, agreed to discontinue the foreclosure action.

245-02 Merrick Boulevard LLC, as landlord had entered into a lease agreement with CVS Albany LLC, to lease a building to be constructed by the landlord at 245-02 Merrick Boulevard, for use as a CVS retail store and pharmacy. The construction was not substantially completed on time and possession of the property was not delivered to the tenant in accordance with the lease's outside

date, and the tenant commenced an action entitled *CVS Albany L.L.C. v 245-02 Merrick Boulevard LLC, et al.*, under Index No. 30633/2008. The CVS action was consolidated with the Merrick foreclosure action for the purposed of a joint trial. The CVS action was settled on April 27, 2012, and a stipulation of discontinuance was filed with the court on May 2, 2012.

Titan Capital was the holder of a subordinate mortgage on the premises owned by 90-67 Sutphin Boulevard Corp., and known as 90-67 Sutphin Boulevard, Jamaica, New York. Titan Capital had commenced a mortgage foreclosure action, entitled *Titan Capital ID, LLC v 90-67 Sutphin Boulevard Corp.*, Index No. 32074/2009. Mr. Eshaghpour has executed a guaranty with respect to the loan at issue in said action. Titan Capital obtained a judgment of foreclosure and sale, and was the successful bidder at the foreclosure sale held on July 15, 2011. Although Titan Capital executed a memorandum of sale, the referee had not yet conveyed title to said real property to Titan Capital or its nominee. On April 27, 2012, Titan Capital, 90-67 Sutphin Boulevard Corp., and Mr. Eshaghpour entered into an Option Agreement, whereby Titan Capital gave Mr. Eshaghpour an option to acquire title to the mortgaged premises known as 90-67 Sutphin Boulevard, Jamaica, New York, by executing an assignment of the bid for purchase price of \$1,000,000.00 together with interest at the rate of 6%. Said option was for a term of one year and expired on April 27, 2013 and expressly stated with respect to said expiration date, that time was of the essence.

Mr. Eshaghpour did not exercise the option to purchase the Sutphin Boulevard premises by April 27, 2013. Titan Capital by its nominee Titan Willard, took title to the Sutphin Boulevard premises, pursuant to referee's deed dated May 3, 2013.

Plaintiffs commenced the within action on October 31, 2013, and filed a notice of pendency against the Sutphin Boulevard property. Plaintiffs allege that the defendants Titan Capital and MetBank deliberately and unlawfully prevented plaintiffs from refinancing the Merrick Premises and purchasing the Sutphin Premises in accordance with the Option Agreement by failing to cancel the notice of pendency against the Merrick Premises despite Plaintiffs obtaining an undertaking from their counsel, Roy Justice, Esq., that said notice of pendency would be canceled no later than May 17, 2012.

Plaintiffs allege that the defendants did not cancel the notice of pendency filed against the Merrick premises until April 29, 2013, two days after the option to purchase the Sutphin premises expired. Plaintiffs allege that they had obtained

financing on favorable terms in place for the Merrick premises but could not proceed due to the conduct of Titan Capital and MetBank; that the proceeds from the Merrick refinancing represented the funds to be utilized by the plaintiffs to redeem and purchase the Sutphin premises in accordance with the Option Agreement; and that the defendants deliberately defeated the plaintiffs' rights by delaying the cancellation of the notice of pendency filed against the Merrick premises, and thereby delaying plaintiffs' ability to obtain refinancing and the funds needed to exercise their rights under the Option Agreement.

Plaintiffs' first cause of action for breach of Settlement Agreement and Option Agreement is based upon the defendants alleged failure to cancel the notice of pendency in the Merrick foreclosure action, and seeks to recover damages of at least \$5,000,000.00. The second cause of action for declaratory judgment alleges that a justiciable controversy exists between the plaintiffs and defendants regarding the Option Agreement and its terms and conditions, and seeks a declaration to the effect that the expiration date of the option to purchase the Sutphin premises be deemed extended for a period of one year from the date the notice of pendency filed in the Sutphin foreclosure action was canceled and vacated. The third cause of action seeks specific performance of the Option Agreement.

The fourth cause of action is for tortious interference with contractual rights, business relations and economic disadvantage, and seeks to recover damages of at least \$5,000,000.00. Plaintiffs allege that because the defendants failed to timely discontinue the Merrick foreclosure action and cancel the notice of pendency filed against the Merrick premises, plaintiff 245-02 Merrick Blvd LLC was "induced to breach Paragraph 3 of the CVS Settlement Agreement, thereby giving CVS the right to cancel its lease with said plaintiff. It is alleged that although CVS did not cancel said lease, it delayed taking possession of the premises, and delayed 245-02 Merrick Blvd LLC ability to receive rent from CVS until the summer 2013. Said plaintiff asserts as a result of the defendants' failure to timely discontinue the Merrick foreclosure action and cancel the notice of pendency, it lost significant rent from CVS.

Defendant Titan Capital served an answer and interposed fourteen affirmative defenses. Defendant MetBank served an answer and interposed twelve affirmative defenses.

Defendant Titan Capital now seeks an order dismissing the complaint on the grounds of documentary evidence and failure to state a cause of action, pursuant to CPLR 3211(a)(1) and (7), and, in the alternative, cancelling the notice of pendency filed by

plaintiffs against the real property known as 90-07 Sutphin Boulevard, Jamaica, New York, Block 9994, Lot 51, pursuant to CPLR 3211(a)(1)(7) and 6514(b), and awarding attorney's fees, costs and expenses pursuant to CPLR 6514(c).

Defendant MetBank separately moves for an order dismissing the complaint on the grounds of documentary evidence and failure to state a cause of action, pursuant to CPLR 3211(a)(1) and (7).

It is well established that on a motion to dismiss pursuant to CPLR 3211(a)(7), "the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true and provide plaintiff the benefit of every possible favorable inference" (*AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 5 NY3d 582, 591 [2005]; see *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The court's "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" (*Polonetsky v Better Homes Depot, Inc.*, 97 NY2d 46, 54 [2001], quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; see also *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Leon v Martinez*, 84 NY2d at 87-88; *Tom Winter Assoc., Inc. v Sawyer*, 72 AD3d 803 [2d Dept 2010]; *Uzzle v Nunzie Court Homeowners Assn. Inc.*, 70 AD3d 928 [2d Dept 2010]; *Feldman v Finkelstein & Partners, LLP*, 76 AD3d 703 [2d Dept 2010]). The facts pleaded are to be presumed to be true and are to be accorded every favorable inference, although bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration (see *Morone v Morone*, 50 NY2d 481 [1980]; *Gertler v Goodgold*, 107 AD2d 481 [1st Dept 1985], affirmed 66 NY2d 946 [1985]).

"When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one (*Guggenheimer v Ginzburg*, 43 NY2d at 275). This entails an inquiry into whether or not a material fact claimed by the pleader is a fact at all and whether a significant dispute exists regarding it (see, *id.*; accord, Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:25, at 39)" (*Gershon v Goldberg*, 30 AD3d 372 [2d Dept 2006], quoting *Doria v Masucci*, 230 AD2d 764, 765 [2d Dept 2006]; *lv to appeal denied* 89 NY2d 811 [1997]).

A party seeking dismissal of a complaint under CPLR 3211(a)(1) must submit documentary evidence that " 'conclusively establishes a defense to the asserted claims as a matter of law' " (511 W.

232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 152 [2002] quoting *Leon v Martinez*, 84 NY2d at 88; *Cives Corp. v George A. Fuller Co., Inc.*, 97 AD3d 713 [2d Dept 2012]).

The documentary evidence submitted herein establishes that MetBank filed an amended notice of pendency on March 25, 2009 in the Merrick foreclosure action. Said notice of pendency expired three years from the date of its filing (CPLR 6513). MetBank did not file a successive notice of pendency pursuant to CPLR 6516. Therefore, prior to the execution of the April 27, 2012 Repayment and Release Agreement in the Merrick foreclosure action and the execution of April 27, 2012 Option Agreement, said notice of pendency had expired and was a nullity.

The April 27, 2012 Repayment and Release Agreement entered into by MetNat Bank, Titan Capital, 245-02 Merrick Blvd LLC and Robin Eshaghpour, did not, by its terms require either MetBank or Titan Capital to take any action with respect to the notice of pendency filed in the Merrick foreclosure action. Said agreement only recites that MetBank was "prepared to accept the Discounted Repayment Amount, discontinue the Foreclosure Action, and release Borrower and Guarantor on the terms and conditions hereinafter set forth in this Agreement". In addition, said agreement did not set forth any time frame for discontinuing the Merrick foreclosure action, nor did it specify how the discontinuance was to be accomplished.

Plaintiffs' claims that MetBank and Titan Capital agreed to remove the notice of pendency and discontinue the Merrick foreclosure action within 20 days of the closing of the Repayment and Release Agreement, and relies upon emails between counsel for CVS and counsel for MetBank in the Merrick foreclosure action. Said emails, however, cannot serve to alter the terms of the Repayment and Release Agreement, as said agreement provides that it "may not be amended, modified, or otherwise changed except in a writing signed by all of the parties hereto".

Furthermore, said emails do not establish that counsel for MetBank or Titan Capital agreed to discontinue the Merrick foreclosure action and cancel the notice of pendency within a 20-day time frame, as alleged herein. Counsel for CVS, in an email dated April 26, 2012, requested that MetBank discontinue the Merrick foreclosure action, by either filing a fully executed stipulation of settlement or a motion to discontinue said action.

Mr. Justice, counsel for MetBank in an email dated April 27, 2012, following the closing, stated that his office "undertakes to obtain all requisite signatures of all defendants in the Action [Merrick foreclosure action] on a customary (1) Stipulation Discontinuing

Action and (2) Stipulation Discontinuing Notice of Pendency of Action, and to file both with the clerk of the Court. If in the exercise of due diligence the foregoing cannot be accomplished in 20 days from the date hereof, then and in that event our office will move the Court for an order (1) discontinuing the Action and (2) cancelling the notice of pendency filed therein."

The 20-day time period, thus, only applied to obtaining the stated stipulations. Mr. Justice did not agree to any deadline or period of time in which to move for an order discontinuing the Merrick foreclosure action or cancelling the notice of pendency. It is undisputed that MetBank was unable to obtain all of the necessary signatures for said stipulations within 20 days from April 27, 2012.

Counsel for CVS, in a letter dated February 14, 2013, informed Mr. Eshaghpour that MetBank had not moved for an order discontinuing the Merrick foreclosure action and canceling the notice of pendency, and requested that 245-02 Merrick Blvd LLC move to discontinue the action and cancel the notice of pendency. However, Mr. Eshaghpour, on behalf of 234-02 Merrick Blvd LLC did not, at any time, move to discontinue the action or cancel the notice of pendency, pursuant to CPLR 6514.

MetBank, in a motion returnable on April 17, 2013 moved to discontinue the Merrick foreclosure action, with prejudice, and this court granted said unopposed motion on April 29, 2013. It is noted that MetBank did not seek to cancel the notice of pendency and this court in its order of April 29, 2013, did not cancel the notice of pendency.

The Option Agreement between Titan Capital, Mr. Eshaghpour and 90-67 Sutphin Boulevard Corp., makes no reference to the Merrick foreclosure action, and did not create any obligation on the part of Titan Capital to cancel the notice of pendency in said action. MetBank was not a party to said Option Agreement.

As neither the Release and Repayment Agreement nor the Option Agreement imposed any obligation on Titan Capital to cancel the notice of pendency, plaintiff may not maintain a claim against this defendant for breach of the Repayment and Release Agreement and breach of the Option Agreement, based upon this defendant's failure to cancel the expired notice of pendency. Therefore, that branch of Titan Capital's motion which seeks to dismiss the first cause of action for breach of contract, is granted.

That branch of Titan Capital's motion which seeks to dismiss the second cause of action for declaratory judgment and extending

the time in which to exercise the option agreement to April 29, 2014, is granted. The complaint does not allege a justiciable controversy between the parties to said agreement. In addition, the courts may not extend the time during which the option must be exercised in the absence of equitable considerations not present here (see *J.N.A. Realty Corp. v Cross Bay Chelsea*, 42 NY2d 392, 397 [1977]; *Urban Archaeology Ltd. v Dencorp Invs., Inc.*, 12 AD3d 96, 103-104 [1st Dept 2004]; *Ittleson v Barnett*, 304 AD2d 526, 528 [2d Dept 2003]). Finally, as the proposed extension date expired more than a year ago, the relief sought is now moot.

That branch of Titan Capital's motion which seeks to dismiss the third cause of action for specific performance, is granted. An option contract is an agreement to hold an offer open; it confers upon the optionee, for consideration paid, the right to purchase or, less commonly, to sell at a later date (see *Jarecki v Shung Moo Louie*, 95 NY2d 665, 668[2001]; *Kaplan v Lippman*, 75 NY2d 320, 324 [1990]; *Ipe Asset Mgt. v Fairview Block & Supply Corp.*, 123 AD3d 883, 885 [2d Dept 2014]; *East End Cement & Stone, Inc. v Carnevale*, 73 AD3d 974, 975 [2d Dept 2010]; *Singh v Atakhanian*, 31 AD3d 425, 426 [2d Dept 2006]; *Ittleson v Barnett*, 304 AD2d at 528; see also 10-101 Warren's Weed, New York Real Property § 101.01[1][2014]). In order for there to be an enforceable contract for the sale of land upon which an action for specific performance can be based, an optionee must exercise an option in accordance with its terms, within the time and the manner specified in the option (see *Kaplan v Lippman*, 75 NY2d at 325; *Ipe Asset Mgt. v Fairview Block & Supply Corp.*, 123 AD3d at 885; *Pacific Dean Realty, LLC v Specific St., LLC*, 105 AD3d 827, 828 [2d Dept 2013]).

Here, Mr. Eshaghpour, the optionee, does not allege that he attempted to exercise the option to purchase the Sutphin Boulevard premises within the time and manner specified by the Option Agreement. To the extent that he alleges an inability to do so due to the defendants' alleged failure to cancel the notice of pendency on the Merrick Boulevard property, the terms of the Option Agreement are not dependent upon the cancellation of said notice of pendency. As Mr. Eshaghpour was a signatory to the settlement of the Merrick foreclosure action, he could have moved to cancel the notice of pendency pursuant to CPLR 6514, prior to the expiration of the option. As the option was not exercised and has now expired, Mr. Eshaghpour may not maintain the within action for specific performance.

Plaintiffs' fourth cause of action seeks to recover damages for defendants' alleged interference with the plaintiffs' contractual rights, business relations, and economic advantage arising out of the Option Agreement, the Release and Repayment

Agreement, and the CVS Settlement agreement, is predicated upon the defendants' alleged breach of the Release and Repayment Agreement by failing to timely discontinue the Merrick foreclosure action and cancel the notice of pendency filed therein. Plaintiffs assert that the defendants had knowledge of said agreements, and that they willfully and intentionally failed to comply with the terms of the Release and Repayment Agreement, thereby frustrating plaintiffs' contractual rights by preventing plaintiffs from timely exercising the Option Agreement and preventing plaintiffs from being able to fully comply with the terms of the CVS Settlement Agreement. Plaintiffs allege that as a direct result of the defendants' failure to discontinue the Merrick foreclosure action and cancel the notice of pendency filed therein, they could not obtain refinancing, lost significant rent from CVS and lost the right to exercise the Option and redeem the Sutphin Premises from Titan Capital LLC".

As regards plaintiffs' fourth cause of action, the elements of a cause of action for tortious interference with contract are: (1) the existence of a valid contract between the plaintiff and a third party, (2) the defendant's knowledge of that contract, (3) the defendant's intentional procurement of a third-party's breach of that contract without justification, and (4) damages (see *Foster v Churchill*, 87 NY2d 744, 749-750[1996]; *Nagan Constr., Inc. v Monsignor McClancy Mem. High School*, 117 AD3d 1005, 1006 [2d Dept 2014]). Viewing the complaint in the light most favorable to the plaintiffs and accepting the factual allegations as true, the complaint is insufficient to state any claim for tortious interference with a contract on the part of Titan Capital. As noted above, Titan Capital, pursuant to the terms of both the Repayment and Release Agreement and the Option Agreement had no contractual obligation to discontinue the Merrick foreclosure action and cancel the notice of pendency filed in that action. Plaintiffs admit that CVS did not cancel its lease agreement with its landlord, 245-02 Merrick Blvd, LLC, or otherwise hold the landlord in breach of the CVS Settlement Agreement. Therefore, as plaintiffs do not allege any breach by a third party, the complaint fails to state a claim for tortious interference with a contract (see *Ferrandino & Son, Inc. v Wheaton Bldrs., Inc., LLC*, 82 AD3d 1035, 1036 [2d Dept 2011]; see also *NBT Bancorp v Fleet/Norstar Fin. Group*, 87 NY2d 614, 620-621[1996]; *82 Retail LLC v Eighty Two Condominium*, 117 AD3d 587, 589 [1st Dept 2014]).

To state a claim for tortious interference with prospective economic advantage or business relations, plaintiffs must allege that "(a) the plaintiff had business relations with a third party; (b) the defendant interfered with those business relations; (c) the defendant acted with the sole purpose of harming the plaintiff or

by using unlawful means; and (d) there was resulting injury to the business relationship." (*Thome v Alexander & Louisa Calder Found.*, 70 AD3d 88, 108 [1st Dept 2009]; see also *Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47 [1st Dept 2009]; *71 Pierrepont Assocs. v 71 Pierrepont Corp.*, 243 AD2d 625, *supra*; *Nassau Diagnostic Imaging & Radiation Oncology Assocs. v Winthrop-Univ. Hosp.*, 197 AD2d 563, 563-564 [2d Dept 1993]).

Here, plaintiffs' allegations are insufficient to state a claim for tortious interference with business relations or with a prospective economic advantage. As regards the Option Agreement, plaintiff Eshaghpour's business relationship was with the defendant Titan Capital, and not a third party. As to the business relationship between plaintiff 245-02 Merrick Blvd LLC and CVS, the complaint fails to allege that Titan Capital acted with the sole purpose of harming said plaintiff, or that it used means that were unlawful and improper. Furthermore, Titan Capital had no obligation to discontinue the Merrick foreclosure action and cancel the notice of pendency, and plaintiffs' could have sought such relief on their own. Therefore, that branch of Titan's motion which seeks to dismiss the fourth cause of action, is granted.

That branch of MetBank's motion which seeks to dismiss the first cause of action for breach of contract, is granted. As MetBank was not a party to the Option Agreement, plaintiffs cannot maintain a claim against this defendant for breach of said agreement. With respect to the Repayment and Release Agreement, as MetBank had no contractual obligation to cancel the notice of pendency, plaintiffs cannot maintain a claim for breach of the Repayment and Release Agreement, based upon the failure to cancel the expired notice of pendency.

That branch of MetBank's motion which seeks to dismiss the second cause of action for declaratory judgment and extending the time in which to exercise the option agreement to April 29, 2014, is granted. As MetBank is not a party to the Option Agreement, no justiciable controversy exists with respect to this defendant.

That branch of MetBank's motion which seeks to dismiss the third cause of action for specific performance of the Option Agreement, is granted, as MetBank is not a party to said agreement.

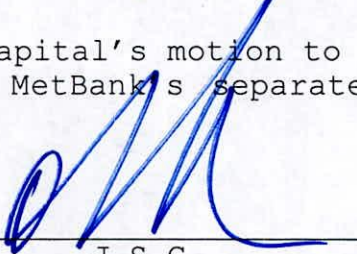
That branch of MetBank's motion which seeks to dismiss the fourth cause of action is granted. Viewing the complaint in the light most favorable to the plaintiffs and accepting the factual allegations as true, the complaint is insufficient to state any claim for tortious interference with a contract on the part of MetBank. As noted above, MetBank, pursuant to the terms of both

the Repayment and Release Agreement agreed to discontinue the Merrick foreclosure action and cancel the notice of pendency filed in that action. However, said agreement did not set forth a time frame for obtaining a discontinuance or even state how it was to be accomplished. In addition, said agreement did not expressly require MetBank to cancel the already expired notice of pendency. Plaintiffs admit that CVS did not cancel its lease agreement with its landlord, 245-02 Merrick Blvd, LLC, or otherwise hold the landlord in breach of the CVS Settlement Agreement. Therefore, as plaintiffs do not allege any breach by a third party, the complaint fails to state a claim for tortious interference with a contract (see *Ferrandino & Son, Inc. v Wheaton Bldrs., Inc., LLC*, 82 AD3d 1035, 1036 [2d Dept 2011]; see also *NBT Bancorp v Fleet/Norstar Fin. Group*, 87 NY2d 614, 620-621 [1996]; *82 Retail LLC v Eighty Two Condominium*, 117 AD3d 587, 589 [1st Dept 2014]).

This court further finds that the allegations set forth in the complaint are insufficient to support a claim for tortious interference with business relations or prospective economic advantage. Therefore, that branch of MetBank's motion which seeks to dismiss the fourth cause of action, is granted.

Accordingly, defendant Titan Capital's motion to dismiss the complaint, is granted. Defendant MetBank's separate motion to dismiss the complaint, is granted.

Dated: May 11, 2015



J.S.C.

FILED

MAY 14 2015

**COUNTY CLERK
QUEENS COUNTY**