

Forlenza v Thibodeau
2018 NY Slip Op 31698(U)
March 23, 2018
Supreme Court, New York County
Docket Number: 653212/15
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 59

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LOUISE C. FORLENZA,

Plaintiff,

Index No. 653212/15

-against-

MARC THIBODEAU,

Defendant.

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Plaintiff Louise C. Forlenza ("Forlenza") moves, pursuant to CPLR 3025(b), for an order granting leave to amend the complaint to withdraw her cause of action for negligence and to assert causes of action for tortious interference with business relations and for prima facie tort. Defendant Marc THIBODEAU cross-moves, pursuant to CPLR 3211 (a) (1), (4) and (7), for an order dismissing the complaint.

CONCLUSION

The motion shall be granted as to the first cause of action and denied as to the second cause of action and the cross motion shall be denied.

BACKGROUND

In this action, Forlenza seeks damages in negligence against defendant Thibodeau, in connection with an unsuccessful effort to fund a Broadway musical called Rebecca.

According to the complaint, Forlenza is the principal of a business operating under the name Louise Forlenza Productions, Inc.

(LFP) which is engaged in the production of theatrical shows.¹

In 2012, LFP and another production enterprise called The Sprecher Organization, LLC, formed an entity named Sprecher Forlenza Productions, Inc. (SFP). SFP is the general partner of Rebecca Broadway LP (RBLP) a limited partnership organized for the purpose of mounting the production of a musical theater show on Broadway called "Rebecca" (Rebecca).

In May of that year, RBLP hired defendant Thibodeau to act as the press representative for Rebecca.

The complaint alleges that RBLP had difficulty obtaining investors for Rebecca. However, in September, 2012, it located an investor to help fund the project. One condition of the investor's participation was that it retain its anonymity.

The complaint alleges that, in that same month, Thibodeau, who knew the identity of such investor, sent four anonymous emails to the investor, which made several negative allegations about the producers and the show's prospects, and encouraged the potential investor not to back the production. See Rebecca Broadway Ltd. Partnership v Hotton, 143 AD3d at 73. After receiving these emails, the investor withdrew its involvement and the production never went forward.

¹The facts of this case have been set forth in detail in a decision by the Appellate Division, First Department in a related action titled Rebecca Broadway Ltd. Partnership v Hotton (143 AD3d 71 [1st Dept 2016]).

In October 2012, RBLP and SFP commenced an action in this court against several entities, to which Thibodeau was eventually added as a defendant. See Rebecca Broadway Ltd. v Hotton, Sup Ct NY County, index No. 653659/12 (RBLP action). In May, 2017, a jury awarded RBLP \$90,000 in total damages against Thibodeau, for breach of contract and interference with business relations. See id.

In the meantime, in September, 2014, Bennett Sprecher commenced an action in the court against Thibodeau for, among other things, tortious interference with business relations. See Sprecher v Thibodeau, Sup Ct NY County, Index No. 158846/14 ("the Sprecher action). The Sprecher action is ongoing, and in Sprecher v Thibodeau, 148 AD3d 654 [1st Dept. 2017]), the Appellate Division affirmed the dismissal of the negligence claim and the upholding of the tortious interference with business relations claim on the part of Sprecher, finding that the latter was not duplicative of the same claim in the RBLP action.

Forlenza commenced the instant action in September, 2015, asserting a claim for negligence. Forlenza now seeks to withdraw the cause of action for negligence and to assert causes of action for tortious interference with business relations and for prima facie tort. Thibodeau opposes the motion and cross-moves to dismiss the complaint.

DISCUSSION

Motion to Amend

"Leave to amend a complaint is typically freely granted, but is committed, however, to the sound discretion of the trial court." Velarde v City of New York, 149 AD3d 457, 457 (1st Dept 2017) (citations omitted). "To obtain leave, a plaintiff must submit evidentiary proof of the kind that would be admissible on a motion for summary judgment." Id. (citations omitted).

The first cause of action in the proposed amended complaint is for tortious interference with business relations. "To set forth a cause of action sounding in tortious interference with business relations, a plaintiff is required to plead that the defendant interfered with the plaintiff's business relationships either with the sole purpose of harming the plaintiff or by means that were unlawful or improper." Tri-Star Lighting Corp. v Goldstein, 151 AD3d 1102, 1106 (2d Dept 2017), internal quotation marks and citation omitted.

Defendant argues that the motion to amend should be denied because the cause of action for tortious interference is already being litigated in the RBLP action. However, it is undisputed that Forlenza is not a party to that action. and as in the Sprecher action, there is not "substantial" identity of parties . Moreover, as set forth above, subsequent to the submission of the instant motion and cross motion, the RBLP action concluded with a jury

verdict against Thibodeau. The parties here have not briefed or argued what effect, if any, such verdict would have on the instant action. As such, defendant has not demonstrated that plaintiff's motion to assert such a claim should be denied.

Plaintiff's proposed second cause of action is for prima facie tort. "The elements of prima facie tort are (1) intentional infliction of harm, (2) resulting in special damages, (3) without any excuse or justification, (4) by an act or acts otherwise lawful." Ahmed Elkoulily, M.D., P.C. v New York State Catholic Healthplan, Inc., 153 AD3d 768, 772 (2d Dept 2017), citation omitted. "To adequately plead prima facie tort, the complaint must plead the defendant's malicious intent or disinterested malevolence as the sole motive for the challenged conduct." Id.

Here, the proposed amended complaint fails to plead sufficient facts to state a cause of action for prima facie tort in that plaintiff fails both to allege that defendant's conduct was motivated solely by malice or disinterested malevolence and the existence of special damages.

Cross Motion to Dismiss

Defendant cross-moves to dismiss the original complaint. However, in light of the granting of the motion to amend, the amended complaint will become the operative pleading in this action and defendant's cross motion to dismiss the original complaint is moot. See, Gay v Farella, 5 AD3d 540, 541 (2d Dept 2004).

ORDER

Accordingly, it is

ORDERED that the motion of plaintiff Louise Forlenza to amend the complaint is granted with respect to the first cause of action in the proposed amended complaint; and it is further

ORDERED that the motion to amend the complaint is denied with respect to the second cause of action in the proposed amended complaint; and it is further

ORDERED that the motion to amend the complaint to withdraw the cause of action for negligence is granted; and it is further

ORDERED that plaintiff shall serve the amended complaint within twenty days of service of a copy of this order with notice of entry; and it is further

ORDERED that the cross-motion to dismiss the complaint by defendant Marc Thibodeau is denied; and it is further

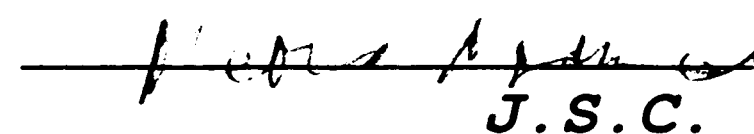
ORDERED that within 20 days of service of a copy of this order and the amended complaint, defendant shall serve an answer in accordance with CPLR 3025(d); and it is further

ORDERED that counsel are directed to appear for a preliminary conference in IAS Part 59, 60 Centre Street, Room 331, on May 1, 2018, 9:30 AM.

This is the decision and order of the court.

DATED: March 23, 2018

ENTER:


J.S.C.

DEBRA A. JAMES