

Gentry Beach v Touradji Capital Mgt., LP

2019 NY Slip Op 30199(U)

January 23, 2019

Supreme Court, New York County

Docket Number: 603611/2008

Judge: Andrew Borrok

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

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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GENTRY BEACH, ROBERT VOLLERO, DEEPROCK VENTURE PARTNERS, LP (3RD PARTY PLTF.),

Plaintiff,

- v -

TOURADJI CAPITAL MANAGEMENT, LP, PAUL TOURADJI, VOLLERO BEACH CAPITAL PARTNERS (3RD PARTY DEFT.), VOLLERO BEACH CAPITAL FUND (3RD PARTY DEFT.), VOLLERO BEACH ASSOCIATES LLC (3RD PARTY DEFT.), VOLLERO BEACH CAPITAL OFFSHORE, LTD. (3RD PARTY DEFT.), GARY (3RD PARTY DEFT.) BEACH

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 039) 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 754, 755

were read on this motion to/for

PRECLUDE

Borrok, J.

Gentry T. Beach and Robert A. Vollero (collectively, the **Plaintiffs**) worked as portfolio managers for Touradji Capital Management, L.P. (**Touradji Capital**), a hedge fund which had its principal place of business in New York. Paul Touradji (Touradji Capital and Mr. Touradji, collectively, the **Defendants**) was the founder and managing partner of Touradji Capital. According to the Amended Complaint, dated January 22, 2008 (the **Amended Complaint**), the Plaintiffs were to be compensated based on a specified formula for their work in managing certain Touradji capital portfolios. At the end of each year, the parties discussed performance and agreed to compensation. However, the Plaintiffs aver that they were not properly paid despite making repeated demands. The relationship soured. Mr. Vollero was paid a portion of the compensation that he claims was owed to him. Mr. Beach was not compensated. In fact, Mr.

Touradji allegedly threatened to ruin Mr. Beach's career if he did not make a public apology for certain investment decisions made by Touradji Capital. Mr. Beach apologized, the Defendants allegedly continued to withhold his compensation, and following a verbal confrontation with Mr. Touradji in September, 2006, Mr. Beach resigned. Mr. Vollero later resigned in December, 2008.

The Amended Complaint alleged six causes of action – all of which were dismissed other than the cause of action for Breach of Contract (the first cause of action) as against Touradji Capital and Intentional Infliction of Emotional Distress (**IIED**, the fifth cause of action) pursuant to a Decision and Order (mtn. seq. no. 001) dated September 17, 2009, by Hon. Richard B. Lowe, III. In a decision dated June 30, 2011, the Appellate Division reversed, holding that the court had erred in dismissing the Plaintiffs' quantum meruit/unjust enrichment claim since it was based on allegations that the Defendants were unjustly enriched by withholding Plaintiffs' 2005 compensation and reinvesting it without their permission, and that no contract governing these actions existed, and also in concluding, at the pleading stage, that Plaintiffs' compensation did not constitute wages under Labor Law 190 because the Plaintiffs alleged that the compensation was not "entirely discretionary," but based on Plaintiffs' "own productivity," and not solely upon the defendants' overall financial success (*Beach v Touradji Capital Mgmt., L.P.*, 85 AD2d 674 [1st Dept 2011], citing *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]; *Winick Realty Group LLC v Austin & Assoc.*, 51 AD2d 408 [2008]; *Truelove v Northeast Capital & Advisory*, 95 NY2d 220, 224 [2000]).

Subsequently, the fifth cause of action for IIED was dismissed pursuant to a Decision and Order (mtn. seq. no. 5) dated May 18, 2010 (Lowe, J.), and the second cause of action (violation of Labor Law 190) was dismissed pursuant to a Decision and Order (motion sequence no. 27)

dated February 26, 2014 (Schweitzer, J.). The Defendants filed an Answer and asserted certain counterclaims, including a claim for defamation against Gentry Beach, Robert Vollero, the Vollero Beach funds and Gary Beach (the fifth counterclaim) and a claim for tortious interference with business relations against Gentry Beach, Robert Vollero and the Vollero Beach Funds (the sixth counterclaim). With respect to the defamation counterclaim, paragraphs 186-187 of the Answer provide:

186. Beach and Vollero committed defamation by stating to Gary Beach, with knowledge that he would repeat it, and to investors and potential investors in the Vollero Beach Funds, among others, that Touradji Capital's agreement with Amaranth had a "no trade" provision, that Touradji and Touradji Capital violated that "no trade provision, and that Touradji and Touradji Capital used the information they acquired from Amaranth Advisors to trade against Amaranth's positions. On information and belief, Gary Beach repeated these statements to Amaranth, with knowledge of their falsity.

187. Gentry Beach and Robert Vollero have also stated to Touradji Capital investors and other businesses in the financial industry, that Touradji Capital "broke its word" and breached a supposed contract with them.

With respect to the tortious interference counterclaim, paragraphs 194-195 provide:

194. Beach and Vollero tortuously interfered with Touradji Capital relationships with its current and prospective investors and potential investors in the Vollero Beach Funds, among others, that Touradji Capital's agreement with Amaranth had a "no trade" provision, that Touradji and Touradji Capital violated that "no trade" provision, and that Touradji and Touradji Capital used the information they acquired from Amaranth Advisors to trade against Amaranth's positions.

195. Gentry Beach and Robert Vollero have also stated to Touradji Capital investors and other businesses in the financial industry, that Touradji Capital "broke its word" and breach a supposed contract with them.

The plaintiffs/counterclaim defendants' motion for summary judgment (mtn. seq. no. 8) and to dismiss the Fifth and Sixth "Counts" of the November 4, 2009 counterclaims was denied pursuant to a "grey sheet" Decision and Order dated June 15, 2010 (Lowe, J.) in which Judge

Lowe indicated only that the motion for summary judgment was denied for the reasons set forth on the record.

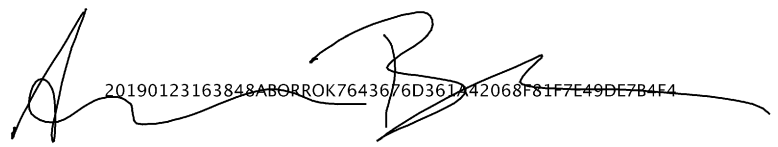
There was significant additional motion practice over the past approximately 11 years, but as now framed, and as it relates to the instant motion, this is an action for breach of contract and quantum meruit/unjust enrichment against Touradji Capital where certain defenses and counterclaims have been alleged, including, without limitation, defamation for certain statements allegedly made regarding an alleged violation of a “no trade” provision in an agreement with Amaranth.

The Defendants have now brought this motion *in limine* (mtn. seq. 039) seeking to preclude (i) (a) purported “bad acts” committed by Mr. Touradji, (b) Mr. Touradji’s prior contractual disputes, and (c) Mr. Touradji’s personal wealth and income, (ii) Plaintiffs’ expert witness from offering testimony as to the existence of an employment agreement between the Plaintiffs and Touradji Capital, or to the contents of any such agreements and (iii) such other and further relief the Court deems just and proper.

It is axiomatic that unrelated bad acts are inadmissible to show that an act occurred on a particular occasion (*Mazella v Beals*, 27 NY3d 694 [2016]). However, courts have long recognized the so-called *Molineux* exceptions (re: motive, intent, absence of mistake, common scheme or plan or identity) (*Matter of Brandon*, 55 NY2d 206 [1982]). In the motion at *nisi prius*, the Defendants seek to preclude introduction of evidence of Mr. Touradji’s alleged treatment of other employees arguing that it is being impermissibly offered to show that an act occurred on a particular occasion. In their opposition papers, the Plaintiffs argue that the alleged bad acts are offered to show that Mr. Touradji never honored his agreements and his intent never to honor his agreements to show that he did not intend to honor his agreement with the Plaintiffs

in this case. This is patently improper. Accordingly, the motion is granted to the extent of evidence of any alleged mistreatment of other employees, business partners, and of other legal proceedings. Evidence of “bad acts” will only be admissible as it relates to either the breach of contract claim in this case, quantum meruit/unjust enrichment claim or any potential defense to the allegations regarding the alleged statements regarding the violation of the “no trade” provision with Amaranth which form the basis of the counterclaims for defamation (*Burdick v Shearson Am. Express*, 160 AD2d 642 (1990)). For the avoidance of doubt, however, evidence of Mr. Touradji’s alleged threats of Mr. Beach in response to Mr. Beach’s requests for compensation are admissible as they are directly relevant to the breach of contract cause of action. Evidence of Mr. Touradji’s personal wealth and income is not relevant to the breach of contract claim, the quantum meruit/unjust enrichment claim or the counterclaims and is otherwise inadmissible unless the door is “opened.” Finally, expert testimony will be admissible insofar as it relates to industry norms and practices as such testimony may be necessary to determine reasonable compensation for Plaintiff’s quantum meruit claim, and whether any hypothetical agreement would be within industry norms. However, expert testimony will not be permitted to prove the existence of an employment agreement with the Plaintiffs and an appropriate jury instruction will be issued, if necessary, that the jury should not infer that any such agreement did in fact exist based on the expert’s testimony.

1/23/2019
DATE



ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

