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| <b>PLM Group Advisors/Cyprus Ins. Agency v Solomon</b>   |
| 2019 NY Slip Op 30420(U)   |
| January 18, 2019   |
| Supreme Court, Queens County   |
| Docket Number: 715930/2017   |
| Judge: Denis J. Butler   |
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ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

PLM Group Advisors/Cyprus Insurance
Agency Prodromou M. Loizos,

Index No.:
715930/2017

Plaintiff(s),

Motion Date:
December 18, 2018

-against-

Motion Seq. No.:002

Francine Solomon, JFA Insurance
Brokerage & Associates, "XYZ CORP. #1-
25", said names being fictitious, it
being the intention of Plaintiff to
designate additional entities having
liability for the complained of incident
upon discovery of their identity

Defendant(s).

The following papers were read on this motion by defendants
Francine Solomon ("Solomon") and JFA Insurance Brokerage &
Associates, Inc. ("JFA Insurance") (collectively "defendants") for
an order, pursuant to CPLR 3211 (a) (7), 3016 (a), and 3013,
dismissing the complaint.

Papers
Numbered

Notice of Motion, Affirmation, Exhibit
and Memorandum of Law..... E12-21

Upon the foregoing papers, it is hereby ordered that this
unopposed motion is determined as follows:

Plaintiffs complaint asserts causes of action for defamation,
intentional infliction of emotional distress, tortious interference
with contract, and breach of contract against both JFA Insurance
and its owner Solomon.

Defendants now move, pursuant to CPLR 3211 (a) (7), 3016 (a), and 3013, to dismiss the complaint.

A. Defamation Per Se

CPLR 3016 (a) requires any claim for libel to be plead with specificity. The complaint must "set forth the particular words allegedly constituting defamation, and it must also allege the time, place, and manner of the false statement and specify to whom it was made" (*Arvanitakis v Lester*, 145 AD3d 650, 651 [2d Dept 2016], citing CPLR 3016 [a]; see also *Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 2009]). "Compliance with CPLR 3016 (a) is strictly enforced" (*Horbul v Mercury Ins. Group*, 64 AD3d 682, 683 [2d Dept 2009]).

In the instant matter, the cause of action for defamation did not set forth the particular words complained of (see *Fusco v Fusco*, 36 AD3d 589, 590 [2d Dept 2007]). The complaint merely alleges that, "[u]pon information and belief, on or about January 01, 2015 through November 15, 2017 defendant published orally defamatory statements regarding plaintiff's persons competency as a businessman and insurance broker to the former client of plaintiff named 'STAMATIS' who operated [sic] restaurant." Plaintiffs' complaint fails to satisfy the heightened pleading requirements of CPLR 3016 (a).

Plaintiffs' cause of action for defamation per se is dismissed.

B. Intentional Infliction of Emotion Distress

Pursuant to CPLR 3211 (a) (7), "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . the pleading fails to state a cause of action."

"In order to state a cause of action to recover damages for intentional infliction of emotional distress, the complaint must allege conduct that was 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency . . . and [was] utterly intolerable in a civilized community' " (*Baumann v Hanover Community Bank*, 100 AD3d 814, 816-817 [2d Dept 2012], quoting *Marmelstein v Kehillat New Hempstead: The Rav Aron Jofen Community Synagogue*, 11 NY3d 15, 22-23 [2008]; see *Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]). Here, plaintiffs' cause of action for intentional infliction of emotional distress only alleges that "[d]efendnat intentionally caused to the plaintiff emotional distress by using words of hurtful nature regarding

plaintiff's incompetency as the commercial insurance broker." Even accepting as true the allegations in the complaint and according the plaintiff the benefit of every possible favorable inference (see *Leon v Martinez*, 84 NY2d 83, 87 [1994]), defendants' conduct was not "so outrageous in character, and so extreme in degree" as to qualify as intentional infliction of emotional distress (see *Murphy v Am. Home Prods. Corp.*, 58 NY2d 293, 303 [1983]; *Borawski v Abulafia*, 117 AD3d 662, 664-665 [2d Dept 2014]; *Klein v Metropolitan Child Servs., Inc.*, 100 AD3d 708, 711 [2d Dept 2012]).

Plaintiffs' cause of action for intentional infliction of emotional distress is dismissed.

#### C. Tortious Interference with Contract

In order to sustain a claim for tortious interference with contract, a party "must show the existence of its valid contract with a third party, defendant's knowledge of that contract, defendant's intentional and improper procurement of a breach without justification, and damages" (*White Plains Coat & Apron Co., Inc. v Cintas Corp.*, 8 NY3d 422, 426 [2007]; see *Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 424 [1996]; *Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 94 [1993]).

The complaint, in this case, alleges that "defendant knowing that plaintiff was withing [sic] contractual obligations with third party clients, nevertheless, she approached plaintiffs clients and demanded their business." The complaint further alleges that "[d]efendant behind plaintiff' [sic] back induced plaintiff's clients to stop doing business with plaintiff and by false promise offered them a discounted rate as long as the plaintiff's clients would sign up with her agency and leave plaintiff's agency." However, plaintiffs have failed to identify any contract interfered with by defendants, leaving the court to speculate as to the nature of its relationship, if any, with these third parties. Plaintiffs have also failed to identify the third parties and relationship, if any, that defendants' actions impaired. Additionally, while the complaint states that third parties stopped conducting business with plaintiffs, it does not demonstrate a breach or damages resulting therefrom.

Plaintiffs' cause of action for tortious interference with contract is dismissed.

#### D. Breach of Contract

The elements of a cause of action for breach of contract are the existence of a valid contract, the plaintiff's performance

under the contract, the defendant's breach of the contract, and damages (see *JP Morgan Chase v J.H. Elec. of N.Y., Inc.*, 69 AD3d 802, 803 [2d Dept 2010]; *Furia v Furia*, 116 AD2d 694, 695 [2d Dept 1986]; *Palmetto Partners, L.P. v AJW Qualified Partners, LLC*, 83 AD3d 804, 806 [2d Dept 2011]). Here, the complaint fails to identify any specific contract, or portion thereof, that was breached (see *Barker v Time Warner Cable. Inc.*, 83 AD3d 750, 751 [2d Dept 2011]). "When a claim is founded upon a contract, the relevant portions of the contract should be set forth in the complaint" (*Bomser v Moyle*, 89 AD2d 202, 203 [1st Dept 1982]).

Plaintiffs' cause of action for breach of contract is dismissed.

Accordingly, and in the absence of opposition thereto, defendants motion to dismiss plaintiff's complaint is GRANTED.

This constitutes the decision and order of the court.

Dated: January 18, 2019



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DENIS J. BUTLER, J.S.C.

FILED  
JAN 30 2019  
COUNTY CLERK  
QUEENS COUNTY