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| <b>Griffon 1356 LLC v Schwartz</b>                                                                                                                                                                                             |
| 2019 NY Slip Op 31870(U)                                                                                                                                                                                                       |
| June 26, 2019                                                                                                                                                                                                                  |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: 150072/2018                                                                                                                                                                                                     |
| Judge: William Franc Perry                                                                                                                                                                                                     |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTYPRESENT: HON. W. FRANC PERRY

PART

IAS MOTION 23EFM

*Justice*

-----X

INDEX NO. 150072/2018

GRIFFON 1356 LLC, DELSHAH MANAGEMENT, LLC,

MOTION DATE 09/22/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

SUSAN SCHWARTZ,

## DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for

DISMISS

Upon the foregoing documents, the motion to dismiss is granted.

Defendant moves for an Order pursuant to CPLR 3211 (a)(7) to dismiss the complaint. Plaintiff commenced this action alleging that as a result of statements made by defendant, a neighbor of defendant, demanded and obtained from plaintiffs a buyout agreement for \$240,000.00, which exceeded their original buyout offer of \$40,000.00 by \$200,00.00. Plaintiffs further claim that two other tenants, also defendant's neighbors in the building, stopped returning plaintiffs' calls. Plaintiffs allege that defendant stated that a number of unspecified tenants would not receive the buyout monies promised by plaintiffs; that defendant stated that plaintiffs have ten million dollars to spend on buyouts, rather than the three million that they claimed to have; and that defendant stated that plaintiffs are not to be trusted.

On a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading is to be afforded a liberal construction and the Court must accept the allegations of the complaint as true and accord the plaintiff the benefit of every possible favorable inference arising therefrom in determining whether the allegations fit within any cognizable legal theory. *Leon v. Martinez*, 84 NY2d 83

(1994); *Hartman v. Morgenstern*, 28 AD3d 423 (2006). However, bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss for failure to state a cause of action. *Id.*

Plaintiffs' first cause of action is for defamation. The second cause of action is for tortious interference with contract, the third cause of action claims tortious interference with prospective business opportunities. The final cause of action is for prima facie tort.

Upon review of the papers submitted and the pertinent law, plaintiff's first cause of action for defamation is dismissed. CPLR 3016(a) requires that in an action for defamation, "the particular words complained of shall be set forth in the complaint". *Gardner v. Alexander Rent-A-Car, Inc.*, 28 AD2d 667 (1967).

Here, the complaint fails to set forth the time, place or manner by which anything defamatory was allegedly communicated. The complaint also fails to name the persons to whom these alleged communications were made. Defendant correctly asserts that if anything was said it is protected by the common-interest privilege, which would require a showing of actual malice, and plaintiffs would need to demonstrate that they suffered special damages. Plaintiffs present no facts to support a finding of actual malice or that they suffered such damages.

The second and third causes of action must also be dismissed. The second cause of action alleges interference with contracts. The elements of a cause of action alleging 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. *Foster v. Churchill*, 87 NY2d 749; *Chung v. Wang*, 79 AD3d 693.

Plaintiffs claim that defendant came between a fellow tenant and plaintiffs in the negotiation of that tenant's lease buyout. Plaintiffs also claim that subsequent to that interference, two other tenants stopped communicating with plaintiffs. However, plaintiffs do not allege that the first tenant, with whom defendant allegedly spoke, brought about any breach any breach of any buyout agreement. Further, at the time plaintiff claims that the incidents occurred, there was no contract between plaintiff and the unnamed third parties.

Viewing the complaint in the light most favorable to plaintiffs and accepting the factual allegations as true, the complaint fails to sufficiently allege that defendant engaged in any conduct which resulted in a breach of a contract. *Ferrandino & Son, Inc., v. Wheaton Bldrs, Inc.*, 82 AD2d 1035 (2011).

The third cause of action is for tortious interference with prospective business opportunities. To state such a cause of action, it must be alleged that the conduct by defendant that allegedly interfered with plaintiff's prospects either was undertaken for the sole purpose of harming plaintiff, or that such conduct was wrongful or improper independent of the interference allegedly caused thereby. *Alexander & Alexander of New York v. Fritzen*, 68 NY2d 968 (1986).

The instant complaint fails to plead sufficient nonconclusory allegations to meet this standard. Plaintiff neither alleges specific facts that could support an inference that defendant was motivated solely by a desire to harm them nor do plaintiffs allege specific facts that, if proven, would show that the alleged statements were objectively false or otherwise independently wrongful. *Miller v. Mount Sinai Med. Ctr.*, 288 AD2d 72 (2001).

The fourth cause of action for prima facie tort is likewise dismissed. The requisite elements for a cause of action sounding in prima facie tort include (1) intentional infliction of harm, (2) resulting in special damages, (3) without excuse or justification, (4) by an act or series

of acts which are otherwise legal. *Del Vecchio v. Nelson*, 300 AD2d 277 (2002); *Curiano v. Suozzi*, 63 NY2d 113 (1984). An element of prima facie tort cause of action is that the complaining party suffered specific and measurable loss, which requires an allegations of special damages. While plaintiffs allege special damages, such damages are not specifically pled and not supported by any facts to prove the damages. Further, central to a cause of action alleging prima facie tort is that defendant's intent was motivated solely by malice or "disinterested malevolence". *Simaee v. Levi*, 22 AD3d 559 (2005); *Lancaster v. Town of East Hampton*, 54 AD3d 906 (2008).

Here, the allegations in the complaint fail to show, other than conclusory allegations, the motivation of defendant's conduct.

Based upon the above, plaintiffs' complaint is dismissed in its entirety. This is the Decision and Order of the Court.

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|-----------------------|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------|------------------------------------|
| <u>6/26/2019</u>      |                                                                             |  |                                    |
| DATE                  |                                                                             | W. FRANC PERRY, J.S.C.                                                                |                                    |
| CHECK ONE:            | <input checked="" type="checkbox"/> CASE DISPOSED                           | <input type="checkbox"/> NON-FINAL DISPOSITION                                        |                                    |
|                       | <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART                                              | <input type="checkbox"/> OTHER     |
| APPLICATION:          | <input type="checkbox"/> SETTLE ORDER                                       | <input type="checkbox"/> SUBMIT ORDER                                                 |                                    |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN                         | <input type="checkbox"/> FIDUCIARY APPOINTMENT                                        | <input type="checkbox"/> REFERENCE |