

GCA Advisors, LLC v Onion, Inc.
2019 NY Slip Op 32341(U)
August 1, 2019
Supreme Court, New York County
Docket Number: 653989/2018
Judge: Saliann Scarpulla
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 39EFM-----X
GCA ADVISORS, LLC,

INDEX NO. 653989/2018

Plaintiff,

MOTION DATE 05/14/2019

- v -

MOTION SEQ. NO. 002

ONION, INC., UNIVISION COMMUNICATIONS INC.

Defendants.

**DECISION + ORDER ON
MOTION**-----X
HON. SALIANN SCARPULLA:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 21, 22, 23, 24, 25, 28, 31, 32

were read on this motion to/for

DISMISS

In this action for breach of contract and tortious interference with contract, defendant Univision Communications Inc. (“Univision”) moves to dismiss the complaint insofar as asserted against it, pursuant to CPLR § 3211(a)(7).

Background¹

Plaintiff GCA Advisors, LLC (“GCA”) is a limited liability company that provides investment banking and advisory services globally, including in New York. Defendant Onion Inc. (“The Onion”) is a corporation that publishes satirical news articles on domestic and international matters, and Univision is a communications corporation headquartered in New York City.

¹ The following facts are taken from the complaint and assumed to be true.

On October 7, 2013, GCA and the Onion executed an engagement letter (“the Agreement”) under which the Onion contracted with GCA to act as its financial advisor. Pursuant to the Agreement, the Onion was obligated to pay GCA a transaction fee for its advisory services, including a “Base Fee” of \$2,000,000, if a transaction was completed within twelve months of the Agreement’s termination. The complaint alleges that the Agreement defines “transaction” as “the sale of [] substantially all assets or a majority of the shares to, or a merger, business combination or other similar change of control transaction with another company (an ‘Acquirer’).”

GCA alleges that the Onion terminated the Agreement on April 4, 2015. Nine months later, Univision acquired a 40.5% interest in The Onion for \$27,100,000. At the time, Univision allegedly announced that “it would have oversight over The Onion.” Further, GCA alleges that Univision was aware of the Agreement, including the Onion’s obligation to pay GCA a transaction fee, when Univision obtained its alleged controlling interest in the Onion. However, Univision allegedly decided to pay the transaction fee to a third party instead of GCA.

In its complaint GCA alleges, among other things, that Univision intentionally prevented the Onion from paying the transaction fee pursuant to the Agreement. Univision now moves, pursuant to CPLR § 3211(a)(7), to dismiss GCA’s tortious interference claim for failure to state a cause of action.

Discussion

In moving to dismiss the tortious interference claim,² Univision raises its economic interest in the Onion, which is “a defense to an action for tortious interference with a contract[.]” *Foster v Churchill*, 87 N.Y.2d 744, 750 (1996). “The imposition of liability in spite of a defense of economic interest requires a showing of either malice on the one hand, or fraudulent or illegal means on the other.” *Id.* at 750 (citing *Felsen v. Sol Cafe Mfg. Corp.*, 24 N.Y.2d 682, 687 (1969)).

The economic interest defense has been applied in cases where “defendants were significant stockholders in the breaching party’s business...” *White Plains Coat & Apron Co., Inc. v. Cintas Corp.*, 8 N.Y.3d 422, 426 (2007). Here, the complaint alleges that Univision acquired a 40.5% interest in the Onion for \$27,100,000. Therefore, accepting the allegations of the complaint as true, Univision’s economic interest in the Onion is sufficient to make out a defense of economic interest for allegedly interfering with the Onion’s obligation to pay a transaction fee to GCA.

To overcome Univision’s economic interest defense, GCA must allege facts showing that Univision acted with malice or employed illegal or fraudulent means. *See*

² To plead a cause of action for tortious interference with contract, a plaintiff must allege “the existence of a valid contract between the plaintiff and a third party, defendant’s knowledge of that contract, defendant’s intentional procurement of the third-party’s breach of the contract without justification, actual breach of the contract, and damages resulting therefrom.” *Lama Holding Co. v Smith Barney Inc.*, 88 N.Y.2d 413, 424 (1996) (internal citations omitted). While the allegations in a complaint should be construed liberally on a motion to dismiss, “to avoid dismissal of a tortious interference with a contract claim a plaintiff must support his claim with more than mere speculation.” *Burrowes v Combs*, 25 A.D.3d 370, 373 (1st Dept. 2006).

Churchill, 87 N.Y.2d 744, 750 (1996). Review of the complaint, however, demonstrates that even the issue of whether the Onion's failure to pay the transaction fee constituted a breach of contract is far from clear. Moreover, the complaint fails to allege that Univision's alleged interference even "exceeded a minimum level of ethical behavior in the marketplace." *Normandy Real Estate Partners LLC v. 24 East 12th Street Associates LLC*, 168 A.D.3d 429, 430 (1st Dept. 2019) (citations omitted). Thus, even if Univision directed the Onion not to pay the fee, that conduct alone does not amount to malicious or fraudulent conduct, particularly because the contracting parties have reasonably interpreted the contract terms differently.

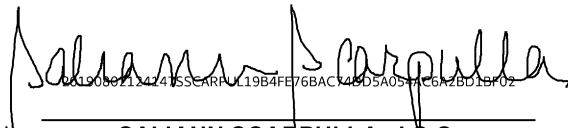
Also, GCA's allegation that Univision was "likely bolstering a prior relationship" by allegedly diverting the transaction fee to a third party is a bare conclusion without any factual support and is insufficient to support a claim for tortious interference with contract. *See Combs*, 25 A.D.3d 370, 373 (1st Dept. 2006) (finding that the plaintiff failed to sufficiently allege tortious interference because their assertions were supported by "scant speculation without the support of relevant facts.").

Because GCA has failed to adequately allege facts in support of a claim for tortious interference with contract, Univision's motion to dismiss the complaint against it is granted.

In accordance with the foregoing, it is

ORDERED that the motion of defendant Univision Communications Inc. to dismiss the complaint against it is granted and the complaint is severed and dismissed in its entirety as against defendant Univision Communications Inc. The action shall continue against defendant Onion Inc.

This constitutes the decision and order of the Court.

<u>8/1/2019</u> DATE	 SALIANN SCARPULLA, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED ☒ GRANTED	☐ DENIED
APPLICATION:	☐ SETTLE ORDER ☐ INCLUDES TRANSFER/REASSIGN	☒ NON-FINAL DISPOSITION ☐ GRANTED IN PART ☐ SUBMIT ORDER ☐ FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:		☐ OTHER ☐ REFERENCE