

<b>Madeof, LLC v Bronson</b>
2020 NY Slip Op 30846(U)
March 23, 2020
Supreme Court, New York County
Docket Number: 655107/18
Judge: Barry R. Ostrager
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**SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY**

**PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM**

*Justice*

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MADEOF, LLC, RYAN J. BONIFACINO, and IGOR A. BEKKER,

Plaintiffs,

- v -

DAWN KELLAS BRONSON and BABY CHINA PRODUCTS CO.,

Defendants.

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**DECISION + ORDER ON MOTION**

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were read on this motion to/for

HON. BARRY R. OSTRAGER

Plaintiffs’ newly substituted counsel moves for an order pursuant to CPLR 3025(b) granting leave to serve an Amended Complaint adding Cause of Action XIV. The Cause of Action is titled in the Proposed Amended Complaint as “Tortious Interference with Economic Expectation” (NYSCEF Doc. No. 91) but named in counsel’s affirmation as “Tortious Interference with Economic Interference” (NYSCEF Doc. No. 88) and named still differently in counsel’s memorandum of law as “Tortious Interference with Economic Expectancy” (NYSCEF Doc. No. 89). Regardless of the name decided upon by plaintiffs for their proposed new cause of action, the motion must be denied because, as correctly argued by defendants’ now former counsel, plaintiffs have failed to plead a cognizable cause of action.

It appears from the various papers submitted in support of the motion, including the Proposed Amended Complaint, that the essence of the proposed new cause of action is that defendants’ alleged malicious conduct, consisting of a bad faith trademark application and

defamatory statements about plaintiffs, caused an unnamed third party to decline to invest in plaintiffs' business, causing plaintiffs to suffer economic injury. But while plaintiffs correctly note that typically leave to amend is "freely given" pursuant to CPLR 3025(b) absent surprise or prejudice resulting from the delay, defendants correctly assert in opposition that the First Department "has consistently held that in order to conserve judicial resources, an examination of the proposed causes of action is warranted ... and leave to amend will be denied where the proposed pleading fails to state a cause of action ... or is palpably insufficient as a matter of law..." *Davis & Davis. v. Morson*, 286 AD2d 584, 585 (1st Dep't 2001) (citations omitted).

As defendants also correctly assert, no cause of action exists in New York with any of the three names proposed by plaintiffs. Assuming plaintiffs intended to assert a claim for tortious interference with prospective economic advantage, a recognized cause of action in New York, their proposed pleadings fail to allege such a claim. "To prevail on a claim for tortious interference with [prospective economic advantage or] business relations in New York, a party must prove (1) that it had a business relationship with a third party; (2) that the defendant knew of that relationship and intentionally interfered with it; (3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and (4) that the defendant's interference caused injury to the relationship with the third party." *Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47 (1st Dep't 2001), citing *Carvel Corp. v Noonan*, 3 NY3d 182, 189 (2004); *NBT Bancorp v Fleet/Norstar Fin. Group*, 87 NY2d 614 (1996) *Guard-Life Corp. v Parker Hardware Mfg. Corp.*, 50 NY2d 183 (1980). Conclusory allegations devoid of factual detail are "clearly insufficient to establish the requisite elements" of the claim. *Bank Leumi Trust Co. v Samalot/Edge Assocs.*, 202 AD2d 282, 283-4 (1st Dep't 1994).

Plaintiffs proposed pleadings here are devoid of any factual detail. Plaintiffs fail to allege the identity of the investor, the nature or timing of the anticipated investment, the content of the negotiations, that defendants knew of the investor and potential investment, and how defendants' purported conduct actually interfered with the potential investment and caused the investor not to proceed. Nor do plaintiffs allege that defendants directed any tortious or wrongful activity at the third-party investor, as opposed to the plaintiffs, as they must to state a claim for tortious interference with prospective economic advantage or business relations. *Devash LLC v German Am. Capital Corp.*, 104 AD3d 71, 79 (1st Dep't 2013).

The Court further notes the alleged malicious conduct by defendants, consisting of defamatory comments and deceptive acts, is also the basis for the originally asserted Fourth and Sixth Causes of Action, so plaintiffs presumably have had the details underlying the proposed new claim all along. In any event, the details are within the scope of plaintiffs' knowledge, not defendants', and no claim is stated without them. Not even on reply have plaintiffs come forward with those details, merely reiterating defendants' alleged defamatory comments and frivolous trademark filings.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for leave to amend the Complaint to add Cause of Action XIV is denied. Upon the expiration of the thirty-day stay set forth in the order granting defense counsel leave to amend (NYSCEF Doc. No. 99), the parties or their counsel shall confer and agree upon a schedule to resume discovery, to the extent possible.

A status conference is scheduled for June 23, 2020 at 9:30 a.m. in Room 232. at 60 Centre Street, New York, NY.

Dated: March 23, 2020

*Barry R. Ostrager*  
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BARRY R. OSTRAGER, J.S.C.

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CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE