

Shyer v Shyer

2020 NY Slip Op 31519(U)

May 20, 2020

Supreme Court, New York County

Docket Number: 651109/2018

Judge: Joel M. Cohen

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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 3EFM

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CATHERINE SHYER,
Plaintiff,

INDEX NO. 651109/2018

MOTION DATE 12/17/2019

- v -

CHRISTOPHER SHYER, JAMES SHYER, ZYLOWARE
CORPORATION,

MOTION SEQ. NO. 011

Defendants.

DECISION + ORDER ON
MOTION

-----X

ZYLOWARE CORPORATION
Plaintiff,

Third-Party
Index No. 595921/2018

-against-

CATHERINE SHYER

Defendant.

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 380, 381, 382, 383,
384, 385, 409, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430,
431, 432, 433, 434, 435, 436, 437, 438, 451

were read on this motion to DISMISS

This case revolves around the disputed pricing of shares in Defendant Zyloware
Corporation ("Zyloware"), an eyewear company run by the Shyer family (NYSCEF 382 [Third
Am. Compl.]). Plaintiff Catherine Shyer represents the estate of her late husband, Robert Shyer,
who was the CEO and Chairman of Zyloware for many years prior to his death in 2017 (the
"Estate") (id. ¶ 4). The Estate alleges that Zyloware failed to honor its share-repurchase and
compensation obligations to Robert Shyer under a Shareholders Agreement and an Employment
Agreement (collectively, the "Agreements") (id. ¶¶ 68-69). And in its Third Amended
Complaint, the Estate seeks to hold Defendants Christopher Shyer and James Shyer (the

“Individual Defendants”) liable for tortious interference with those Agreements, which allegedly induced Zyloware to breach its contractual obligations to the Estate.

On this motion, the Individual Defendants seek to dismiss the claim for tortious interference with contract for failure to state a cause of action. As set forth below, the motion is granted.

BACKGROUND

The Court presumes the parties’ familiarity with the background facts of this case. As relevant here, the Individual Defendants are two of Zyloware’s four shareholders, and they succeeded Robert Shyer to become co-CEOs of Zyloware (NYSCEF 382 ¶¶ 6-7). Robert Shyer was another Zyloware shareholder, and so was his brother, Henry Shyer (*id.* ¶ 4). All four Zyloware shareholders, plus Zyloware itself, were parties to the Shareholders Agreement and the Employment Agreement (*see* NYSCEF 383 [Shareholders Agreement], 384 [Employment Agreement]). In other words, the Individual Defendants themselves were parties to the Agreements they allegedly interfered with, in addition to “controll[ing] Zyloware” (NYSCEF 383 ¶ 1), the alleged breaching party.

DISCUSSION

On a motion to dismiss made pursuant to CPLR 3211, the Court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit into any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]; *Nomura Home Equity Loan, Inc. v Nomura Credit & Capital, Inc.*, 30 NY3d 572, 582 [2017]). However, “allegations consisting of bare legal conclusions . . . are not entitled to such consideration” (*Kliebert v McKoan*, 228 AD2d 232, 232 [1st Dept 1996]).

“Tortious interference with contract requires 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 NY2d 413, 424 [1996]; *Hoag v Chancellor, Inc.*, 246 AD2d 224, 228 [1st Dept 1998]).

“It is well established that only a stranger to a contract, such as a third party, can be liable for tortious interference with a contract” (*Koret, Inc. v Christian Dior, S.A.*, 161 AD2d 156, 157 [1st Dept 1990], lv denied 76 NY2d 714 [1990] [dismissing claim for tortious interference with contract where one defendant’s managing director “played a role in negotiation of the [contract] and executed same”]; *see, e.g., Wilson v Dantas*, 128 AD3d 176, 188 [1st Dept 2015] [dismissing claim for tortious interference with contract “because defendants are parties to the shareholder agreement and, thus, could not have tortiously interfered with plaintiff’s right to payment thereunder”]; *XpresSpa Holdings, LLC v Cordial Endeavor Concessions of Atlanta, LLC*, 171 AD3d 511, 513 [1st Dept 2019] [“The tortious interference with contract claim fails because [defendants] were not strangers to these agreements”]; *Buller v Giorno*, 28 AD3d 258, 258-59 [1st Dept 2006] [dismissing the tortious interference claim against a defendant who “was a party to the allegedly interfered-with agreement”]; *Serko v Serko Simon Gluck & Kane LLP*, 2007 N.Y. Slip Op. 33995[U] [Sup Ct, New York County 2007] [“An action for tortious interference against parties who were signatories to a contract that formed the basis for the interference claim, however, will not stand.”]).

The Individual Defendants are not strangers to the Agreements: in addition to being contracting parties themselves, they are also alleged to have “controlled Zyloware” (NYSCEF 382 ¶ 1), the alleged breaching party, as co-CEOs of the company (*see* NYSCEF 383, 384; *UBS*

Sec. LLC v Highland Capital Mgmt., L.P., 86 AD3d 469, 476 [1st Dept 2011] [hereinafter, “*UBS*”] [noting tortious interference claim “properly dismissed, since [defendant] was a party to the contracts with which it is alleged to have interfered”]; *Ashby v ALM Media, LLC*, 110 AD3d 459 [1st Dept 2013] [dismissing tortious interference claim against corporate officer because he “was not a stranger to plaintiff’s contract with [the breaching party] as he was one of [the breaching party’s] executives”], lv denied, 22 NY3d 860 [2014]).

According to the Estate, “although the Individual Defendants were parties to some of the provisions of the Agreements, they were not parties to the ones covered by alleged tortious interference” (NYSCEF 438 at 13 [Estate’s Opp. Br.]). Stated differently, the Estate maintains that in multilateral agreements like these, a contracting party can still be a stranger in relation to specific obligations running between co-parties to the contract (*see Leber Assoc., LLC v Entertainment Group Fund, Inc.*, 2003 WL 21750211 [SDNY 2003] [holding that parties can tortiously interfere with obligations of co-parties because “even though [defendants] were parties to the contract . . . they were effectively third parties to the specific agreement between EGC and [plaintiff]”).

But “[w]hile some courts have held that a party to a multilateral agreement can be found liable for tortious interference with the agreement, that has generally been where the alleged tortfeasor has rights and duties that are separate from those of the breaching party” (*UBS*, 86 AD3d at 476-77 [citing *Aljassim v S.S. South Star*, 323 F.Supp. 918, 925 [SDNY 1971]; *see VariBlend Dual Dispensing Sys. LLC v Crystal Intl. (Group) Inc.*, 18 CIV. 10758 (ER), 2019 WL 4805771, at *22 [SDNY Sept. 30, 2019] [“In cases like *Leber* [*supra*] . . . the other contracting party was found to have rights and duties that are separate from those of the breaching party”]). In *UBS*, the First Department dismissed a tortious interference claim against

a hedge fund because it “was a party to the contracts with which it is alleged to have interfered,” and “was essentially the alter ego of the parties it induced to breach the agreements” (86 AD3d at 466-67; *see also New Media Holding Co., LLC v Kagalovsky*, 118 AD3d 68, 79 [1st Dept 2014] [dismissing tortious interference claim against defendant who “completely dominated and controlled” breaching entity]). Here, the Estate fails to explain how, in light of the Individual Defendants’ interwoven roles, they have rights and duties that are separate from those of Zyloware under the Agreements (*see Ashby*, 110 AD3d at 459). Therefore, to the extent multilateral agreements represent an exception to the standard rule precluding claims of tortious interference against contracting parties, the Estate has not shown that this case fits within that exception.¹

Accordingly, it is:

ORDERED that the Individual Defendants’ motion to dismiss the Estate’s Third Cause of Action for Tortious Interference with Contract is **granted** and the cause of action is dismissed.

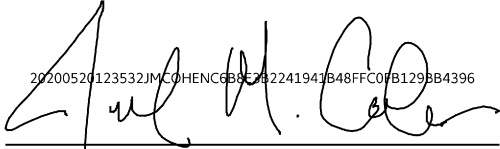
This constitutes the Decision and Order of the Court.

¹ The Individual Defendants’ alternative argument for dismissing the tortious interference claim turns on the “corporate officer defense” – that is, even if the Individual Defendants were not considered parties to the Agreements, they still could not be held personally liable, as Zyloware executives, for Zyloware’s alleged breach (*see Hudson Bay Master Fund Ltd. v Patriot Natl., Inc.*, 16 CIV. 2767 (GBD), 2019 WL 1649983, at *12 [SDNY Mar. 28, 2019] [“Where a defendant is a corporate officer of the breaching party, the analysis of the third party requirement sometimes overlaps with the corporate officer defense . . . most commonly analyzed as a defense to a different element of a claim for tortious interference: whether the defendant improperly induced a breach of the contract”]; *see also Shyer v Shyer*, 2019 N.Y. Slip Op. 32138[U], 11-13 [Sup Ct, New York County 2019]). The Court need not reach this issue, however, because the Individual Defendants’ involvement in the Agreements provides a sufficient and independent basis for dismissal.

5/20/2020

DATE

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JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE