

Grosseto Group Corp. v Homepeople Corp.
2021 NY Slip Op 32666(U)
December 14, 2021
Supreme Court, New York County
Docket Number: Index No. 651579/2020
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. ARTHUR ENGORON</u>	PART	37
	<i>Justice</i>		
-----X		INDEX NO.	<u>651579/2020</u>
GROSSETO GROUP CORP., MAX PINCIONE		MOTION DATE	<u>12/20/2020</u>
Plaintiffs,		MOTION SEQ. NO.	<u>001</u>
- v -			
HOMEPEOPLE CORPORATION, TARIK SANSAL,		AMENDED DECISION + ORDER ON MOTION	
Defendants.			

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 37 were read on this motion to DISMISS

Upon the foregoing documents and for the reasons stated hereinbelow, defendants' motion to dismiss plaintiffs' sixth and ninth causes of action is granted.

Background

On March 10, 2020, plaintiffs, Grosseto Group Corporation ("Grosseto") and Max Pincione ("Pincione"), individually and on behalf of Romio Mid East Partners ("Romio;" collectively with Grosseto and Pincione, "Plaintiffs"), commenced this action against defendants, Homepeople Corporation ("Homepeople") and Tarik Sansal ("Sansal;" collectively with Homepeople, "Defendants"), to recover \$1,300,000.00, plus compensatory, punitive, exemplary, treble, and/or other applicable damages, allegedly due pursuant to a Consulting Services Agreement ("the CSA") entered into on or about February 16, 2016, and a Joint Venture Agreement ("the JVA;" collectively with the CSA, "the Agreements") entered into on or about March 2, 2016. Pursuant to the Agreements, Plaintiffs contracted to provide consulting services and fundraising through their introductions and local partnerships. Plaintiffs allege that Defendants received and accepted said services but failed to respond to Plaintiffs' demands for payment.

Defendants now move, pursuant to CPLR 3211(a)(7) and 3016(b), to dismiss the sixth cause of action, for fraud, and the ninth cause of action, for prima facie tort.

Discussion

The law on the dismissal of a complaint pursuant to CPLR 3211 is clear and well-settled. Dismissal pursuant to CPLR 3211(a)(7) is warranted where, after accepting the facts alleged as true and according plaintiff the benefit of every possible favorable inference, the court determines that the allegations do not fit within any cognizable legal theory. Leon v Martinez, 84 NY2d 83, 87-88 (1994); see also EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 (2005) ("[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus" in determining a motion to dismiss for failure to state a cause of action). A complaint survives a

motion to dismiss for failure to state a cause of action if it gives the court and the parties “notice” of what is intended to be proved and the material elements of a cause of action. CPLR 3013.

Sixth Cause of Action—Fraud

Plaintiffs’ sixth cause of action, for fraud, must be dismissed as it is duplicative of the first and second causes of action, for breach of contract. “A cause of action for fraud ‘can be predicated upon an insincere promise of future performance only where the alleged false promise is collateral to the contract the parties executed; if the promise concerned the performance of the contract itself, the fraud claim is subject to dismissal as duplicative.’” Cronos Grp. Ltd. v XComIP, LLC, 156 AD3d 54, 62 (1st Dep’t 2017) (quoting HSH Nordbank AG v UBS AG, 95 AD3d 185, 206 (1st Dep’t 2012)).

In the sixth cause of action, for fraud, Plaintiffs are merely asserting that Defendants misrepresented that they would perform under the Agreements. In doing so, Plaintiffs are simply realleging the first and second causes of action, for breach of contract. However, Plaintiffs are attempting to differentiate the sixth cause of action by classifying it as a cause of action for fraud rather than breach of contract. Here, Plaintiffs are seeking duplicative damages for fraud and breach of contract. Plaintiffs are seeking damages under the sixth cause of action, for fraud, in the sum of not less than \$1,300,000.00 as well as under the first and second causes of action, for breach of contract, each in the sum of not less than \$1,300,000.00. Thus, the sixth cause of action is subject to dismissal. See Fin. Guar. Ins. Co. v Morgan Stanley ABS Cap. I Inc., 164 AD3d 1126, 1127 (1st Dep’t 2018) (“An action for fraud may be dismissed where damages sought are duplicative of damages sought for breach of contract.”); see also Fin. Guar. Ins. Co. v Morgan Stanley ABS Cap. I Inc., 164 AD3d 1126, 1127 (1st Dep’t 2018); MBIA Ins. Corp. v Countrywide Home Loans, Inc., 87 AD3d 287 (1st Dep’t 2011); Manas v VMS Assoc., LLC, 53 AD3d 451, 454 (1st Dep’t 2008).

Moreover, Defendants assert that Plaintiffs’ sixth cause of action, for fraud, must be dismissed because Plaintiffs did not plead the cause of action with the particularity that CPLR 3016(b) requires. This Court agrees. CPLR 3016(b) states that “[w]here a cause of action or defense is based upon misrepresentation, fraud, mistake, willful [*sic*] default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail.”

‘The purpose of section 3016(b)’s pleading requirement is to inform a defendant with respect to the incidents complained of,’ thus, ‘[w]e have cautioned that section 3016(b) should not be so strictly interpreted as to prevent an otherwise valid cause of action in situations where it may be impossible to state in detail the circumstances constituting a fraud.’ What is ‘[c]ritical to a fraud claim is that a complaint allege the basic facts to establish the elements of the cause of action[.]’ ... ‘Necessarily, then, section 3016(b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct[.]’

Sargiss v Magarelli, 12 NY3d 527, 530-31 (2009) (citations omitted). Here, Plaintiffs’ amended complaint does not sufficiently allege a cause of action for fraud. In order to sufficiently allege a cause of action for fraud, the complaint must include the following elements: “(1) [the]

defendant made a representation as to a material fact; (2) such representation was false; (3) [the] defendant [] intended to deceive [the] plaintiff; (4) [the] plaintiff believed and justifiably relied upon the statement and was induced by it to engage in a certain course of conduct; and (5) as a result of such reliance [the] plaintiff sustained pecuniary loss.” Young v Williams, 47 AD3d 1084, 1086 (2008) (quoting Ross v Louise Wise Servs., Inc., 8 NY3d 478, 488 (2007) (citations omitted); see Lama Holding Co. v Smith Barney Inc., 88 NY2d 413, 421 (1996)).

The amended complaint lacks specific detailed allegations establishing each of the required elements to plead sufficiently a cause of action for fraud and fails to allege what statements, representations, promises, or warranties made by Defendants that were false, misleading, or untrue. Accordingly, Plaintiffs have failed to set forth sufficient facts to establish the cause of action. Weinstein v CohnReznick, LLP, 144 AD3d 1140, 1141 (2nd Dep’t 2016) (Plaintiffs have “failed to make specific factual allegations that would establish that [Defendants] knowingly misrepresented a material fact for the purpose of inducing the [Plaintiffs’] reliance, actual justifiable reliance on the part of [Defendants], and damages.”); see also 107 Realty Corp. v National Petroleum U.S.A., Ltd., 181 AD2d 817, 818 (2nd Dep’t 1992) (“[T]he allegations are stated in vague and conclusory terms and are insufficient to meet the pleading requirements set forth in CPLR 3016(b).”). Thus, this Court will grant Defendants’ motion to dismiss Plaintiffs’ sixth cause of action.

Ninth Cause of Action—Prima Facie Tort

Defendants’ motion to dismiss Plaintiffs’ ninth cause of action, for prima facie tort, must be granted, as it is duplicative of the first and second causes of action, for breach of contract. Here, the ninth cause of action, for prima facie tort, is centered around Plaintiffs’ allegation that Defendants misrepresented that they would perform under the Agreements.

“A prima facie tort claim is duplicative and thereby dismissed where the underlying allegations ‘fall within the ambit of other traditional tort liability, namely, plaintiffs cause of action sounding in defamation.’” Fleischer v NYP Holdings, Inc., 104 AD3d 536, 538-39 (1st Dep’t 2013).

Moreover, Plaintiffs have failed to plead sufficiently a cause of action sounding in prima facie tort. In order to plead sufficiently a prima facie tort cause of action, the complaint must allege the following elements: “(1) intentional infliction of harm; (2) resulting in special damages; (3) without any excuse or justification; (4) by an act or acts otherwise lawful.” Berland v Chi, 142 AD3d 1121, 1123 (2016) (quoting Freihofer v Hearst Corp., 65 NY2d 135, 142-43 (1985); Diorio v Ossining Union Free School Dist., 96 AD3d 710, 712 (2012)).

Plaintiffs’ amended complaint and opposition papers fail to include any allegation of intentional infliction of harm. “[T]here is no recovery in prima facie tort unless malevolence is the sole motive for defendant’s otherwise lawful act ... unless defendant acts [with] ‘disinterested malevolence.’” Squire Records, Inc. v Vanguard Recording Soc., 25 AD2d 190 (1st Dep’t 1966); Morrison v Nat’l Broad. Co., 24 AD2d 284, 287 (1st Dep’t 1965) (citations omitted).

Furthermore, the amended complaint fails to allege “specific and measurable loss[es]” that warrant special damages. Del Vecchio v Nelson, 300 AD2d 277, 278 (2nd Dep’t 2002). More specifically, Plaintiffs “failed to allege special damages beyond the physical, psychological, or

financial [damages]...” Del Vecchio, 300 AD2d at 278; *see also Engel v CBS, Inc.*, 93 NY2d 195 (1999); *Burns Jackson Miller Summit & Spitzer v Lindner*, 59 NY2d 314 (1983); Levy v Coates, 286 AD2d 424 (2nd Dep’t 2001). Plaintiffs are merely alleging the existence of economic harm, which does not qualify as special damages. Thus, this Court will grant Defendants’ motion to dismiss Plaintiffs’ ninth cause of action.

Conclusion

Thus, for the reasons set forth herein, Defendants’ motion to dismiss Plaintiffs’ sixth and ninth causes of action is hereby granted. The Clerk is hereby directed to enter judgment dismissing Plaintiffs’ sixth and ninth causes of action only.



12/14/2021
DATE

ARTHUR ENGORON, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<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