

Farber Schneider Ferrari LLP v Slowik
2022 NY Slip Op 30094(U)
January 12, 2022
Supreme Court, New York County
Docket Number: Index No. 157630/2019
Judge: James E. d'Auguste
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES D'AUGUSTE PART 55
Justice

-----X **INDEX NO. 157630/2019**

FARBER SCHNEIDER FERRARI LLP, DANIEL SCHNEIDER, MICHAEL FARBER **MOTION DATE _____**

Plaintiffs, **MOTION SEQ. NO. 001/002**

- v -

DECISION + ORDER ON MOTION

CHRISTOPHER SLOWIK, STUART KLEIN, KLEIN SLOWIK PLLC,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 15, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 65, 68, 72, 73, 75, 76, 79, 80

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 69, 70, 71, 74, 77, 78

were read on this motion to/for DISMISS.

Plaintiffs Farber Schneider Ferrari LLP (FSF), Daniel Schneider and Michael Farber, seek to recover damages from defendants Christopher Slowik, Stuart Klein and Klein Slowik PLLC (KS). Plaintiffs have asserted causes of actions for defamation, sexual harassment and hostile work environment, tortious interference with contract, tortious interference with prospective economic relations, prima facie tort, negligent misrepresentation, injurious falsehood and abuse of process. Motion Sequence No. 001 is denied as moot and Motion Sequence No. 002 is granted to the extent set forth below.

Plaintiffs are attorneys and former employees with the KS law firm. They contend that they departed because of Slowik and Klein’s “gross mismanagement” of KS. Schneider and Farber opened their own firm, FSF, after leaving KS, and allege defendants engaged in a campaign of defamation with “false, salacious and highly offensive statements,” to one or more third parties, including current and former clients of FSF and KS, to prevent them working with or referring clients to FSF. Plaintiffs claim that no fewer than one current and/or former KS client, and one co-and/or opposing counsel disclosed to Farber and/or Schneider that Klein and Slowik were making defamatory statements and impugning their integrity, indicating the statements were of an egregious and actionable level. They assert a good faith belief that as a result of the foregoing by Klein and Slowik, certain KS clients that previously expressed an intent to give their legal work to FSF decided to stay with KS, believing defendants falsely maligned plaintiffs to these clients to effectuate such change of heart.

In Motion Sequence No. 001, defendants seek dismissal of plaintiffs’ complaint pursuant to CPLR 3012(b) and CPLR 3211(a)(7) asserting the allegations of the complaint fail to specify the time, place and manner of such allegedly false statements. Defendants contend plaintiffs filed this lawsuit merely in retaliation for defendants’ filing of a prior litigation against plaintiffs, and for the termination of their employment at KS. Defendants deny the allegedly salacious claims in plaintiffs’ complaint, arguing the work environment plaintiffs complained of at defendants’ law office were mischaracterized. The Court denies Motion Sequence No. 001 finding same moot in light of Motion Sequence No. 002, which seeks to dismiss the amended complaint.

The Court also denies that portion of Motion Sequence No. 002, which seeks to dismiss the defamation cause of action as against Klein, finding plaintiffs’ amended complaint sufficiently states this cause of action. For instance, the amended complaint asserts that on or

about August 12, 2018, Klein communicated with a client, Bronstein—who advised he would be taking his pending matter from KS and hiring FSF as his new attorneys—that Farber and Schneider “were not fit to serve clients, had committed ethical violations, cannot be trusted, and had to be fired.” At the pleading stage, the Court finds such alleged statements are sufficient to state a defamation cause of action, noting additional, more specific details, if any, may be further parsed out for a full record during discovery.

However, the Court grants the motion to dismiss the defamation cause of action as against Slowik, finding plaintiffs’ amended complaint does not sufficiently state this cause of action against him. While the amended complaint contends Slowik met with a client in August 2019, and blamed Farber and Schneider as the cause of KS’ alleged poor service to said client, no allegedly defamatory statements were attributed to Slowik by plaintiffs with any particularity.

Additionally, the Court grants dismissal of the defamation cause of action against KS as plaintiffs’ amended complaint fails to articulate any cognizable legal theory of liability under which defendant law firm is liable, for example vicarious liability, for the alleged intentional tort allegedly committed by one or both of its partners/owners.

Defendants’ motion to dismiss the cause of action alleging violations of the State and City Human Rights Laws for a hostile work environment is denied. The Court finds plaintiffs have articulated sufficient facts at this stage of the litigation to sustain their harassment claims, particularly under the standards set forth in the City Human Rights Law in which the individual plaintiffs asserted abuse and hostile work environment. For instance, plaintiffs allege Klein emailed Farber using pejorative words referring to people of Hispanic origin, to wit “wetback,” and Slowik’s inappropriate conduct manifested in “explosive emotional outbursts.” Additionally, the Court finds the pleadings adequately state such cause of action in light of Slowik’s conduct

of utilizing pornographic images into work product documents he edited for Farber or Schneider and emailed similar content. Further, the motion is denied as against KS, the corporate entity, as the individual defendants' conduct, as sole partners and owners of KS, may be imputed to the law firm as plaintiffs' employer who may be liable for the allegedly abusive and hostile conduct of its corporate officers.

The Court grants dismissal of plaintiffs' third cause of action alleging sexual harassment/hostile work environment as duplicative of their second cause of action, concluding sexual harassment is but one form of a hostile work environment allegedly violative of the Human Rights Law.

Defendants' motion to dismiss plaintiffs' asserted causes of action for tortious interference with contract and tortious interference with prospective economic relationship is granted. The Court finds plaintiffs fail to articulate with specificity any contracts or prospective economic relations with any third parties that resulted in a breach due to defendants' conduct. Plaintiffs' contentions of KS's clients indicating an intent to move their business to FSF and their "change of heart" in light of the allegedly defamatory statements made by defendants are conclusory and unsubstantiated. For instance, no retainer agreements, contracts or letters of intent to engage FSF are provided nor shown that were breached due to defendants' alleged conduct. Also, plaintiffs fail to articulate any causation or proffer actions by prospective clients that but for defendants' conduct caused said clients to forgo hiring FSF.

The Court grants dismissal of plaintiffs' prima facie tort cause of action as plaintiffs assert wholly conclusory and unsupported statements.

Plaintiffs additionally fail to adequately articulate a negligent misrepresentation cause of action, and the Court finds such claim duplicative of the first cause of action for defamation.

The Court dismisses plaintiffs’ cause of action for injurious falsehood as duplicative of the cause of action for defamation finding an “injurious falsehood” is essentially the very definition of defamation.

Finally, the Court also dismisses plaintiffs’ abuse of process cause of action finding that plaintiffs’ disagreement concerning the circumstances of their departure from KS does not constitute abuse of process. Additionally, to the extent that there is a cognizable legal claim pursuant to the faithless servant doctrine, as alleged by defendants in their previously commenced litigation against plaintiffs, in which the Court (Goetz, J) denied consolidation with the instant matter, that issue will be decided in that action.

This constitutes the decision and order of the Court.



1/12/2022

DATE

JAMES D'AUGUSTE, 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