

Rockaway HD LLC v Grunstein
2022 NY Slip Op 30652(U)
March 2, 2022
Supreme Court, New York County
Docket Number: Index No. 156204/2020
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART 12

Justice

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INDEX NO. 156204/2020

ROCKAWAY HD LLC,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

STEPHANIE GRUNSTEIN, AVANTUS UPPER
EAST SIDE DIALYSIS, CENTER, DR. OLUSEGUN
OGUNFOWORA,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15-25 were read on this motion to dismiss.

Defendant Avantus Upper East Side Dialysis Center (Avantus) moves pursuant to CPLR 3211(a)(7) for an order dismissing the complaint against it. Plaintiff opposes.

I. VERIFIED COMPLAINT (NYSCEF 1)

On November 19, 2018, plaintiff, a business entity which provides dialysis services, entered into an employment agreement with defendant Grunstein, whereby Grunstein was hired to work at plaintiff's office at 529 Beach 20th Street, Queens, New York. The agreement requires 90-day written notice for either party to terminate the agreement, and that Grunstein would not engage in, or become an employee of, any business in competition with plaintiff within a 10-mile radius of plaintiff's office.

On February 14, 2020, Grunstein terminated the employment agreement without giving plaintiff a 90-day notice, and was immediately hired by Avantus, an entity which also provides dialysis services. Plaintiff alleges that Avantus knew or should have known about its agreement

with Grunstein, that it improperly induced Grunstein to terminate her employment agreement, and that Grunstein is in violation of the termination notice and non-compete provision of the agreement. It advances causes of action for breach of contract, breach of the contractual covenant not to compete, and breach of the implied covenant of good faith and fair dealing against Grunstein, and causes of action for conspiracy, “intentional” and “malicious” interference with a contract, and “business intentionally interfered with” against Avantus. It also seeks punitive damages against both defendants.

II. CPLR 3211(a)(7)

“A party may move for judgment dismissing one or more causes of action asserted against [it] on the ground that . . . the pleading fails to state a cause of action . . .” (CPLR 3211[a][7]). When evaluating such a motion, the court must determine whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action.” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Thus, “the court must accept the facts as alleged in the complaint as true, according plaintiffs the benefit of every possible favorable inference . . .” (*JFK Holding Co., LLC v City of New York*, 68 AD3d 477 [1st Dept 2009] [internal quotation omitted]), although “conclusory allegations – claims consisting of bare legal conclusions with no factual specificity – are insufficient to survive a motion to dismiss.” (*Barnes v Hodge*, 118 AD3d 633 [1st Dept 2014]; *see also Jones v Voskresenskaya*, 125 AD3d 532, 534 [1st Dept 2015] [allegations that are “vague, speculative and unsupported by any facts” cannot sustain cause of action]).

On such a motion, the reviewing court is also required to “determine only whether the facts as alleged fit within any cognizable legal theory,” and “the [motion] must be denied unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and

unless it can be said that no significant dispute exists regarding it.” (*Butler v Magnet Sports & Entm’t Lounge, Inc.*, 135 AD3d 680, 680-81 [2d Dept 2016]).

III. CONTENTIONS

Avantus argues that plaintiff’s allegation that it induced Grunstein to breach her employment agreement is conclusory and unsupported by any facts, and that the causes of action for intentional interference with a business, conspiracy, and punitive damages are not recognized in New York. It asks that the court take judicial notice that its office is located at 321 East 62nd Street, New York, New York, which is located more than 15 miles “as the crow flies” and 22 miles by land transport from plaintiff’s office. In support, it attaches a copy of a web page listing Avantus’s office locations, and a copy of a webpage from freemaptools.com measuring the distance between plaintiff’s office and Avantus’s office. It thus argues that plaintiff’s non-compete agreement with Grunstein is inapplicable.

In opposition, plaintiff argues that as all factual allegations contained in the complaint must be considered true for the purposes of this motion, the court should reject Avantus’s assertion that its office is more than 10 miles from plaintiff’s office, and clarifies that all of its causes of action for interference constitute a claim for tortious interference with contract, for which it asserts that it has sufficiently pleaded the elements, as well as the related cause of action for civil conspiracy, and that a dismissal of its cause of action for punitive damages would be premature.

In reply, Avantus asserts that plaintiff’s cause of action for tortious interference with contract is insufficiently particular and lacks facts sufficient to support it or a related civil conspiracy claim. Additionally, it contends that the court may take judicial notice at any stage of litigation, including a motion to dismiss, and that doing so here advances the interest of judicial

economy.

IV. ANALYSIS

To state a claim for tortious interference with contract, the 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 NY2d 413, 424 [1996]).

As it is undisputed that plaintiff alleges the existence of a contract with Grunstein and that it sustained damages, at issue is whether plaintiff sufficiently alleges that Avantus knew of its employment agreement with Grunstein, and whether Avantus intentionally induced her to breach the agreement without justification. Absent factual allegations that Avantus engaged in specific conduct, plaintiff fails to sufficiently allege that it not only knew of the agreement but that it intended to induce a breach of it. (*Kimso Apartments, LLC v Rivera*, 180 AD3d 1033, 1035 [2d Dept 2020]; *31 Cornelia Properties Corp. v Lemma*, 136 AD3d 584, 585 [1st Dept 2016] [speculative and conclusory allegations insufficient to state claim for tortious interference]).

Plaintiff’s claims for civil conspiracy and punitive damages cannot survive absent an underlying tort claim. (*Wholey v Amgen*, 165 AD3d 458 [1st Dept 2018] [no independent cause of action for punitive damages]; *Mamoon v Dot Net Inc.*, 135 AD3d 656 [1st Dept 2016] [civil conspiracy not recognized as an independent tort in New York]). In light of this result, Avantus’s argument regarding its distance from the non-compete area need not be considered.

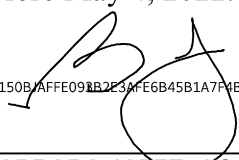
V. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant Avantus Upper East Side Dialysis Center’s motion to dismiss is granted, and the complaint is severed and dismissed as against it; it is further

ORDERED, that the clerk is directed to enter judgment accordingly; and it is further

ORDERED, that the remaining parties to this action are directed to submit a preliminary conference stipulation, by email to cpaszko@nycourts.gov, on or before May 4, 2022.

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BARBARA JAFFE, J.S.C.

3/2/2022
DATE

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