

Law Bucks, LLC v Monaco & Monaco, LLP
2022 NY Slip Op 32488(U)
July 25, 2022
Supreme Court, New York County
Docket Number: Index No. 654987/2017
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

LAW BUCKS, LLC,

Plaintiff,

- v -

MONACO & MONACO, LLP, MARC MUELLER AS
ADMINISTRATOR OF THE ESTATE OF THERESA GUSS,
and AIRMONT ASSOCIATES, LLC

Defendant.

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INDEX NO. 654987/2017

MOTION DATE 06/13/2022

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177

were read on this motion to/for DISMISSAL of COUNTERCLAIMS.

In this action, Plaintiff alleges three advances of money given on three separate dates to Theresa Guss (Guss), a plaintiff in a personal injury case, while she was represented by Monaco, a law firm. The underlying personal injury case was settled with the City of New York, but the funds have not yet been disbursed.

Monaco & Monaco and the Estate of Guss (Defendants) have filed an answer with three counterclaims.

PENDING MOTION

On June 6, 2022, Plaintiff moved to dismiss the counterclaims pursuant to CPLR §3211(a)(7) and for sanctions. The motion was fully briefed and on June 13, 2022, the motion was submitted and the court reserved decision.

The motion is granted to the extent of dismissing the first counterclaim for Tortious Interference with Business Relationship and otherwise denied.

DISCUSSION

Under CPLR 3211 §(a)(7) the relevant inquiry is whether the counterclaims state a valid cause of action on their face, giving the Defendants the benefit of every possible favorable inference. (*See Leon v Martinez*, 84 NY2d 83, 87-88 [1994].)

Tortious Interference with Business Relationship

In their first counterclaim against Plaintiff, Defendants allege that Plaintiff interfered in the relationship between Monaco & Monaco & Guss. Defendants base this cause of action on the fact that Plaintiff reached out to the City of New York in the underlying personal injury case, after the settlement was reached, but before the documents for the settlement had been executed, and notified the City that it was asserting a five million dollar security interest in the 2.1 million dollars of settlement funds.

Defendants allege this interfered with the execution of the settlement papers and transfer of the funds to Defendants for an accounting and disbursement. The counterclaim further asserts:

Law Bucks, LLC ... had a direct obligation or duty or an obligation or duty otherwise imposed by operation of law not to interfere with execution of the settlement and conclusion of the litigation in the underlying personal injury case to allow that case to be completed and for the funds to be "paid" to the attorney trust account where an accounting could be done to determine the net settlement after attorney disbursements, the attorney fees and the remaining client's share subject to the time sensitive priority Medicaid lien and resolution of any other alleged or purported liens on the client's share.

Law Bucks, LLC breached that duty or obligation by improperly contacting defense counsel in the underlying personal injury case prior to execution of the settlement and conclusion of the litigation and instead filed this lawsuit with knowledge that no settlement funds were "paid."

It is well settled that:

To prevail on a claim for tortious interference with 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. (*See 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].)

Amaranth LLC v. J.P. Morgan Chase & Co., 71 A.D.3d 40, 47 (2009).

The court finds that the counterclaim fails to assert the required elements of the cause of action. There is no allegation that Plaintiff prevented Monaco & Monaco from continuing its relationship with Guss, a relationship which continues to date with Guss' Estate (*Korn v Princz* 226 AD2d 278). The lack of this allegation alone is sufficient to grant dismissal of the cause of action. To the extent that Defendants argue in opposition that the relationship interfered with was between Monaco & Monaco and The City of New York, the court finds that neither the allegations in the counterclaim nor the facts in the case at bar support such argument.

Additionally, Plaintiff's conduct in reaching out to the City regarding its claim on the settlement funds was neither unlawful nor an independent tort [*See e.g. Law Offices of Ira H. Leibowitz v. Landmark Ventures, Inc.*, 131 A.D.3d 583, 586 (2nd Dept.) (*allegations that the plaintiff-attorney contacted a settling party to protect their attorney's fees after having been discharged as defendant's counsel, while arguably a violation of the disciplinary rules, does not constitute a crime or independent tort, for the purpose of establishing the elements of a tortious interference with business relations*); *Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 190, (2004) (*conduct which amounts to "normal economic self-interest" cannot be the basis of a tortious interference claim*)].

Based on the foregoing, the motion to dismiss the first counterclaim is granted.

Breach of Contract

Defendants argue that Plaintiff breached its contractual obligation not to interfere in the underlying personal injury suit in any way by reaching out to the City of New York regarding its claim prior to the execution of the settlement documents.

“The essential elements of a cause of action for breach of contract are the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of the contract, and resulting damages”. *Morpheus Capital Advisors LLC v. UBS AG*, 105 A.D.3d 145, 150 (1st Dept 2013).

The court finds in the case at bar that the counterclaim sufficiently pleads a claim for breach of contract. Plaintiff argues that Defendants can not state they had performed under the contract, however, as to date Defendants have not received the settlement funds, Plaintiff can not claim that they breached by failing to turn over funds they have yet to receive.

Notwithstanding the denial of the motion on this counterclaim, the court agrees with Plaintiff that the counterclaim does not assert the failure to go to arbitration as the breach alleged, and any such claim by Defendants has been waived at this point in the litigation. *See, e.g. Two Central Tower Food, Inc. v. Pelligrino*, 212 A.D.2d 441, 442 (1st Dept 1995) (*finding that the assertion of an answer with affirmative defenses may be perceived as an active participation and acceptance of litigation which waives the right to arbitrate*); and *Rusch Factors, Inc. v. Fairview Mfg. Co.*, 34 A.D.2d 635, 636 (1st Dept. 1970) (“*where, as here, respondent affirmatively seeks relief and counterclaims in the action, it effectively waived the agreement to arbitrate as does a plaintiff who commences an action ignoring the agreement to arbitrate*”).

Based on the foregoing, the motion to dismiss the counterclaim for breach of contract is denied.

Breach of Covenant of Good Faith and Fair Dealing

Defendants make the following assertion in support of this counterclaim:

In or about May 2017, Law Bucks, LLC became aware that Airmont Associates, LLC's alleged predecessor or alleged assignor on that purported funding agreement, which Law Bucks pleads the alleged predecessor as "Case Funding" and that purported agreement as the "Contingent Proceeds Purchase Agreement", was interested in accepting \$60,000.00 to resolve that purported funding agreement in full, yet Law Bucks, LLC through its employees/agents/attorneys directly either created Airmont Associates, LLC or notified Airmont's agent that that purported funding agreement was available for \$60,000.00 when Law Bucks, LLC was under a direct obligation or duty imposed by the covenant of good faith and fair dealing to disclose that settlement proposal to defendants first.

Law Bucks, LLC never disclosed that to defendants until after the alleged assignment which Airmont either in connection with Law Bucks or otherwise, immediately demanded over one million of dollars for the alleged \$60,000.00 purchase. Law Bucks, LLC's failure to disclose that to defendants and either create Airmont for that purpose or notify Airmont's agent of the offer are all an independent breach of the implied covenant of good faith and fair dealing.

Implicit in every contract is a covenant of good faith and fair dealing. *New York Univ. v. Continental Ins. Co.*, 87 N.Y.2d 308, 318 (1995). This covenant "is breached when a party to a contract acts in a manner that . . . would deprive the other party of the right to receive the benefits under their agreement." *Jaffe v Paramount Communs.*, 222 A.D.2d 17, 22 (1st Dept 1996). "For a complaint to state a cause of action alleging breach of an implied covenant of good faith and fair dealing, the plaintiff must allege facts which tend to show that the defendant sought to prevent performance of the contract, or to withhold its benefits from the plaintiff." *Aventine Inv. Mgmt., Inc. v. Canadian Imperial Bank of Commerce*, 265 A.D.2d 513, 514 (2d Dept 1999).

The court agrees with Plaintiff to some extent and does not find that a party that holds a second position lien and is aware that the first position lienholder would accept a certain amount for their lien has an implied obligation to notify the lienee. This is not an implied covenant in the

Funding Agreements or the Attorney Agreements and cannot be reasonably imputed from a review of the contracts.

However, Defendants also assert that Law Bucks formed Airmont for the specific improper purpose of purchasing Mr. Cerrato's purported contract for \$60,000 with the intent of immediately commencing either directly or in an alter ego capacity an action claiming a 5 million dollar security interest in the "unpaid funds" and by filing a CPLR §3213 motion in lieu of a complaint for 1 million dollars. Defendants argue that even if it is assumed that Law Bucks was entitled to form Airmont and buy Mr. Cerrato's purported contract for \$60,000, Law Bucks/Airmont could not properly immediately try to enforce it in a CPLR §3213 action for 1 million dollars. As it is alleged that Law Bucks/Airmont undertook this improper conduct, those allegations must be accepted as true for the purposes of the motion. Defendants contend that the proscription of Law Bucks/Airmont's improper conduct as reasonably alleged, is implied in the Law Bucks contract, and it is reasonably alleged and supported that Law Bucks/Airmont breached the implied covenant. Accordingly, defendants allege a sustainable cause of action for breach of the covenant of good faith and fair dealing, and Plaintiff's motion to dismiss this cause of action is denied.

Sanctions

The court does not find any sanctions are warranted.

Conclusion

WHEREFORE it is hereby

ORDERED that the motion to dismiss is granted to the extent of dismissing the first counterclaim and otherwise denied; and it is further

ORDERED that Plaintiff is directed to serve a reply to the counterclaims within 20 days after service of a copy of this order with notice of entry; and it is further

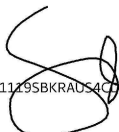
ORDERED that counsel are directed to appear for a virtual preliminary conference in on September 28, 2022, at 2 PM; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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7/25/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: