

Marra v First Access Entertainment LLC
2022 NY Slip Op 33259(U)
September 28, 2022
Supreme Court, New York County
Docket Number: Index No. 151624/2022
Judge: David B. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

-----X

INDEX NO. 151624/2022

JONATHAN MARRA,

Plaintiff,

MOTION SEQ. NO. 001

- v -

FIRST ACCESS ENTERTAINMENT LLC and FAE
VENTURES LLC,**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 28

were read on this motion to/for

DISMISS

In this tort action commenced by plaintiff pro se Jonathan Marra, defendant FAE Ventures LLC f/k/a First Access Entertainment LLC moves, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the complaint. Plaintiff opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff commenced this action by filing a summons and complaint on February 17, 2022. Doc. 1. In his amended complaint, filed February 25, 2022, the plaintiff alleged that the defendant, a talent management company, represented a fashion model who, in May 2018, had retained him to assist her in managing her media relations and website. Doc. 6 at par. 3. The plaintiff claimed that the defendant disparaged him and directed others working for the model to make false statements to him and, by doing so, "destroyed the business relationship between [he]

and [the model] and caused damage to [his] reputation.” Doc. 6 at pars. 14-15. The amended complaint contained causes of action for negligent misrepresentation, defamation per se, tortious interference with prospective economic advantage, and tortious interference with prospective business relations.¹ Doc. 6 at par. 17. The plaintiff also alleged that he was entitled to punitive damages. Id.

The defendant now moves to dismiss the complaint. Docs. 13-18. Specifically, the defendant argues that the amended complaint must be dismissed based on documentary evidence pursuant to CPLR 3211(a)(1) because the plaintiff acknowledged in a settlement agreement with the model, dated September 8, 2021, that his professional engagement with her was terminated and that he was “not entitled to, and shall not seek, any further compensation of any kind or nature in connection with [his] engagement [by the model]...” Doc. 18 at par. 2. The plaintiff also acknowledged that all of his claims against the model and her affiliated entities were “fully and finally settled, compromised and released.” Doc. 18 at 6.

Additionally, the defendant moves, pursuant to CPLR 3211(a)(7), to dismiss the plaintiff’s remaining claims for failure to state a cause of action. Doc. 14. In particular, he claims that: the plaintiff failed to plead his defamation claim with sufficient specificity; the tortious interference claims are duplicative of the defamation claim; and that he failed to state a claim for negligent misrepresentation. Doc. 14. Further, the defendant maintains that the plaintiff failed to establish his entitlement to punitive damages. Doc. 14.

In opposition, the plaintiff argues, in effect, that the settlement agreement does not bar his claim against the defendant. He further asserts that he has adequately pleaded claims for

¹ Although plaintiff also alleged “tortious negligent interference with prospective economic advantage” (Doc. 6 at par. 17), no such cause of action appears to exist.

negligent misrepresentation, defamation per se, tortious interference with prospective economic advantage, and tortious interference with prospective business relations. Doc. 20.

In reply, the defendant argues that the plaintiff improperly refers to external evidence to establish that the defendant was not intended to benefit from the settlement agreement. Doc. 28. The defendant further asserts that plaintiff fails to: state a claim for defamation; sufficiently plead malice for the purpose of establishing punitive damages; plead a claim for negligent misrepresentation; and plead a claim for tortious interference with business relations.²

LEGAL CONCLUSIONS

CPLR 3211(a)(1)

Where documentary evidence, such as a written agreement, utterly contradicts a plaintiff's factual claim, there is no presumption of truth or favorable inference accorded the plaintiff and the complaint must be dismissed (*See Scott v Bell Atl. Corp.*, 282 AD2d 180 [1st Dept 2001]; *see also Berger v Temple Beth-El of Great Neck*, 303 AD2d 346 [2d Dept 2003] [where defendant moves to dismiss pursuant to CPLR 3211 (a) (1), the documentary evidence must resolve all factual issues as a matter of law and conclusively dispose of plaintiff's claim]).

Here, the settlement agreement does not completely refute plaintiff's claims. The settlement agreement prevented the plaintiff from seeking any further compensation from the model or any of her affiliated entities. However, the defendant was neither a party to the settlement agreement nor was it listed in the said agreement as an affiliated entity of the model, which other entities were. Thus, the branch of the motion seeking dismissal pursuant to CPLR 3211(a)(1) is denied.

² A sur-reply was submitted by the plaintiff (Doc. 29) but it will not be considered in determining this motion since it was filed without court leave.

CPLR 3211(a)(7)

In considering a CPLR 3211 (a) (7) motion to dismiss, this Court must determine whether the pleading states a cause of action. “The motion must be denied if from the pleadings’ four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*Richbell Info. Servs. v Jupiter Partners*, 309 AD2d 288, 289 [1st Dept 2003], quoting *511 W. 232nd Owners Corp. v Jennifer Realty Corp.*, 98 NY2d 144, 151-152 [2002]). Plaintiffs’ pleadings are afforded a liberal construction, and the courts “accord plaintiffs the benefit of every possible favorable inference” (*Leon v Martinez*, 84 NY2d 83, 87 [1994]; see also *Nonnon v City of New York*, 9 NY3d 825, 827 [2007] [dismissal warranted only if pleading failed to allege facts that fit within any cognizable legal theory]). While factual allegations of a complaint are afforded a favorable inference, bare legal conclusions and inherently incredible facts are not entitled to preferential treatment (*Matter of Sud v Sud*, 211 AD2d 423, 424 [1st Dept 1995]).

Negligent Misrepresentation

It is well settled that “[a] claim for negligent misrepresentation requires the plaintiff to demonstrate (1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information” (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 180 [2011] [citations omitted]). Here, the only relationship referred to in the complaint is between the plaintiff and the model, not the plaintiff and the defendant. Additionally, there is no allegation that the plaintiff relied on any information provided by the defendant. Therefore, this claim is facially deficient.

Defamation Per Se

The plaintiff alleges, in effect, that the defendant defamed him in connection with his trade, business or profession. Since this is one of the four categories giving rise to liability for defamation per se, this would relieve the plaintiff from his burden of establishing special damages (*See Nolan v State of NY*, 158 AD3d 186, 195 [1st Dept 2018]). However, the plaintiff was nevertheless required to plead defamation with the required specificity, setting forth the particular words that were said, who said them and who heard them, when the speaker said them, and where the words were spoken (*See CPLR 3016 [a]; Vertical Sys. Analysis, Inc. v Balzano*, 171 AD3d 621 [1st Dept 2019]; *Dillon v. City of New York*, 261 AD2d 34, 37-38 [1st Dept 1999]). Since he failed to do so, this claim is dismissed.

Tortious Interference With Prospective Economic Advantage

The plaintiff has failed to properly plead tortious interference with prospective economic advantage since he does not allege "that the action complained of was motivated solely by malice or to inflict injury by unlawful means rather than by self-interest or other economic considerations" (*Matter of Entertainment Partners Group v Davis*, 198 AD2d 63, 64 [1st Dept 1993]; *see Advanced Global Tech., LLC v Sirius Satellite Radio, Inc.*, 44 AD3d 317, 318 [1st Dept 2007]).

Tortious Interference With Prospective Business Relations

Similarly, the plaintiff fails to state a claim for tortious interference with prospective business relations since he does not sufficiently allege that the defendant "acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort" such that it acted "for the sole purpose of inflicting intentional harm on plaintiff[]" (*Wolberg v IAI N. Am., Inc.*, 161 AD3d 468, 469 [1st Dept 2018] [citations omitted]).

Punitive Damages

Since each of the plaintiff's claims are dismissed, there is no cause of action upon which a demand for punitive damages can be grounded (*See Prote Contr. Co. v Bd. of Educ.*, 276 AD2d 309, 310 [1st Dept 2000]).

Accordingly, it is hereby:

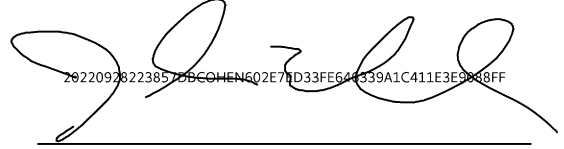
ORDERED that the branch of the motion by defendant FAE Ventures LLC f/k/a First Access Entertainment LLC seeking dismissal of the complaint of plaintiff Jonathan Marra pursuant to CPLR 3211(a)(1) is denied; and it is further

ORDERED that the branch of the motion by defendant FAE Ventures LLC f/k/a First Access Entertainment LLC seeking dismissal of the complaint of plaintiff Jonathan Marra pursuant to CPLR 3211(a)(7) is granted and the complaint is dismissed in its entirety against the said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the dismissal; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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).



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9/28/2022
DATE

DAVID B. 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