TPC Angels Landing DTLA, LLC v Claridge DTLA Assoc., LLC
2022 NY Slip Op 34115(U)
December 6, 2022
Supreme Court, New York County
Docket Number: Index No. 652567/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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TPC ANGELS LANDING DTLA, LLC, MACFARLANE DEVELOPMENT COMPANY, LLC

Plaintiffs,

- v -

CLARIDGE DTLA ASSOCIATES, LLC,

Defendant.

INDEX NO. 652567/2021

MOTION DATE 10/18/2022

MOTION SEQ. NO. 009

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 256, 257, 258, 260

were read on this motion to AMEND PLEADINGS.

Plaintiffs TPC Angels Landing DTLA, LLC and MacFarlane Development Company, LLC ("Plaintiffs") seek leave to file an Amended Complaint to add seven additional causes of action and to add Ricardo Pagan ("Pagan"), the founder and CEO of Defendant Claridge DTLA Associates, LLC ("Defendant"), as an individual defendant. For the following reasons, Plaintiffs' motion is **granted in part**.

CPLR 3025(b) provides that "[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court . . . ." "Motions for leave to amend should be freely granted, absent prejudice or surprise . . . unless the proposed amendment is palpably insufficient or patently devoid of merit" (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]). "A proposed amended complaint that would be subject to dismissal *as a matter of law* is, by definition, 'palpably insufficient or clearly devoid of merit' and thus should not be permitted under CPLR 3025"

(*Olam Corp. v Thayer*, 2021 NY Slip Op 30345[U], 3–4 [Sup Ct, NY County 2021]; *see also Scott v Bell Atl. Corp.*, 282 AD2d 180, 185 [1st Dept 2001], *affd as mod sub nom. Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314 [2002]). Further, Courts have held that prejudice "arises when a party incurs a change in position or is hindered in the preparation of its case or has been prevented from taking some measure in support of its position" (*Valdes v Marbrose Realty*, 289 AD2d 28, 29 [1st Dept 2001]; *Anoun v City of New York*, 85 AD3d 694, 694 [1st Dept 2011]).

Amended Claims Against Claridge

Claridge has not demonstrated that the amended allegations and claims against it in Counts One, Two, Three, Four, Seven, and Eight are palpably insufficient or patently devoid of merit. Nor has it demonstrated undue prejudice, particularly insofar as certain allegations are based on information produced by Claridge during discovery in this action. Of course, whether Plaintiffs can *prove* its allegations against Claridge is a question for another day.

However, Plaintiffs' proposed Sixth cause of action against Claridge for tortious interference with business relations is palpably insufficient and patently devoid of merit. "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" (*Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47 [1st Dept 2009]). Here, the only business relationship Plaintiffs allege Claridge interfered with is its business relationship with the City, to which Claridge was a party and which is the subject of Plaintiffs' breach of contract claims.

Furthermore, Plaintiffs provide no explanation as to how AL Partners' relationship with the City of Los Angeles was "disrupted" by Claridge, as AL Partners was awarded the Angels Landing Project which it continues to develop. Thus, Plaintiffs fail to adequately allege that Claridge's interference caused injury to its relationship with the City (*M.J. & K. Co., Inc. v Matthew Bender and Co., Inc.*, 220 AD2d 488, 490 [2d Dept 1995] ["Tortious interference with business relations 'applies to those situations where the third party would have entered into or extended a contractual relationship with plaintiff but for the intentional and wrongful acts of the defendant'"]).

Proposed Claims Against Pagan

The Court agrees with Pagan that Plaintiffs' proposed allegations are insufficient, as a matter of law, to warrant piercing the corporate veil to hold Pagan personally liable for Claridge's breach of contract and related claims. Plaintiffs' repeated allegations that Pagan "dominated" and "controlled" Claridge are not sufficient, on their own, to warrant holding Pagan liable for the claims asserted against Claridge. Plaintiffs fail to adequately allege that Claridge and Pagan abused the corporate form for improper purposes to harm third parties. Accordingly, Plaintiffs do not have leave, based on the allegations proposed, to amend by complaint by adding Pagan as a defendant in Counts One, Two, Three, Seven, and Eight.

Pagan can, however, be found responsible for his own individual fraudulent conduct (if any is so proven) in connection with his Claridge activities, even without piercing the corporate veil (*First Bank of Americas v Motor Car Funding, Inc.*, 257 AD2d 287, 294 [1st Dept 1999] ["[A] corporate officer may be held personally liable for committing fraud on the corporation's behalf"]). Accordingly, Plaintiffs have leave to assert its claim against Pagan in Count Four.

Plaintiffs' proposed claim against Pagan for tortious interference with contract (Count Five) is palpably insufficient and devoid of merit. "It is well established that only a stranger to a contract, such as a third party, can be liable for tortious interference with a contract" (*Bradbury v Israel*, 204 AD3d 563, 564 [1st Dept 2022]). In *Bradbury*, the First Department held, "[g]iven that Israel was the sole owner and operator of MiT, and MiT could only act upon Israel's direction, MiT was also not a stranger to the contract" (204 AD3d at 564). Based on the allegations Plaintiffs have advanced in this case, Pagan cannot be considered a stranger to the LLC Agreement.

Moreover, "[t]o establish a corporate officer's liability for inducing a breach of a contract between the corporation and a third party, the complaint 'must allege that the officers' . . . 'acts were taken outside the scope of their employment or that they personally profited from their acts'" (*Hoag v Chancellor, Inc.*, 246 AD2d 224, 228 [1st Dept 1998], quoting *Courageous Syndicate v People--to--People Sports Comm.*, 141 AD2d 599, 600 [2nd Dept 1988]). "[A] cause of action seeking to hold corporate officials personally responsible for the corporation's breach of contract is governed by an enhanced pleading standard" and, generally, "such a standard [] require[s] a particularized pleading of allegations that the acts of the defendant corporate officers which resulted in the tortious interference with contract either were beyond the scope of their employment or . . . were motivated by their personal gain, as distinguished from gain for the corporation" (*Petkanas v Kooyman*, 303 AD2d 303, 305 [1st Dept 2003] [construing "personal gain in terms that the challenged acts were undertaken 'with malice and were calculated to impair the plaintiff's business for the personal profit of the [individual] defendant' "] quoting *Joan Hansen & Co. v Everlast World's Boxing Headquarters Corp.*, 296 AD2d 103, 110 [1st Dept 2002]). Plaintiffs make no such allegations here.

Finally, the proposed sixth cause of action against Pagan for tortious interference with business relations is also without merit, because, as noted, Plaintiffs have not alleged sufficient conduct demonstrating injury to its relationship with the City (*Matthew Bender and Co.,* 220 AD2d at 490).

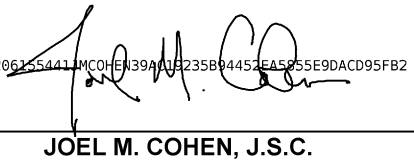
Accordingly, it is

ORDERED that Plaintiffs' motion to amend its complaint is **granted in part**, and Plaintiffs may assert their proposed first, second, third, fourth, seventh, and eighth claims against Claridge, and only the fourth proposed claim against Pagan; it is further

ORDERED that Plaintiffs shall file the Amended Complaint on NYSCEF within 5 business days of the date of this Order; it is further

ORDERED that Defendant shall serve an answer or otherwise respond to the Amended Complaint within 20 days from the date of said filing.

This constitutes the Decision and Order of the Court.



12/6/2022
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE