

<b>Malik v Malik</b>
2022 NY Slip Op 34229(U)
December 14, 2022
Supreme Court, New York County
Docket Number: Index No. 161065/2021
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. WILLIAM PERRY PART 23**

*Justice*

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GHAUS MALIK,

Plaintiff,

- v -

FARHAN MALIK, JOHN MALIK, ILIASSER ARIAS, WELLS  
FARGO CLEARING SERVICES, LLC D/B/A WELLS  
FARGO ADVISORS

Defendant.

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INDEX NO. 161065/2021

MOTION DATE 01/04/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 39, 40, 41, 42, 47

were read on this motion to/for STRIKE PLEADINGS.

In this action for fraud, defendants John Malik and Farhan Malik move for an order, pursuant to CPLR 3024 (b), to strike scandalous, irrelevant and prejudicial matter from plaintiff Ghaus Malik’s (Ghaus Malik) complaint. Based upon the foregoing, the court grants this motion.

In his complaint, Ghaus Malik alleges that he is close to 90 years old and was born poor in Pakistan. He immigrated to the United States approximately 46 years ago, and in or around November of 1991, Ghaus Malik purchased farmland in California for the purpose of growing and cultivating almonds. In about 1995, Ghaus Malik established the G. and P. Malik Family Partnership, a California Limited Partnership, and both he and his ex-wife Parveen Malik operated the farm as General Partners. In or around April of 2000, the partnership was converted into G & P Malik LLC, a California limited liability company. According to the allegations in the complaint, Ghaus Malik’s sons, defendant Farhan Malik and defendant John Malik “fraudulently transferred millions of dollars belonging to G & P Malik LLC to themselves

through a series of sham business transactions without any authority to do so” (NYSCEF Doc No. 19, verified complaint at 2). In 2018, when Ghaus Malik was 87, he sold the Almond Farm via asset-sale to a third-party purchaser for Seven Million Two-Hundred Thousand Dollars (\$7,200,000.00). The final installment payment for the purchase of the Almond Farm was made in or around April of 2021.

The gist of the alleged wrongdoing of Farhan Malik and John Malik is set forth in the complaint as follows:

“the Defendants embarked on a sinister campaign to fleece their father and take all of the proceeds of the anticipated Almond Farm Sale for themselves by (i) fraudulently concealing material information from Plaintiff Malik, G & P Malik’s sole Manager with full decision-making authority, so as to secure his signature on a multitude of questionable company documents; (ii) removing significant sums of the monies from the Company’s bank account without authority to do so; (iii) clandestinely forging documents and Plaintiff Malik’s signature in order to fabricate a sham “buyout” of Plaintiff from his own Company, such buyout for consideration never actually taking place (the “Fraudulent Buyout”); (iv) prior to Plaintiff Malik’s knowledge of the Fraudulent Buyout, manipulating their 87 year-old father into signing additional documents altering the structure of the Company in order to transfer it from California and set it up as a Delaware LLC; and then (v) calling a meeting of the Members of the newly structured LLC without notice to Plaintiff Malik, dissolving the Company, and directing the Company’s Wells Fargo Money Manager responsible for managing all of the Company’s assets - who also serves as the personal money manager for Defendant Farhan Malik– to transfer all of the Company’s moneys to Farhan and John Malik’s personal accounts and/or brokerage accounts with Wells Fargo”

(NYSCEF Doc No. 19, verified complaint at 3-4).

Farhan Malik and John Malik now move pursuant to CPLR 3024 (b), to strike language in paragraph 4 of the complaint that states that John Malik was attempting to extort money from his boss. In his affidavit in support of the motion, Farhan Malik avers that he is the son of Ghaus Malik and the brother of John Malik. He additionally states that paragraph 4 of the complaint in this action contains the false statement that: “... Upon information and belief, John Malik is also attempting to extort his former employer out of approximately \$2,500,000.” According to Farhan Malik, plaintiff will allege that Farhan Malik made this statement. It is Farhan Malik’s

contention that he never suggested that John Malik was extorting money from his previous employer, and that instead, he only made the statement that “J. Malik was suing his former employer for funds that J. Malik alleges were improperly taken from him and other partners” (NYSCEF Doc No. 21, Farhan Malik affidavit, ¶ 7). According to Farhan Malik, this statement concerning extortion is untrue and inflammatory, and unrelated to any cause of action in the lawsuit.

It is the movants contention that this statement is false and a mischaracterization of a statement made by Farhan to plaintiff. Movants further argue that the statement has no relevance to any of the allegations in the complaint. The statement pertains to John Malik’s conduct toward a third party, his former employer, and has nothing to do with John Malik’s relationship with G & P Malik LLC, the company at issue in this lawsuit.

In opposition, plaintiff argues that the statement concerning John Malik’s alleged extortion of his employer is relevant to the allegations in the complaint, because “they provide an example of Defendant John Malik’s history of fraudulent conduct and propensity to steal millions of dollars from others” (NYSCEF Doc No. 39, plaintiff memo in opp at 2). Ghaus Malik further argues that “the allegations in the contested sentence of the Complaint are important to describe the character and history of Defendant John Malik, which is entirely relevant to Plaintiff’s claim, as a cause of action for fraud requires scienter” (NYSCEF Doc No. 39, memo in opp at 6-7).

CPLR Sec. 3024 (b) permits a party to move to strike any scandalous or prejudicial matter unnecessarily inserted in the pleading. “Although the statute uses the word ‘unnecessarily,’ it is generally held that the test under this section is whether the allegation is relevant, in an evidentiary sense, to the controversy and, therefore, admissible at trial” (*Wegman*

*v Dairylea*, 50 AD2d 108, 111 [4th Dept 1975]). “A motion to strike scandalous or prejudicial material from a pleading will be denied if the allegations are relevant to a cause of action” (*New York City Health & Hosp. Corp. v St. Barnabas Community Health Plan*, 22 AD3d 391, 391 [1st Dept 2005] [citation omitted]; see also *Soumayah v Minnelli*, 41 AD3d 390, 392 [1st Dept 2007])[“In reviewing a motion pursuant to CPLR 3024 (b), the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action”]. “Scandalous matter may be stricken from a pleading regardless of whether it is prejudicial, and vice versa, but also if the matter contained in the pleading is unnecessary” (*Pisula v Roman Catholic Archdiocese of N.Y.*, 201 AD3d 88, 95 [2d Dept 2021]).

There are 11 causes of action in the complaint. The first sounds in fraud and deceit as against Farhan Malik and John Malik and alleges, in part, that these two defendants “manufactured documents and fabricated a ‘buy out’ of [Ghaus Malik] which he never reviewed nor signed, but which nevertheless purported to relinquish Plaintiff Malik’s 0.5% Membership Interest held by [Ghaus Malik] in the Company” (NYSCEF Doc No. 19, verified complaint, ¶ 124). As set forth above, the complaint alleges, among other things, that these two defendants held secret, coercive meetings, transferred company assets to themselves, removed money from plaintiff’s bank account without authority and forged signatures. The allegation that John Malik attempted to extort money from his “boss” is not probative of the fraud claim.


“In an action to recover damages for fraud, the plaintiff must prove a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury” (*Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 421 [1996]).

The allegation that John Malik attempted to extort money from his “boss,” whether true or not, does not serve to establish plaintiff’s fraud claim. It is not in any way relevant to the cause of action. Based on the party submissions, the court grants defendants’ motion to strike the aforementioned statement from the complaint, pursuant to CPLR 3024 (b). The court denies the portion of Farhan Malik and John Malik’s motion seeking an award of sanctions for frivolous conduct. Accordingly, it is

ORDERED that the motion for an order striking scandalous matter is granted in part, and plaintiff shall, within 10 days from service of a copy of this order with notice of entry, serve an amended complaint that shall not include the scandalous matter set forth in paragraph 4 of the verified complaint: “Upon information and belief, John Malik is also attempting to extort his former employer out of approximately \$2,500,000” which is stricken from the complaint; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days of service of such pleading; and it is further

ORDERED that the portion of defendants Farhan and John Malik’s motion seeking sanctions is denied.

<p><u>12/14/2022</u> DATE</p>		 <hr/> WILLIAM PERRY, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE