

**Finitive LLC v Pattelli**

2023 NY Slip Op 30664(U)

March 7, 2023

Supreme Court, New York County

Docket Number: Index No. 155024/2022

Judge: Barry Ostrager

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW  
YORK NEW YORK COUNTY**

**PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM**

*Justice*

-----X  
FINITIVE LLC and PRIVATE BROKERS LLC,

Plaintiffs,

- v -

BRADLEY G. PATTELLI, CLEANCAPITAL LLC, and  
CLEANCAPITAL HOLDINGS LLC,

Defendants.

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MOTION DATE	
MOTION SEQ. NO.	001

**DECISION + ORDER ON MOTION**

HON. BARRY R. OSTRAGER

The Court heard oral argument on March 7, 2023 via Microsoft Teams on the pre-Answer motion by defendants Bradley G. Pattelli (“Pattelli”), CleanCapital LLC (“CleanCapital”), and CleanCapital Holdings LLC (“Holdings”) to dismiss the First Amended Complaint filed by plaintiffs Finitive LLC (“Finitive”) and Private Brokers LLC (“PB”) (NYSCEF Doc. No. 26). The grounds for the motion under CPLR 3211(a) include lack of standing (subd. 3), Statute of Limitations (subd. 5), documentary evidence (subd. 1), and failure to state a cause of action (subd. 7). In accordance with the March 7, 2023 transcript of proceedings and as stated herein, the motion is granted in part and denied in part.

The dispute relates back to the March 6, 2017 Letter Agreement between Finitive and its affiliated broker dealer North Capital Private Securities Corporation (“NCPS”, later replaced by plaintiff PB), on the one hand, and non-party Tyndall Capital Pty Ltd (“Tyndall”) and its wholly owned subsidiary Marketlend Pty Ltd (“Marketlend”), on the other hand (“the Marketlend Agreement”, NYSCEF Doc. No. 34, later amended). Pursuant to the Marketlend Agreement, Tyndall and its affiliates retained Finitive and NCPS to act as its capital advisor and broker-

dealer, respectively, to introduce Tyndall to potential investors and provide related services. Finitive also had an agreement with CleanCapital, a clean energy investment platform, to assist it in raising capital. Finitive alleges it introduced defendant Pattelli to both CleanCapital and Marketlend. But the relationship soured and led to a FINRA Arbitration by plaintiffs against CleanCapital with a 2020 Award in plaintiffs' favor (NYSCEF Doc. No. 32) and this suit in which plaintiffs allege two causes of action: (1) that defendants tortiously interfered with the Marketlend Agreement; and (2) prima facie tort. Punitive damages are also requested.

The Court declines to dismiss the First Amended Complaint based on plaintiffs' alleged lack of standing. Plaintiff PB is an alleged assignee of NCPS, a party to the Marketlend Agreement with a claim for payment for its services. The fact that the assignment was only recently completed does not defeat standing as a matter of law at the pleading stage. Plaintiff Finitive was also a party to the Marketlend Agreement so would have standing to sue as well. Standing is an issue wholly distinct from the issue whether a cause of action lacks merit. Defendants have not established the affirmative defense of lack of standing to sue based on irrefutable documentary evidence at the pleading stage.

The Court declines to dismiss the First Cause of Action sounding in tortious interference with contract against CleanCapital and Holdings. Plaintiffs have adequately alleged, at the pleading stage, that CleanCapital (through Pattelli) persuaded Tyndall to breach the Marketlend Agreement by terminating the Agreement and replacing Finitive with GreensLedge. The fact that the Agreement was non-exclusive does not bar the claim as a matter of law, as plaintiffs have alleged that "but for" defendants' conduct, the Agreement would have continued. The claim arguably extends to CleanCapital Holdings as successor to CleanCapital LLC. Defendants have not met their burden of establishing their affirmative defense that the claim is time-barred.

However, defendants may raise the Statute of Limitations defense in their Answer and in a dispositive motion upon the completion of discovery.

Although the Court has declined to dismiss the First Cause of Action as against the two defendant entities, the Court grants dismissal of the tortious interference claim against defendant Bradley G. Pattelli, individually, without prejudice to an application to reinstate the claim should discovery reveal additional evidence. Plaintiffs have not alleged sufficient facts to state a claim that Pattelli acted maliciously, in his own self-interest, and/or for personal gain to withstand dismissal at this time. As a director of Marketlend, Pattelli had a duty to act on behalf of Marketlend and allegedly did so by terminating the purportedly ineffective Marketlend Agreement and replacing Finitive with GreensLedge. Nor have plaintiffs asserted a viable claim for liability based on Pattelli's purported disclosure of allegedly confidential information related to the FINRA Arbitration where, as here, no confidential information is even identified. In sum, plaintiffs' allegations do not satisfy the heightened pleading standard applicable for personal liability of a corporation's director.

The Court dismisses the Second Cause of Action sounding in prima facie tort. The First Amended Complaint does not plead facts approaching the requisite "intentional and malicious infliction of harm" causing special damages without excuse or justification by actions that would otherwise be unlawful. Nor does the Complaint adequately allege that "disinterested malevolence" was the sole motive for defendants' alleged misconduct. On the contrary, the profitability of the business venture is allegedly another motive for defendants' conduct.

The Court also dismisses plaintiffs' request for punitive damages. The conduct alleged in this commercial dispute between sophisticated parties does not rise to the requisite level of willful and wanton misconduct of an egregious nature.

The remaining defendants shall efile an Answer to the remaining claims within twenty (20) days of the date of this Decision and Order. Counsel shall thereafter meet and confer to prepare a Preliminary Conference Order using the form available on the Part 61 website with a Note of Issue deadline no later than twenty (20) months from the date of this Decision and Order. A Preliminary Conference is scheduled for May 17, 2023, at 11:00 a.m. Counsel shall efile the Proposed Preliminary Conference Order with a cover letter providing a dial-in number for the conference no later than May 1, 2023. If an acceptable Preliminary Conference Order is efiled, the Court will advise counsel that the May appearance is waived and will set a future date for a compliance conference. If counsel cannot agree on the terms of a Proposed Preliminary Conference Order, each side may efile a letter not exceeding two pages by May 1, 2023 outlining the areas of disagreement which will be discussed at the conference.

Counsel are urged to pursue mediation or other consensual resolution of this dispute.

Dated: March 7, 2023

  
 BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE