

Pirinate Consulting Group, LLC v Ianthus Capital Holdings, Inc.

2023 NY Slip Op 32458(U)

July 12, 2023

Supreme Court, New York County

Docket Number: Index No. 656694/2021

Judge: Verna L. Saunders

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

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

-----X INDEX NO. 656694/2021
PIRINATE CONSULTING GROUP, LLC, Plaintiff, MOTION SEQ. NO. 001

- v -

IANTHUS CAPITAL HOLDINGS, INC. and RANDY MASLOW,

Defendants.

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 16, 20, 21, 22, 23, 24, 25, 30, 31

were read on this motion to/for

DISMISS

Plaintiff brings an action against defendants iAnthus Capital Holdings, Inc. and Randy Maslow for breach of contract and tortious interference, respectively. Defendant Maslow moves to dismiss the complaint as against him (NYSCEF Doc. No. 7). Since the original motion, plaintiff has amended its complaint, and the court so-ordered the parties' stipulation that the original motion papers be applied to the amended complaint (NYSCEF Doc. No. 29, *Order*). For the reasons below, the court grants defendant Maslow's motion to dismiss.

The action arises out of a July 10, 2020, contract between plaintiff and iAnthus (NYSCEF Doc Nos. 18 ¶ 2, *amended complaint*; 27, *letter agreement*). Plaintiff and iAnthus agreed that plaintiff would provide iAnthus with professional advisory services relating to a "recapitalization transaction," the closing of a financial transaction in which iAnthus would transfer 97.5% of its shares to lenders (*id.* ¶¶ 2, 3, 14, 35). According to plaintiff, "the Contract could only be terminated, at the earliest, upon the closing of a financial transaction to which the Services relate" (NYSCEF Doc. No. 22, ¶ 3). The contract was amended on February 1, 2021, and it provided "that the Company may only terminate the Agreement after the Extended Term on sixty (60) days prior written notice to [plaintiff]" (NYSCEF Doc No. 28 at 3, *amendment*). Defendant iAnthus allegedly provided plaintiff with notice of termination of the contract in June 2021. According to plaintiff, because the termination occurred before the closing of the financial transaction ("recapitalization transaction"), this termination was premature and in violation of the contract's terms (*id.* ¶¶ 5, 9).

Plaintiff filed the summons and complaint in this action on November 24, 2021. In the third cause of action, plaintiff alleges that defendant Maslow, director, officer, and shareholder of iAnthus, induced the breach of contract by directing defendant iAnthus to terminate the contract and not performing his obligations under the contract (NYSCEF Doc No. 18 ¶¶ 39-62). Plaintiff alleges that defendant Maslow purposefully prevented plaintiff from obtaining regulatory approvals needed for iAnthus's recapitalization transaction by not updating a pending application for a retailer license in Massachusetts, failing to attend a vital regulatory approval

process meeting in Florida, and challenging the lenders' right of extension in the Supreme Court of Ontario. Defendant Maslow allegedly misrepresented to the iAnthus Board of Directors that plaintiff was responsible for upsetting business in an attempt to shift blame away from himself. Plaintiff speculates that defendant Maslow was attempting to prevent the recapitalization transaction from closing because he would lose ownership interest and his control in iAnthus, his position as President and CEO, and all of his options in iAnthus. In lieu of an answer, defendant Maslow moves to dismiss the third cause of action, and thus, the complaint as against him, pursuant to CPLR 3211(a)(7).

Defendant Maslow argues plaintiff has not pleaded a cause of action that meets all the elements for tortious interference. The elements of a tortious interference cause of action are: "a valid contract between plaintiff and another, the defendant's knowledge of the contract and intentional procurement of its breach without justification, and damages resulting therefrom" (*Nostalgic Partners, LLC v New York Yankees Partnership*, 205 AD3d 426, 428 [1st Dept 2022]). Defendant Maslow specifically argues the element of intentional procurement of the breach of contract has not been met.

Plaintiff opposes the motion, stating it has pleaded a successful cause of action for tortious interference. In support, plaintiff has provided a copy of the contracts which were signed by defendant Maslow on behalf of iAnthus (NYSCEF Doc Nos. 5 and 6). Additionally, plaintiff alleges damages by way of fees for its services according to the contract, the fee from proceeds if the recapitalization transaction had closed, and attorneys' fees (NYSCEF Doc. No. 18 at 10). As previously stated, plaintiff alleges that defendant Maslow intentionally procured the breach of contract without justification by not updating a pending application for a retailer license in Massachusetts, failing to attend a vital regulatory approval process meeting in Florida, challenging the lenders' right of extension in the Supreme Court of Ontario, misrepresenting to the iAnthus Board of Directors that plaintiff was responsible for upsetting business, and attempting to prevent the recapitalization transaction from closing.

Defendant Maslow argues that plaintiff has not met the heightened pleading standard for a cause of action for tortious interference with contract asserted against an officer or director of the company (NYSCEF Doc No. 31 at 4, *memorandum in further support*). Courts have held that officers or directors of a corporation are not personally liable on a theory of inducing a breach of contract "merely due to the fact that, while acting for the corporation, he has made decisions and taken steps that resulted in the corporation's promise being broken" (*Joan Hansen & Co. v Everlast World's Boxing Headquarters Corp.*, 296 AD2d 103, 109 [1st Dept 2002], quoting, *Matter of Brookside Mills, Inc. [Raybrook Textile Corp.]*, 276 App Div 357, 367 [1st Dept, 1950]). Courts have warned that to hold otherwise would be a dangerous doctrine continually subjecting officers and directors to liability (*id.*).

Since defendant Maslow is a director and officer of iAnthus, he argues he is not personally liable as he was acting for the corporation. In rebuttal to plaintiff's assertions that his actions rise to the level of intentional procurement of the breach of contract, defendant Maslow points out that iAnthus, not defendant Maslow, litigated the issue of the right of extension in the Supreme Court of Ontario (NYSCEF Doc No. 31 at 6). Defendant Maslow also argues that plaintiff "fails to allege how Maslow 'misrepresented [plaintiff]'s work to the iAnthus Board of

Directors,' [and] fails to identify any details of [defendant] Maslow's alleged refusal to cooperate in furtherance of the contract" (*id.* at 7). Defendant Maslow asserts that the remainder of plaintiff's claims, such as his failure to update the pending application for a retailer license in Massachusetts or attend the vital regulatory approval process meeting in Florida, are conclusory and merely suspicious (*id.* at 6-7). He argues that he was merely acting for the corporation; thus, his actions do not rise to the level of tortious interference.

Furthermore, defendant Maslow states that his purported interest in preventing the recapitalization transaction from closing is irrelevant to plaintiff's claim, because it does not show defendant Maslow's personal interest in terminating the contract at issue (NYSCEF Doc No. 31 at 6). Defendant Maslow argues that his alleged personal efforts to prevent the closing of the recapitalization transaction are separate from the breach of contract. Plaintiff alleges that interference with the recapitalization transaction is further evidence of procuring the breach of contract, because the purpose of the contract was for plaintiff to provide services related to the recapitalization transaction.

"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" (*Ashby v ALM Media, LLC*, 110 AD3d 459, 459 [1st Dept 2013], quoting, *Koret, Inc. v Christian Dior, S.A.*, 161 AD2d 156, 157, [1st Dept.1990]). Furthermore, an executive of a company cannot be liable for tortious interference because they are not a stranger to the contract (*id.*). Here, since defendant Maslow is an executive of the company, the court finds that defendant Maslow cannot be liable for tortious interference.

The court's role on a motion to dismiss is to "assum[e] the truth of the facts alleged" and determine whether the complaint states the elements of the cause of action (*1199 Hous. Corp. v International Fid. Ins. Co.*, 14 AD3d 383, 384 [1st Dept 2005]; quoting, *P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 375 [1st Dept 2003]). The Court is 'to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (*id.*, quoting, *P.T. Bank Central Asia v ABN AMRO Bank*, 301 AD2d at 375). Even assuming the truth of the facts alleged, the court finds that plaintiff has unsuccessfully pleaded a cause of action for tortious interference since defendant Maslow is an executive of the company. For the reasons stated, the court finds that plaintiff has not alleged the elements for tortious interference and grants defendant Maslow's motion to dismiss the complaint. Accordingly, it is hereby

ORDERED that the motion of defendant RANDY MASLOW to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against 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 the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for the moving party shall serve a copy of this order with notice of entry upon all parties, as well as upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; 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)].

July 12, 2023



HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE