

Ehrlich v Cedar Grove Capital, Inc.

2024 NY Slip Op 30995(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 152321/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO **PART** **33M**

Justice

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INDEX NO. 152321/2023

ZACHARY EHRLICH, NEUE URBAN LLC

MOTION DATE 04/19/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

CEDAR GROVE CAPITAL, INC., AARON GORIN,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after oral argument which took place on October 17, 2023 with Noam Besdin, Esq. appearing for Defendant Aaron Gorin (“Gorin”), no attorney appearing for Plaintiffs Zachary Ehrlich (“Ehrlich”) and Neue Urban LLC (“Neue”) (together “Plaintiffs”) and Defendant Cedar Grove Capital Inc. also failing to appear, Gorin’s unopposed motion for an Order dismissing Plaintiffs’ Complaint in its entirety and for sanctions pursuant to 22 NYYCRR 130-1.1, is granted in part and denied in part.

I. Background

On March 12, 2023 Plaintiffs brought the instant action against Defendants asserting tortious interference with contract and defamation (NYSCEF Doc. 6). Plaintiffs contended that they were attempting to purchase a property at 408 Myrtle Avenue (“408 Myrtle”) (NYSCEF Doc. 6 at ¶ 15). Plaintiffs further claim that Lima One Capital (“Lima One”) had contracted to provide a loan to assist Ehrlich in the purchase of 408 Myrtle (NYSCEF Doc. 6 at ¶ 17).

Prior to the commencement of this action, on December 23, 2022 Defendants filed an action against Plaintiffs for breach of fiduciary duty, equitable accounting, books and records inspection, and breach of contract (NYSCEF Doc. 7) (the “Initial Complaint”).

Plaintiffs allege that on January 10, 2023, Lima One informed Ehrlich that it would not move forward with the loan (NYSCEF Doc. 6 at ¶ 18). Plaintiffs contend that Lima One withdrew from their alleged agreement with Plaintiffs because Gorin forwarded Lima One a copy of the Initial Complaint (NYSCEF Doc. 6 at ¶ 19).

On April 18, 2023, Defendant Gorin brought the instant motion to dismiss Plaintiffs’ Complaint pursuant to CPLR 3211(a)(1) and (7), and for sanctions against Plaintiffs pursuant to 22 NYCRR 130-1.1 (NYSCEF Doc. 4).

II. Discussion

Pursuant to CPLR 3211(a)(7), “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that ...the pleading fails to state a cause of action....” In considering a motion pursuant to CPLR 3211(a)(7) to dismiss a complaint for failure to state a cause of action, “the court must give the pleading a liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference” (*J.P. Morgan Sec. Inc. v Vigilant Ins. Co.* 21 NY3d 324, 334 [2013]). “[T]he sole criterion is whether the pleading states a cause of action, and therefore if from its four corners factual allegations are discerned which if taken together can manifest any cause of action, a motion for dismissal must fail” (*Kusher v King* 126 AD2d 446, 467 [1st Dept 1987]).

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a. Plaintiffs' Cause of Action for Tortious Interference with Contract is Dismissed for Failure to State a Claim

It is well settled that “[t]o state a claim for tortious interference with contract, a plaintiff must allege (1) the existence of a valid contract, (2) the defendant’s knowledge of that contract, (3) the defendant’s intentional procuring of the breach of that contract, and (4) damages” (*111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC*, 220 AD3d 435, 436 [1st Dept 2023]). The First Department has held that “[f]ailure to plead in nonconclusory language facts establishing all the elements of a wrongful and intentional interference in the contractual relationship requires dismissal of the action” (*Bonanni v Straight Arrow Publishers, Inc.*, 133 AD2d 585, 587 [1st Dept 1987]). Further, the First Department has held that a complaint fails to state a cause of action for tortious interference with contract where the complaint “fails to identify the particular provision of the contract allegedly breached” (*Little Rest Twelve, Inc. v Zajic*, 137 AD3d 540, 541 [1st Dept 2016]).

Here, Plaintiffs satisfy the first pleading requirement by alleging that “Plaintiff was in agreement with a funding company, Lima One Capital, to secure financing for 408 Myrtle” pursuant to a “valid contract” (NYSCEF Doc. 6 at ¶¶ 15, 27). However, while Plaintiffs plead that Defendants “intentionally induced the...third-parties to breach their agreements with Plaintiffs,” Plaintiffs fail to plead any facts in support of their conclusory allegation that Defendants “had actual knowledge” of the contracts allegedly breached (NYSCEF Doc. 6 at 28). Accordingly, Plaintiffs’ cause of action for tortious interference with contract is dismissed for failure to state a claim.

b. Plaintiffs' Cause of Action for Defamation is Dismissed

To state a cause of action for defamation “a plaintiff must show: (1) a false statement that is (2) published to a third party (3) without privilege or authorization, and that (4) causes harm,

unless the statement is one of the types of publications actionable regardless of harm” (*Stepanov v Dow Jones & Co., Inc.* 120 AD3d 28, 34 [1st Dept 2014]). Further, “[t]here is a deep-rooted, long standing public policy in favor of a person’s right to make statements during the court of court proceedings without penalty.... This legal principle is also found in cases where a party claims it was defamed in court or court documents” (*Denson v Donald J. Trump for President, Inc.*, 180 AD3d 446, 454 [1st Dept 2020]).

The First Department has held that a cause of action for defamation should be dismissed where the pleadings fail to plead the exact defamatory language (*see Kelly v CBS, Inc.* 59 AD2d 686, 687 [1st Dept 1977] holding that a cause of action sounding in defamation “must fail for its lack of pleading the exact language”). Further, a plaintiff fails to state a claim for defamation where the complaint does not set forth the “exact words complained of and the time, place and manner of the purported defamation” (*Offor v Mercy Med. Ctr.*, 171 AD3d 502, 503 [1st Dept 2019]). Here, Plaintiffs’ Complaint fails to identify any specific words that it alleged were defamatory, or the time, place and manner in which such statements were made.

In light of the foregoing, Plaintiffs’ cause of action for Defamation is dismissed for failure to state a cause of action.

c. Defendants’ Motion for Sanctions on Plaintiffs and Their Attorneys for Frivolous Conduct is Denied

22 NYCRR 130-1.1 permits this Court, in its discretion, to impose sanctions and attorneys’ fees on a party who engages in frivolous conduct. Here, the Court finds that the conduct of Plaintiffs was not so devoid of legal or factual basis to warrant the imposition of sanctions pursuant to 22 NYCRR 130-1.1. Accordingly, Defendant Gorin’s motion for sanctions is denied.

Accordingly, it is hereby,

ORDERED that Defendant Aaron Gorin's motion to dismiss Plaintiffs Zachary Ehrlich and Nueu Urban LLC's Complaint in its entirety, is granted; and it is further

ORDERED that Defendant Aaron Gorin's motion for sanctions pursuant to 22 NYYCRR 130-1.1 is denied; and it is further

ORDERED that within 10 days of entry, counsel for Defendant Aaron Gorin shall serve a copy of this Decision and Order, with notice of entry, on Plaintiffs and the Clerk of the Court; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

3/26/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE