

Kaya v McKeever

2024 NY Slip Op 32937(U)

August 12, 2024

Supreme Court, New York County

Docket Number: Index No. 656518/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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AYDIN KAYA,

Plaintiff,

- v -

IAN MCKEEVER, COLM MCKEEVER, ABDERRAHIM BENRIALA

Defendant.

-----X

INDEX NO. 656518/2023
MOTION DATE 01/31/2024
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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

were read on this motion to/for DISMISSAL.

The instant action arises out of alleged breach and subsequent tortious interference with a lease agreement between plaintiff and defendant Ian McKeever. Defendants, Colm McKeever and Abderrahim Benriala, move to dismiss the second and third causes of action, pursuant to CPLR § 321 l(a)(l), (7). Plaintiff opposes the instant motion. For the reasons set forth below, the motion to dismiss is granted.

Background and Allegations

Plaintiff and defendant Ian McKeever executed a lease agreement in June 2019. The agreement provided that plaintiff would have exclusive use of a license plate for a two-year period in exchange for a total of \$100,000.00 to be paid in ten monthly installments.

Plaintiff alleges that after the first three months of the agreement, when \$40,000.00 had been paid, the pandemic ensued and he was unable to utilize the license plate. Defendant Ian McKeever used the license plate, in violation of the lease agreement. To date, plaintiff has not received the license plate back, nor the amounts paid to defendant Ian McKeever.

Plaintiff further alleges that Ian McKeever transferred the license plate to his brother Colm McKeever who then transferred it to defendant Benriala, to prevent plaintiff from reaping the benefits of the underlying lease agreement.

Applicable Law

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. “The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.” *Id.*

Under CPLR § 3211(a)(1) documentary evidence provides a basis for dismissing a cause of action “where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” *Goshen v Mutual Life Ins. Co. of NY*, 98 NY2d 314, 326 [2002].

Second Cause of Action: Tortious Interference with Prospective Economic Relations

To assert a claim for tortious interference with prospective economic relations the complaint must allege that: “(a) the plaintiff had business relations with a third party; (b) the defendant interfered with those business relations; (c) the defendant acted with the sole purpose of harming the plaintiff or by using unlawful means; and (d) there was resulting injury to the business relationship” (*Thome v Alexander & Louisa Calder Found.*, 70 AD3d 88, 108 [1st Dept

2009)). The First Department has held that these claims fail when plaintiff does not identify any specific customers it would have obtained if not for defendant's conduct (*Learning Annex Holdings, LLC v Gittelman*, 48 AD3d 211, 211 [1st Dept 2008]).

Here, the Court finds that after a liberal reading of the complaint and assuming all allegations are true as required in the instant motion, plaintiff has not pled sufficient facts to establish this cause of action as against Colm McKeever. Specifically, the Court finds that the complaint is devoid of specific allegations that plaintiff had a business relationship with a third-party that was directly harmed by defendant Colm McKeever's alleged conduct. Moreover, the complaint is devoid of any factual allegations of Colm's interfering conduct whether unlawful or for the sole purpose of harming the plaintiff. Accordingly, plaintiff's second cause of action as against defendant Colm McKeever is dismissed.

Third Cause of Action: Tortious Interference with Contract

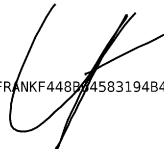
The elements of tortious interference with a contract are: "(1) the existence of a contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional inducement of the third party to breach or otherwise render performance impossible; and (4) damages to plaintiff" (*Nero v Fiore*, 165 AD3d 823, 825 [2d Dept 2018]).

Here, the Court finds that the complaint is insufficient to state a cause of action for tortious interference with contract. The complaint is devoid of any allegations that any third party breached a contract with plaintiff as a direct result of defendant Benrialala's inducement. While the complaint does allege wrongful conduct by defendant Benrialala, the complaint is silent as to the conduct alleged be the cause of the third-party's breach. Accordingly, the third cause of action is dismissed¹. It is hereby

¹ As the Court dismisses the second and third causes of action against the moving defendants pursuant to CPLR 3211 (a)(7), the Court does not reach the defendants' arguments regarding documentary evidence.

ORDERED that the second cause of action is dismissed as to defendant Colm McKeever only; and it is further

ORDERED that the third cause of action is dismissed as to defendant Abderrahim Benriala.

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8/12/2024
DATE

LYLE E. FRANK, J.S.C.

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