

**See Vee Lee v Digital Solutions HD LLC**

2024 NY Slip Op 32978(U)

August 15, 2024

Supreme Court, Kings County

Docket Number: Index No. 502683/2024

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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SEE VEE LEE, ANOTHONY WILLIAMS, HAO XIAN  
KUANG, SPICE ISLE INDUSTRIES, Q & M FRUITS,  
and STUFF BY DEMI,

Plaintiffs, Decision and order

- against -

Index No. 502683/2024

DIGITAL SOLUTIONS HD LLC, JERMAINE H. KERR,  
DANNY LUO, SELENA MCLEOD, BANK OF AMERICA,  
and M&T BANK,

Defendants, August 15, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The defendant M&T Bank has moved pursuant to CPLR §3211 seeking to dismiss of the complaint for the failure to allege any causes of action. The plaintiff opposes the motion. Papers were submitted by the parties and arguments were held. After reviewing all the arguments this court now makes the following determination.

According to the verified complaint the plaintiffs Lee, Williams and Kuang hired defendant Jermaine Kerr the owner of defendant Digital Solutions HD LLC to secure lines of credit for them. The verified complaint alleges that Kerr in collusion with bank employees, defendants Mcleod and Luo, falsified the applications to secure advantageous lines of credit on behalf of defendants. The lines of credit were approved and funds were distributed to all three plaintiffs. The plaintiffs assert they were unaware of the payment terms, cannot meet the payment terms and paid Kerr significant commissions which has further

deteriorated their business fortunes. This lawsuit was commenced and the verified complaint alleges causes of action against Kerr for fraudulent inducement, fraud and unjust enrichment.

Concerning the banks and bank employees the verified complaint alleges causes of action for negligence and respondeat superior and negligent hiring and retention. M&T Bank has now moved seeking to dismiss those causes of action on the grounds they fail to allege any claims. As noted the motion is opposed.

#### Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Perez v. Y & M Transportation Corporation, 219 AD3d 1449, 196 NYS3d 145 [2d Dept., 2023]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (Archival Inc., v. 177 Realty Corp., 220 AD3d 909, 198 NYS2d 567 [2d Dept., 2023]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Lam v. Weiss, 219 AD3d 713, 195 NYS3d 488 [2d Dept., 2023]).

"Generally, an employer will be held liable for torts committed by an employee who is acting within the scope of his or her employment under a theory of respondeat superior" (Eckart v. City of White Plains, 87 AD3d 1049, 930 NYS2d 22 [2d Dept., 2011]). Moreover, an employer can be vicariously liable for the intentional torts of an employee "so long as the tortious conduct is generally foreseeable and a natural incident of the employment (Judith M. v. Sisters of Charity Hospital, 93 NY2d 932, 693 NYS2d 67 [1999]).

In this case the verified complaint does not allege any misconduct committed by Mcleod at all. The verified complaint asserts that plaintiff Williams appeared at the M & T Bank in Staten Island wherein he thought he was going to open an account and was never informed he would be signing documents to secure a line of credit. The verified complaint asserts that "Mcleod induced him into signing certain documents, in an effort to procure a line of credit" (see, Verified Complaint, ¶66 [NYSCEF Doc. No. 1]). However, surely Williams had an obligation to review the documents he was executing. Indeed, it is well settled that a party that signs a contract is generally presumed to know the contents of the contract and to have assented to its terms (Nerey v. Greenpoint Mortgage Funding Inc., 144 AD3d 646, 40 NYS3d 510 [2d Dept., 2016]). Moreover, there is no specific allegation of any wrongdoing at all against Mcleod. Likewise,

concerning the lines of credit extended to Kuang by Mcleod and to Lee by an unidentified female, again, there are no specific acts of wrongdoing alleged against Mcleod at all.

In order to allege any claims for negligent hiring or retention or respondeat superior there must be allegations of wrongdoing, as noted. As explained, there is no allegation Mcleod committed any wrongdoing. The conclusory allegation that she engaged in "collusion" with Kerr (see, Verified Complaint, ¶87 [NYSCEF Doc. No. 1]) without any supporting facts at all is wholly insufficient to support these claims.

Therefore, based on the foregoing, the motion of M & T Bank seeking to dismiss the complaint asserted against it is granted in its entirety.

So ordered.

ENTER:

DATED: August 15, 2024  
Brooklyn N.Y.

Hon. Leon Ruchelsman  
JSC

