Hamilton Acquisition Holdings LLC v Cloverhill Group LLC
2024 NY Slip Op 33518(U)
September 23, 2024
Supreme Court, New York County
Docket Number: Index No. 654101/2022
Judge: Emily Morales-Minerva
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PRESENT: **HON. EMILY MORALES-MINERVA** *Justice* **PART** **42M**

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HAMILTON ACQUISITION HOLDINGS LLC, POL OPERATOR LLC,

Plaintiffs,

- v -

CLOVERHILL GROUP LLC, CHURCHILL REAL ESTATE HOLDINGS LLC, EDWARD WASSERMAN, TRAVIS MASTERS, PATCH FUNDING LLC, CLOVERHILL FUNDING LLC

Defendants.

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INDEX NO. 654101/2022

MOTION DATE 11/30/2023

MOTION SEQ. NO. 009

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 97, 98, 99, 100, 101, 102, 103, 108, 111, 112, 113, 114

were read on this motion to/for DISMISS.

APPEARANCES:

Law Offices of David C. Berg, New York, New York (David C. Berg, Esq., of counsel) for plaintiffs.

Davidoff, Hutcher & Citron LLP, New York, New York (Joshua S. Krakowsky, Esq., of counsel) for defendants.

HON. EMILY MORALES-MINERVA:

In this action alleging tortious interference with a contract, defendants CLOVERHILL GROUP LLC, CHURCHILL REAL ESTATE HOLDINGS LLC, EDWARD WASSERMAN, and TRAVIS MASTERS move, pre-answer, to dismiss plaintiffs' HAMILTON ACQUISITION HOLDINGS LLC and POL OPERATOR LLC ("plaintiffs") amended complaint pursuant to CPLR § 3211 (a)(3) and (a)(7). Plaintiffs oppose the motion.

For the reasons set forth below, the motion to dismiss (seq. no. 009) is granted, in part, to the extent of dismissing the complaint against defendants WASSERMAN and MASTERS; dismissing the unjust enrichment cause of action against defendants CLOVERHILL GROUP and CHURCHILL; and is otherwise denied.

BACKGROUND

The contract at issue is an asset purchase agreement, executed on or about March 09, 2021, between Patch of Land, Inc. ("Patch, Inc.), a loan origination company, and plaintiffs HAMILTON ACQUISITION HOLDINGS LLC and POL OPERATOR LLC (plaintiffs), engaging in real estate related businesses (see NY St Cts Elec Filing [NYSCEF] Doc. No. 88, Amended Complaint, at ¶ 11-12).

Among other things, the subject asset purchase agreement contained an exclusivity provision. The provision provides:

> "[Patch, Inc.] shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. [Patch] shall immediately cease and cause to

> be terminated and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, 'Acquisition Proposal' means any inquiry, proposal or offer from any person relating to the direct or indirect disposition, whether by sale, merger, or otherwise, of all or any portion of the Business or Purchased Assets"

(NYSCEF Doc. No. 007, APA, at ¶ 4.18[a]).

The subject asset purchase agreement also provided that Patch, Inc. -- as seller -- would transfer certain assets of said loan origination company, to plaintiffs -- as buyers -- for the price of $14,000,000.00.

Four million was due at the deal's closing, scheduled for the first week of July 2021 (see id. at ¶ 37). Plaintiffs assert they were ready, willing, and able to close on the deal (see NYSCEF Doc. No. 88, Amended Complaint, at ¶ 71). However, the closing never happened.

Instead, on July 12, 2021, Patch, Inc., executed a term sheet, outlining a proposal for defendant CLOVERHILL GROUP LLC ("Cloverhill Group") -- a private equity investment group -- to purchase the assets from Patch, Inc. as listed for sale in the asset purchase agreement with plaintiffs (see id. at ¶ 51). Patch, Inc. then sold those assets to CLOVERHILL GROUP, on July 26, 2021 (see id. at ¶ 55).

Plaintiffs then commenced this action against defendant CLOVERHILL GROUP, alleging that CLOVERHILL GROUP tortiously interfered with their asset purchase agreement.[1] Defendant CLOVERHILL GROUP filed a pre-answer motion (seq. no. 005)[2] to dismiss the complaint, pursuant to CPLR § 3211(a)(1) and (a)(7). Among other things, CLOVERHILL GROUP alleged plaintiffs sued the wrong party since non-party Cloverhill *Funding*, LLC, a newly formed entity, ultimately closed on the subject transaction (emphasis added). Plaintiffs opposed the motion.

The court (N. Bannon, J.S.C.) denied CLOVERHILL GROUP's motion to dismiss in its entirety, reasoning that Cloverhill *Funding*, LLC's signing of the subject purchase agreement did not "utterly refute[] plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (see Decision and Order, dated July 5, 2023). The court further held that the complaint sufficiently stated a cause of action against CLOVERHILL GROUP (see id.).

Following a motion to extend the deadline to answer (seq. no. 007), CLOVERHILL GROUP filed their answer on September 21, 2023, and asserted sixteen affirmative defenses (see NYCEF Doc.

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[1] Specifically, plaintiffs allege that CLOVERHILL GROUP "intentionally and tortiously interfered with plaintiffs' right under the APA by obstructing the timely closing of plaintiffs' acquisition of Patch, [and] usurping the substantial value of plaintiffs' investments of time and resources through an expedited transaction . . . But for [CLOVERHILL GROUP's] tortious interference with the APA, plaintiffs and Patch would have closed the transaction on the terms agreed to in the fully executed APA, and plaintiffs would have acquired the Purchased Assets" (NYSCEF Doc. No. 002, Complaint).
[2] Motion sequences 001, 002, 003, 004 and 006 were motions to seal certain documents.

No. 85, Answer). The Court (N. Bannon, J.S.C.), at some point later, granted plaintiffs permission to amend their complaint (see NYSCEF Doc. No. 88, Amended Complaint).

The amended complaint named the initial parties and commenced the instant action against three additional defendants -- (1) CHURCHILL REAL ESTATE HOLDINGS LLC ("Churchill Holdings"), (2) EDWARD WASSERMAN ("Wasserman"), and (3) TRAVIS MASTERS ("Masters") -- and against two nominal defendants, PATCH FUNDING LLC ("Patch Funding") and CLOVERHILL FUNDING LLC ("Cloverhill Funding").

The amended complaint asserts causes of action sounding in tortious interference with a contract and unjust enrichment against defendants CHURCHILL HOLDINGS, CLOVERHILL GROUP, WASSERMAN, and MASTERS (see id.).

Plaintiffs allege that CHURCHILL HOLDINGS is their competitor and that CHURCHILL HOLDINGS had a "business relationship" with Patch, Inc., which existed prior to the subject asset purchase agreement. Plaintiffs further allege that CHURCHILL HOLDINGS took advantage of this relationship, engaging CLOVERHILL GROUP in a scheme whereby CHURCHILL HOLDING acquired Patch, Inc.'s assets to plaintiffs' detriment.

According to plaintiffs, as part of a deviant plot, CLOVERHILL GROUP formed CLOVERHILL FUNDING and PATCH FUNDING (see id. at ¶ 7). CHURCHHILL HOLDINGS then used CLOVERHILL

GROUP to make a competing offer to Patch, Inc.; to obtain confidential, proprietary information about the terms of Patch, Inc.'s asset purchase agreement with plaintiffs; and to learn of and offer specific incentives to Patch, Inc. for purposes of persuading the loan origination company to breach the exclusivity provisions of said agreement (see id. at ¶ 5, 6, 9).

Plaintiffs further allege that, because of such interference, PATCH, INC., accepted CLOVERHILL GROUP's offer and closed on the transaction through nominal defendant CLOVERHILL FUNDING and PATCH FUNDING. It is undisputed that, once CLOVERHILL GROUP purchased the assets, it sold them to CHURCHILL HOLDINGS (see id. at ¶ 9, 63).

In response to the amended complaint and these allegations, defendants CLOVERHILL GROUP, CHURCHILL HOLDINGS, WASSERMAN, and MASTERS filed the instant pre-answer motion to dismiss (seq. no. 009).[3] Plaintiffs submit written opposition, and the court held

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[3] Though this is the second motion to dismiss filed in the instant matter, the instant motion (seq. no. 009) is proper given the amended complaint names three additional defendants who were not parties to the original complaint; the amended complaint contains a cause of action for unjust enrichment not pled in the original complaint; and the amended complaint contains entirely new allegations that potentially trigger the application of an affirmative defense not previously available to the defendants on the allegations contained in the original complaint (see Chanice v Fed. Exp. Corp., 118 AD3d 634 [1st Dept 2014][holding: law of the case doctrine did not preclude defendant's motion to dismiss where motion court that had previously granted plaintiff's leave to amend complaint did not consider defendant's opposition given it was not a party to the case at the time]; see also Upfront Megatainment, Inc. v Thiam, 215 AD3d 576 [1st Dept 2023][holding: law of the case doctrine does not preclude a claim or allegations asserted in the amended complaint but not the original complaint]).

oral arguments on the motion.

PRELIMINARY MATTERS

Standing

Defendants' argument that plaintiffs lack standing is without merit, as it is undisputed that plaintiffs are parties to the subject asset purchase agreement (see NYSCEF Doc. No. 007, asset purchase agreement; see also NYSCEF Doc. No. 88, Amended Complaint). Defendants are cautioned against making future baseless arguments to the court.

Withdrawal Against Wasserman and Masters

Plaintiffs are no longer pursuing their tortious interference claim against individual defendants WASSERMAN and MASTERS (see NYSCEF Doc. No. 108, memorandum of law in opposition to motion to dismiss, at p 6). Accordingly, the tortious interference cause of action shall be dismissed against these two defendants, as withdrawn.

Next, the court shall address defendants' motion, pursuant to CPLR § 3211 (a)(7), for an order dismissing the tortious interference claims against defendants CHURCHILL HOLDINGS, and CLOVERHILL GROUP.

ANALYSIS

"On a CPLR § 3211 (a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true" (Alden Glob. Value Recovery Master Fund, L.P. v KeyBank Nat'l Ass'n, 159 AD3d 618, 621 [1st Dept 2018]; 219 Broadway Corp. v Alexander's, Inc., 46 NY2d 506 [1979]). Further, on such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff (see Leon v Martinez, 84 NY2d 83, 87 [1994]). "Whatever an ultimate trial may disclose as to the truth of the allegations, on such a motion, a court is to take them as true and resolve all inferences which reasonably flow therefrom in favor of the pleader" (Sander v Winship, 57 NY2d 391, 394 [1982] [emphasis added]).

To assert a claim for tortious interference with a contract, plaintiffs must allege "[1] the existence of a valid contract between the plaintiff and a third party, [2] defendant's knowledge of that contract, [3] defendant's intentional procurement of the third-party's breach of the contract without justification, [4] actual breach of the contract, and [5] damages resulting therefrom" (Globalx, Inc. v. Hogwarts Cap., LLC, 226 AD3d 535, 537 [1st 2024], quoting MUFG

Union Bank, N.A. v Axos Bank, 196 AD3d 442, 444-445 [1st Dept 2021], lv dismissed 38 NY3d 996 [2022]).

Further, plaintiffs must specifically allege that the contract would not have been breached but for the defendant's conduct (see Grocery Leasing Corp. v. P&C Merrick Realty Co., 197 A.D.3d 628, 629 [2nd Dept 2021] [quotations and citations omitted]; see also Burrowes v Combs, 25 AD3d 370, 373 [1st Dept 2006]). In addition, "'persuasion to breach alone, as by an offer of better terms,' is sufficient to constitute procurement of a breach of contract" (Nostalgic Partners, LLC v. New York Yankees P'ship, 205 AD3d 426, 429 [1st Dept 2022], quoting Guard-Life Corp. v Parker Hardware Mfg. Corp., 50 NY2d 183, 194 [1980]; but see Cantor Fitzgerald Assocs., L.P. v Tradition N. Am., Inc., 299 AD2d 204 [1st Dept 2002])

"[A]s a matter of public policy, courts are called upon to strike a balance between two valued interests: protection of enforceable contracts, which lends stability and predictability to parties' dealings, and promotion of free and robust competition in the marketplace" (White Plains Coat & Apron Co. v Cintas Corp., 8 NY3d 422, 427 [2007] [Judith Kaye, Ch. J.]). "Protecting existing contractual relationships does not negate a competitor's right to solicit business, where liability is limited to *improper* inducement of a third party to breach its contract" (id., citing Guard-Life Corp. v S. Parker Hardware

Mfg. Corp., 50 NY2d 183, 200 [1980] [Cooke, Ch. J., dissenting in part] [providing "the wrongfulness of the act of the interferer need not rise above 'intentional interference, without justification,' with the contractual rights of another, with knowledge of the contract"]).

"A competitor's ultimate liability will depend on a showing that the inducement exceeded 'a minimum level of ethical behavior in the marketplace'" (White Plains Coat & Apron, 8 NY3d at 533]).

Applying these principals -- and construing the amended complaint liberally, drawing all reasonable inferences in favor of plaintiffs -- the court denies the motion to dismiss plaintiffs' claim for tortious interference.

Plaintiffs allege the existence of a valid contract: the asset purchase agreement between them and Patch, Inc., which contained an exclusivity provision (see NYSCEF Doc. No. 88, Amended Complaint, at ¶ 36, 38, 70, 81). Plaintiffs further allege that CHURCHILL HOLDINGS and CLOVERHILL GROUP knew of said contract and that -- armed with that knowledge -- CHURCHILL HOLDINGS and Travis Masters, managing partner of CHURCHILL HOLDINGS, approached, and set up a meeting with the CEO of Patch, Inc. to negotiate purchasing the same assets (see NYSCEF Doc. No. 88, Amended Complaint, at ¶ 43, 72, 83). There, Patch,

Inc. directly informed CHURCHILL HOLDINGS of its exclusivity on the matter and rejected the negotiations (see id. at ¶43).

Next, plaintiffs allege that undeterred CHURCHILL HOLDINGS enlisted defendant CLOVERHILL GROUP to submit two letters of intent to Patch, Inc., offering a better deal than plaintiffs' asset purchase agreement. In addition, plaintiffs assert that defendants' second letter to Patch, Inc., contained something extra -- a promise of a "$1,000,000.00 payment if the deal closed" (see NYSCEF Doc. No. 88, Amended Complaint, at ¶ 46, 51, 54, 73). Contemporaneous with the second letter to Patch, Inc., CHURCHILL HOLDINGS allegedly encouraged CLOVERHILL GROUP to negotiate the assumption of certain debts for Patch, Inc. (see id. at ¶ 52).

Plaintiffs amended complaint also sufficiently pleads actual breach of the subject asset purchase agreement, and damages resulting therefrom. Plaintiffs allege that "Patch ultimately signed a term sheet with [defendant] Cloverhill [GROUP] on July 12, 2021, to sell the very same assets that were slated for sale to Plaintiffs under the APA" (see NYSCEF Doc. No. 88, Amended Complaint, at ¶ 55, 59). As to damages, plaintiffs allege that they expended considerable time, money, and resources to secure their contract with Patch, which they lost when Patch, Inc. entered the contract with defendants (see id. at ¶ 30 - 35).

CLOVERHILL GROUP and CHURCHILL HOLDINGS contrary contention that "plaintiffs' tortious interference claims are insufficient as a matter of law" are unpersuasive. These defendants allege that the breach of the subject exclusivity provision occurred when Patch, Inc. met with CHURCHILL HOLDINGS and MASTERS, prior to its selling of its assets (see id. at p 11-12).

Plaintiffs counter that Patch, Inc. rejected the offer at that meeting, asserting exclusivity, and therefore did not breach the asset purchase agreement at that time (see NYSCEF Doc. No. 003, APA at section 4.18[a]). According to plaintiffs, Patch, Inc. breached the contract when it agreed to sell its assets following CHURCHHILL HOLDINGS increased incentives (see NYSCEF Doc. No. 88, Amended Complaint, at ¶ 52, 53, 54, 73, 77, 84).

These allegations -- which the court is bound to accept as true on a motion to dismiss -- indicate that "but for" defendants' enhanced offer to Patch, Inc., Patch, Inc. would not have breached its contract with plaintiffs (see Grocery Leasing Corp., 197 AD3d at 628).

The court next considers defendants' argument that the cause of action must be dismissed based upon their affirmative defense of economic interest.

A party raising an economic interest defense to a claim of tortious interference with an existing contract must show that

"it acted to protect its own legal or financial stake in the breaching party's business" White Plains Coat & Apron Co., 8 NY3d at 426; Foster v Churchill, 87 NY2d 744 [1996]; UMG Recordings, Inc. v Escape Media Group, Inc., 37 Misc3d 208 [Sup Ct, NY County 2013]). However, "a party acting in its own direct interest, rather than to protect its stake in the breaching party, may not raise the economic interest defense" (UMG Recordings, Inc., 37 Misc3d at 224 citing Wells Fargo Bank, N.A. v ADF Operating Corp., 50 AD3d 280, 281 [1st Dept 2008]).

Here, it is not evident on the face of plaintiffs' amended complaint whether the economic interest defense is applicable (see Audax Credit Opportunities Offshore Ltd. V TMK Hawk Parent, Corp., 72 Misc3d 1218[A] [Sup Ct, NY County 2021] [stating courts routinely dismiss tortious interference claims at the pleading state if it is evident on the complaint's face that the doctrine applies] citing Johnson v Cestone, 162 AD3d 526 [1st Dept 2018]; see Rather v CBS Corp., 68 AD3d 49 [1st Dept 2009]).

Further, there is no showing that defendants CLOVERHILL GROUP and CHURCHILL HOLDINGS have a qualifying interest in Patch Inc.'s business (see White Plains Coat & Apron, Co., 8 NY3d at 426 [holding: "the defense has been applied where defendants were significant stockholders in the breaching party's business; where defendant and breaching party had a parent-subsidiary relationship; where defendant was breaching party's creditor;

and where defendant had managerial contract with breaching party"]). There is also no showing that these defendants acted to protect their purported stake in Patch, Inc.

Unjust Enrichment

On a cause of action for unjust enrichment, "a plaintiff must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (Mandarin Trading Ltd. V Wildenstein, 16 NY3d 173, 182 [2011] [internal citations omitted]). "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi-contract for events rising out of the same subject matter" Clark-Fitzpatrick, Inc. v Long Island R. Co., 70 NY2d 382 [1987]. Courts have consistently held that the "existence of an express contract governing the subject matter of [plaintiff's claim] . . . bars any quasi-contractual claims against a third-party non-signatory to the valid and enforceable contract" 22 Gramercy Park, LLC v Michael Haverland Architect, P.C., 170 AD3d 535 [1st Dept 2019]; Kordower-Zetlin v Home Depot USA., Inc., 134 AD3d 556 [1st Dept 2015]; Randall's Island Aquatic Leisure, LLC v City of New York, 92 AD3d 463 [1st Dept 2012]; Bellino Schwartz

Padob Adv. V Solaris Mktg. Group, 222 AD2d 313 [1st Dept 1995]). Put simply, when a contract covers a subject, a party to the contract may not bring claims on that subject in quasi-contract against a non-party (see Hildene Capital Mgmt., LLC v Bank of New York Mellon, 2015 NY Slip Op 30002[U] [Sup Ct, NY County 2015]).

Here, the unjust enrichment claim must be dismissed because the subject matter of the claim is governed by plaintiffs' asset purchase agreement with Patch, Inc. Likewise, plaintiffs cannot recover for unjust enrichment against defendants, even though defendants are not parties to the subject purchase agreement (see Vitale v Steinberg, 307 AD2d 107, 111 [1st Dept 2003] [holding: "the existence of the plan agreement, an express contract governing the subject matter of plaintiff's claims, also bars the unjust enrichment cause of action as against the individual defendants, notwithstanding the fact that they were not signatories to that agreement"]; see also One Step Up, Ltd. V Webster Bus. Credit Corp., 87 AD3d 1 [1st Dept 2011].

Accordingly, it is

ORDERED that the motion (seq. no. 009) of defendants CLOVERHILL GROUP LLC, CHURCHILL REAL ESTATE HOLDINGS LLC, EDWARD WASSERMAN, and TRAVIS MASTERS, is granted, in part, and the tortious interference of a contract cause of action is dismissed as against defendants WASSMERN and MASTERS; the unjust

enrichment cause of cause of action is dismissed in its entirety; and the motion is denied, in all remaining parts; it is further

ORDERED that defendants shall file an answer to the amended complaint within thirty days of proper service of a copy of this order; and it is further

ORDERED that this matter is scheduled for a virtual Status Conference on November 18, 2024, at 11:00 A.M.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

9/23/2024
DATE

EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	☐ CASE DISPOSED		X NON-FINAL DISPOSITION		
	☐ GRANTED	☐ DENIED	X GRANTED IN PART	☐ OTHER	
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN		☐ FIDUCIARY APPOINTMENT	☐ REFERENCE	