

Long Is. Raceway LLC v 40 Daniel St. LLC
2024 NY Slip Op 35593(U)
June 20, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 606618/2023
Judge: Frank A. Tinari
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY

INDEX No. 606618/2023

PRESENT:**HON. FRANK A. TINARI**

JUSTICE OF THE SUPREME COURT

MOTION DATE: 12/01/2023

MOTION SEQ 002 - MOTD

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LONG ISLAND RACEWAY LLC

Plaintiff,

PLAINTIFF'S ATTORNEY:

TURTURRO LAW, P.C.

1361 N Railroad Ave.

Staten Island, New York 10306

-against-

40 DANIEL STREET LLC and
FUSION AUTO FINANCE LLC**DEFENDANT'S ATTORNEY:**

BOND, SCHOENECK & KING, PLLC

225 Old Country Road

Melville, NY 11747

Defendants.
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Upon the foregoing papers, it is

ORDERED that the defendants' motion pursuant to CPLR 3211(a)(1) and (a)(7) for partial dismissal of the complaint is granted with respect to the plaintiff's fourth and fifth causes of action, and denied with respect to the plaintiff's first and second causes of action.

Plaintiff commenced this action by the filing of a summons with notice on or about March 15, 2023. Defendants filed a demand for a complaint on or about August 7, 2023. Plaintiff filed its complaint on or about October 30, 2023. Defendants move for dismissal of the first, second, fourth, and fifth causes of action set out in the complaint. The first claim is for breach of contract against defendant, 40 Daniel Street LLC (40 Daniel). The second claim is for a declaratory judgment against 40 Daniel. The fourth claim is an aiding and abetting claim against defendant, Fusion Auto Finance LLC (Fusion). The fifth claim is for tortious interference against Fusion.

The plaintiff Long Island Raceway LLC commenced this action in response to a sublease entered into with CMB Wireless Group LLC (CMB Wireless) in 2013. The sublease was for premises occupied by the plaintiff and located at 40 Daniel Street, Farmingdale, New York 11735. The sublease contains two renewal options available to the tenant. Each option was for a period of five years, and in the event of a sale of the building, CMB Wireless could terminate the

plaintiff's lease renewal options by giving proper notice. Defendant, 40 Daniel, purchased the premises from CMB Wireless in February of 2021. This action commenced after the plaintiff received a Termination Notice in the mail from 40 Daniel.

Defendants argue that Plaintiff's claims for breach of contract and declaratory judgment against 40 Daniel must be dismissed on the grounds that Section 39.02 of the Lease is unambiguous and is a matter of law for this Court to decide. Defendants argue that the Lease explicitly states that in the event of a sale of the premises to a new landlord, the new landlord has the right to terminate the tenant's renewal options by furnishing notice to the tenant. Defendants argue that this language is unambiguous so as to give the new landlord this right. Defendants further argue that the plaintiff, in sending a rejection letter after receiving notice of termination, failed to timely exercise its renewal options under the lease.

Defendants also argue that plaintiff has produced merely speculative allegations in its claim of tortious interference. Defendants argue that plaintiff has failed to put forth any allegations demonstrating that Fusion intentionally induced 40 Daniel to breach its Lease. Furthermore, defendants argue that the tortious interference claim must be dismissed because Fusion is an agent of 40 Daniel. Defendants argue that only a third party to the contract may be implicated in a tortious interference claim. Since Fusion is an agent of 40 Daniel, Defendants argue that Fusion is a party to the contract and therefore cannot be sued for tortious interference. Defendants cite the doctrine of judicial estoppel to support this argument, stating that the plaintiff has previously asserted that Fusion is an agent of 40 Daniel in a case where judgment was entered in plaintiff's favor.

As for the plaintiff's aiding and abetting claim, defendants argue that plaintiff has failed to plead with specificity the tortious act upon which the claim is founded. Defendants argue that the plaintiff vaguely asserts a cause of action against Fusion for aiding and abetting by "attempting to evict and/or dispossess, or undermine Plaintiff's right to quietly enjoy, use and occupy the Premises." Additionally, Defendants argue that even if the plaintiff has sufficiently pleaded the aiding and abetting claim, Fusion is not liable because it is an agent of 40 Daniel and therefore cannot aid and abet itself.

On a motion to dismiss for failure to state a claim under CPLR Rule 3211, the Court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972, 974 (1994). The interpretation of an unambiguous contract is a matter for the court. *Las Palmeras De Ossining Rest., Inc. v. Midway Ctr. Corp.*, 2013 NY Slip Op 4580, 107 A.D.3d 854, 968 N.Y.S.2d 529 (App. Div. 2nd Dept.). In interpreting the provisions of a lease agreement, the Court should refrain from rewriting the lease under the guise of construction, should not construe the language of the lease in such a way as would distort its meaning, and should not construe the language in a manner that would render one or more of its provisions meaningless. *Poughkeepsie Sav. Bank F.S.B. v. G.M.S.Y. Assocs.*, 238 A.D.2d 327, 656 N.Y.S.2d 917 (App. Div. 2nd Dept. 1997).

Further, a question of fact is presented where intent of the parties must be determined by disputed evidence or inferences outside the written words of the instrument. *Gallagher v. Long*

Island Plastic Surgical Grp., P.C., 2014 NY Slip Op 204, 113 A.D.3d 652, 978 N.Y.S.2d 334 (App. Div. 2nd Dept.). Ultimately, the proper aim of the Court is to arrive at a construction which will give fair meaning to all of the language employed by the parties, and to reach a practical interpretation of the expressions of the parties to the end that there be a realization of their reasonable expectations. *Tantleff v. Truscelli*, 110 A.D.2d 240, 493 N.Y.S.2d 979 (2nd Dep't. 1985).

Under the doctrine of judicial estoppel, a party may not take a position in a legal proceeding that is contrary to a position he or she took in a prior proceeding, simply because his or her interests have changed. *Bihn v. Connelly*, 162 A.D.3d 626, 628 (2d Dept. 2018). Further, the doctrine applies only where the party secures a judgment in his or her favor in the prior proceeding.

Only a third party, can be liable for tortious interference with a contract. *Ashby v. ALM Media, LLC*, 110 A.D.3d 459 (1st Dept. 2013); *Koret, Inc. v. Chrisitan Dior, S.A.*, 161 A.D.2d 156, 157 (1st Dept. 1990). Further, an agent cannot be held liable for inducing his or her principal to breach a contract with a third person when the agent is acting on behalf of the principal and within the scope of the agent's authority. *Lutz v. Caracappa*, 35 A.D.3d 673, 674 (2d Dept. 2006). Additionally, a plaintiff must support his claim with more than mere speculation to avoid dismissal of a tortious interference with contract claim. *Ferrandino & Son, Inc. v. Wheaton Builders, Inc., LLC*, 82 A.D.3d 1035, 1036 (2d Dept. 2011).

As for claims of aiding and abetting, there is no cause of action for aiding and abetting a breach of contract. *Markowitz v. Friedman*, 144 A.D.3d 993, 996 (2d Dept. 2016). Viable claims for the recovery of damages for the aiding and abetting of any tort rest upon allegations of fact constituting the elements of the existence of the underlying tort, knowledge thereof by the aider and abettor, and substantial assistance by the aider and abettor in the achievement of the tortious act. *IDX Capital, LLC v Phoenix Partners Group*, 83 AD3d 569, 922 NYS2d 304 (1st Dept 2011).

Here, this Court finds that the defendants have failed to submit sufficient evidence to warrant dismissal of the plaintiff's first and second causes of action. The plain meaning of Section 39.02 of the Lease indicates that it was intended to apply to the original landlord in the event that the building was sold. Yet, the defendants interpret the words of this section to apply to subsequent landlords after the sale of the building. Therefore, the defendants' interpretation of Section 39.02 seemingly contradicts the plain meaning of the Lease which, at the very least, indicates that there is an issue of fact as to the intent of both parties. Furthermore, in an effort to arrive at a construction which will give fair meaning to all of the language employed by the parties, this Court finds that an interpretation of Section 39.02 giving subsequent landlords the right to terminate the tenant's renewal option would contradict earlier sections of the Lease, specifically where the original parties to the Lease are referred to as "the Landlord" and "the Tenant." Hence, competing interpretations of Section 39.02 present issues of fact as to the intent of the parties. Thus, the defendants' motion to dismiss the first and second causes of action is denied.

With respect to the plaintiff's fourth cause of action claiming aiding and abetting against Fusion, this Court finds that the plaintiff has failed to provide a sufficient basis for this claim. The plaintiff argues that Fusion aided or abetted 40 Daniel in committing a tortious act, but fails to specify what the tortious act is. If the tortious act is assumed to be tortious interference with contract, then the plaintiff's claim is contradictory since 40 Daniel is a party to the contract and therefore could not have tortiously interfered with it. Furthermore, the aiding and abetting claim cannot be based on Fusion's alleged attempts to interfere with the plaintiff's right to quietly enjoy, use and occupy the premises since there is no cause of action for aiding and abetting a breach of contract. Therefore, the defendant's motion to dismiss the fourth cause of action is granted.

With respect to the plaintiff's fifth cause of action claiming tortious interference with contract against Fusion, this Court finds that the plaintiff has failed to provide a sufficient basis for this claim. The plaintiff cannot assert a claim for tortious interference with contract against Fusion if Fusion is an agent of 40 Daniel, as Fusion would not be a third-party to the contract in question. Additionally, under the doctrine of judicial estoppel, the plaintiff cannot assert that Fusion is a separate entity from 40 Daniel if the plaintiff has made the opposite assertion in a previous case where judgment was entered in the plaintiff's favor. The plaintiff has failed to address the defendants' arguments in this regard. The plaintiff has also failed to support its claim for tortious interference with more than mere speculation. The plaintiff has not alleged that Fusion intentionally induced 40 Daniel to breach the Lease. Therefore, the defendants' motion to dismiss the fifth cause of action is granted.

DATED: June 20, 2024


HON. FRANK A. TINARI, J.S.C.

Final Disposition _____

Non-final Disposition X