

**Hawthorne Fin. Holdings LLC v JDS Dev. LLC**

2025 NY Slip Op 31841(U)

May 21, 2025

Supreme Court, New York County

Docket Number: Index No. 650724/2024

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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HAWTHORNE FINANCE HOLDINGS LLC

Plaintiff,

- v -

JDS DEVELOPMENT LLC,

Defendant.

-----X

**INDEX NO. 650724/2024**

**MOTION DATE 02/13/2025**

**MOTION SEQ. NO. 003**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, plaintiff’s motion is granted.

**Background**

JDS Development LLC (“Defendant”) is a private operator who had a non-exclusive leasehold interest in an aircraft and two model engines, which it used for business and pleasure purposes. In 2017, Defendant entered into an Aircraft Joint-Use and Support Services Agreement with non-party ExcelAire. At the time, ExcelAire was owned by Hawthorne Finance Holdings LLC (“Plaintiff”). The Agreement contained an anti-assignment clause. Plaintiff alleges that Defendant failed to pay outstanding balances accrued under the Agreement between October 2022 and May 2023, amounting to \$1,278,746.55. For their part, Defendant argues that Plaintiff has not submitted sufficient evidence to establish the amounts allegedly owed and argues that the charges breached a provision of the Agreement that required their approval before ExcelAire could incur expenses in excess of \$5,000.

In June of 2023, Plaintiff sold their interests in ExcelAire and entered into an agreement with ExcelAire whereby all rights to collect on outstanding amounts were assigned to Plaintiff.

As the following attempts to recover the alleged unpaid balance from Defendant were unfruitful, Plaintiff instigated the underlying proceeding. Defendant brought a pre-answer motion to dismiss, based in part on the argument that Plaintiff lacked standing because the assignment was invalid. In an order dated October 29, 2024, this Court denied the motion to dismiss and pointed to the body of New York law regarding assignments in violation of an anti-assignment clause. The Court held in the October Order that the clause in question was a personal covenant not to assign, which does not invalidate an assignment but rather provides grounds for a breach of contract claim. Defendant subsequently answered. Plaintiff brought a motion to dismiss the answer's counterclaim, but the motion was mooted when Defendant filed an amended answer with fourteen defenses and a counterclaim for tortious interference. The present motion to dismiss the amended counterclaim is brought by Plaintiff.

### **Standard of Review**

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, “the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference.” *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are

discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

### **Discussion**

The amended counterclaim alleges that this litigation would never have been filed but-for Plaintiff’s alleged actions encouraging ExcelAire to breach the no-assignment clause. Plaintiff moves to dismiss the amended counterclaim on three grounds: 1) that Defendant failed to allege any underlying breach of contract; 2) that Defendant failed to allege sufficient facts to support a claim for tortious interference; and 3) that Defendant has not sufficiently alleged damages. Defendant opposes the motion. For the reasons that follow, because the amended counterclaim does not sufficiently allege damages, the Court need not reach the remaining arguments, and the amended counterclaim is dismissed.

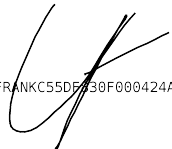
#### ***The Alleged Damages Are Too Speculative***

The required elements of a claim for tortious interference are 1) the existence of a valid contract; 2) defendant’s knowledge of said contract; 3) defendant’s intentional procuring of a breach of said contract; and 4) damages. *Burrowes v. Combs*, 25 A.D.3d 370, 373 [1st Dept. 2006]. Regarding the final element, Defendant’s amended counterclaim alleges that it has been damaged “by, among other things, being forced to defend itself against this litigation.” They argue that ExcelAire would never have brought this action without Plaintiff’s actions, pointing to the continuing business relationship between Defendant and ExcelAire. Plaintiff argues that there is no causal link between these purported damages and any action on their part, and that the alleged damages are speculative, vague, and unprovable. Speculative allegations are not sufficient to support a claim for tortious interference. *See, e.g., Chestnut Hill Partners, LLC v. Van Raalte*, 45 A.D.3d 434, 435 [1st Dept. 2007].

Defendant argues that being forced to defend this suit constitutes sufficient damages. They also argue that discovery will show whether ExcelAire would have pursued this suit in the absence of Plaintiff's allegedly tortious interference. Although Defendant is entitled to every favorable inference, the issue with their amended counterclaim is that it is inherently speculative to argue that ExcelAire, who assigned their rights to pursue unpaid balances, would or would not have pursued said balances on their own. Defendant may be correct that discovery could elicit a statement by ExcelAire as to whether or not they would have eventually pursued legal action absent the assignment. But such a statement would inherently be speculative.

According to a long line of First Department cases, a claim that requires damages cannot be supported by damages that are "grossly" or clearly speculative of future events. *See, e.g., Phillips-Smith Specialty Retail Group II, L.P. v. Parker Chapin Flattau & Klimpl, L.L.P.*, 265 A.D.2d 208, 210 [1st Dept. 1999]; *Sherwood Group, Inc. v. Dornbush, Mensch, Mandelstam, & Silverman*, 191 A.D.2d 292, 294 [1st Dept. 1993]; *Masten v. C.D.I. Travel, Inc.*, 178 A.D.2d 248, 249 [1st Dept. 1991]. In the complaint at issue in *Perkins*, a malpractice claim pled damages based on what a third-party "might" have done had the actions plaintiff complained of not occurred. *Perkins v. Norwick*, 257 A.D.2d 48, 51 [1st Dept. 1999]. The First Department dismissed the claim on the grounds that the pleadings were "couched in terms of gross speculations on future events and point to the speculative nature of plaintiffs' claim." *Id.* The Court finds that here, as in *Perkins*, speculations on what ExcelAire may or may not have done had Plaintiff's alleged solicitation of the assignment not occurred would be by necessity gross speculation. Therefore, the amended counterclaim fails to state a claim for tortious interference. Accordingly, it is hereby

ADJUDGED that the plaintiff's motion is granted; and it is further  
ORDERED that the first amended counterclaim is dismissed.

  
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LYLE E. FRANK, J.S.C.

5/21/2025  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
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CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE

[\*5]