

Timmons v Guggenheim

2025 NY Slip Op 32972(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 651107/2025

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

EMER TIMMONS

Plaintiff,

- v -

PHILIPPE HOERLE GUGGENHEIM,

Defendant.

-----X

INDEX NO. 651107/2025

MOTION DATE 04/21/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion to dismiss is granted in part.

Background

Philippe Hoerle Guggenheim (“Defendant”) is a resident of California who works as a fine art vendor in New York. He entered into an oral agreement with Swiss resident Emer Timmons (“Plaintiff”) for her to plan and execute his wedding that took place in August of 2023. According to Plaintiff, the total costs incurred for the wedding were \$646,195.75. On August 22, 2023, Plaintiff alleges that Defendant falsely represented that \$250,000 was wired to her as partial payment of the overall fees due. Several days later, the parties also entered into a loan agreement for \$300,000 that Plaintiff alleges was for partial payment of the wedding planning costs incurred. The loan was secured by certain works of fine art and was to be repaid by September 21, 2023. Plaintiff alleges that Defendant does not, in fact, have ownership of the artworks that were pledged as collateral on the Loan Agreement. Plaintiff filed this underlying proceeding in February of 2025, pleading claims sounding in breach of contract and fraud.

Defendant answered and pled five counterclaims related to Plaintiff's invoices and her attempts to be repaid. Plaintiff brings the present motion to dismiss the counterclaims.

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

Plaintiff moves to dismiss the five counterclaims on the grounds that they fail to state a valid claim. Defendant opposes. For the reasons that follow, the third, fourth, and fifth counterclaims are dismissed for failure to state a cause of action. The first and second validly plead a claim and therefore are not dismissed.

The Intentional Infliction of Emotional Distress Counterclaim Adequately Alleges Extreme and Outrageous Conduct

The first counterclaim is for intentional infliction of emotional distress (“IIED”). The elements of this tort are “(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and the injury; and (iv) severe emotional distress.” *Howell v. New York Post Co.*, 81 N.Y.2d 115, 121 [1993]. Of these elements, it is the first that is “the most demanding element to meet.” *Brown v. Riverside Church in the City of N.Y.*, 231 A.D.3d 104, 109 [1st Dept. 2024]. The Court of Appeals has defined extreme and outrageous conduct as “conduct exceeding all bounds usually tolerated by decent society”, and behavior that is “atrocious, and utterly intolerable in a civilized community.” *Fischer v. Maloney*, 43 N.Y.2d 553, 557 [1978].

Defendant alleges that Plaintiff went on a “concerted months-long campaign of harassment, emotional abuse, threats, and extortion.” Conduct complained of includes allegations that Plaintiff intentionally did not provide a written contract in order to charge inflated fees; made threats to email Defendant’s family and the wedding guests with Plaintiff’s complaints about lack of payment; sent a long-running series of messages claiming that Plaintiff’s husband was seeking a divorce and actively attempting to end his own life due to Defendant’s lack of payment; and the making of unspecified threats to “expose personal and private details” to family, friends, and business associates. Plaintiff moves to dismiss this counterclaim on the grounds that such behavior does not rise to the level of extreme and outrageous because they “were entirely to be expected” as a result of Defendant’s failure to pay. Plaintiff also repeatedly cites to *Murphy* for the proposition that an IIED claim cannot be sustained unless there is an allegation that the action was “without economic or social justification” but has apparently

overlooked the fact that that portion of the decision was in reference to a different type of tort claim. *Murphy v. Am. Home Prods. Corp.*, 58 N.Y.2d 293, 303 [1983].¹

Courts have repeatedly found that sustained harassment campaigns are sufficient to state a claim for IIED. *See, e.g., Silverman v. Park Towers Tenants Corp.*, 206 A.D.3d 417, 418 [1st Dept. 2022] (upholding claim where there were allegations of a “deliberate, systematic, and malicious campaign of harassment and intimidation”); *Scollar v. City of New York*, 160 A.D.3d 140, 146 [1st Dept. 2018] (noting that the outrageousness standard is not as difficult to satisfy when there is a “deliberate and malicious campaign of harassment or intimidation”). Taking the conduct alleged by Defendant to be true, and granting him every favorable inference, a valid claim for IIED has been pled. It cannot be said to be “entirely expected” that a dispute over the amount of fees incurred in planning a wedding would lead to months of messages blaming Defendant for repeated suicide attempts, threats to expose personal details to social media, friends, family and business associates, and threats to contact wedding guests to demand payment from them (that were apparently acted upon). The behavior alleged, particularly the constant campaign of blaming Defendant for purported suicide attempts, would constitute behavior wildly out of bounds for behavior normally tolerated in society. The first counterclaim validly states a claim for IIED and therefore will not be dismissed.

The Tortious Interference Counterclaim Validly Alleges Improper Means

Defendant’s second counterclaim is for tortious interference with business relationships. The elements for this claim are a showing that “(1) [plaintiff] had a business relationship with a

¹ Similarly, Plaintiff cites to *Cusimano* for the proposition that IIED claims must show that “malevolence is the sole motive”, but again overlooks the fact that there the Second Department was addressing a claim for *prima facie* tort and not IIED. *Cusimano v. United Health Servs. Hosps., Inc.*, 91 A.D.3d 1149, 1153 [2nd Dept. 2012]. For the elements of a claim for *prima facie* tort, see *AREP Fifty-Seventh, LLC v. PMGP Assoc., L.P.* 115 A.D.3d 402, 403 [1st Dept. 2014].

third party; (2) that the defendant knew of that relationship and intentionally interfered with it; (3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and (4) that the defendant's interference caused injury to the relationship with the third party." *Amaranth LLC v. J.P. Morgan Chase & Co.*, 71 A.D.3d 40, 47 [1st Dept. 2009]. Defendant alleges (although somewhat unclearly) that he was involved with a potential business deal involving the Michael Jackson art collection with art collector Alexis Graham that fell through when Plaintiff began to disparage Defendant to Mr. Graham and convinced him not to work with Defendant. Defendant also alleges that Plaintiff contacted another person involved in the Michael Jackson art collection deal and falsely claimed that Defendant could not be a part of the deal as he was currently under investigation.

Plaintiff moves to dismiss this counterclaim on the grounds that Defendant failed to allege wrongful conduct or malice as Plaintiff was "motivated by her economic interest." But the nature of Plaintiff's motivation is an issue of fact that would be improper to decide at the motion to dismiss stage. A party claiming tortious interference need only allege either malice as a sole motivation or improper means, not both. *See, e.g., Jacobs v. Continuum Health Partners, Inc.*, 7 A.D.3d 312, 313 [1st Dept. 2004]. Defendant's allegations that Plaintiff falsely represented to a potential business prospect that Defendant was being investigated and therefore should not be a part of the Michael Jackson art collection deal would constitute an improper means and suffices on a motion to dismiss standard to state a claim for tortious interference. Defendant also sufficiently alleges damages by claiming that he was not included in the business deal due to Plaintiff's statements. While the second counterclaim also alleges a tortious interference with the wedding guests, and this portion of the claim fails because Defendant does not allege that he had

a business relationship with said guests, the allegations surrounding the Michael Jackson art collection deal do adequately state a claim for tortious interference.

*The Breach of Fiduciary Duty Counterclaim Fails Because a Fiduciary Relationship Has Not
Been Adequately Alleged*

Defendant's third counterclaim is for breach of fiduciary duty. To plead a viable claim for this tort, a party must allege that "(1) defendant owed them a fiduciary duty, (2) defendant committed misconduct, and (3) they suffered damages caused by that misconduct." *Besen v. Farhadian*, 195 A.D.3d 548, 549 – 50 [1st Dept. 2021]. Plaintiff is moving to dismiss this counterclaim on the grounds that Defendant has not properly alleged that a fiduciary duty was owed to him. A fiduciary relationship is a fact-specific inquiry where the essential elements are "de facto control and dominance." *Marmelstein v. Kehillat New Hempstead* 11 N.Y.3d 15, 21 [2008]. To avoid dismissal, a plaintiff must "articulate specific facts" and not mere conclusory statements that a fiduciary relationship existed. *Id.*

Here, Defendant argues that by agreeing to plan his wedding, Plaintiff became his agent and therefore owed him a fiduciary duty. But an "arms-length business relationship does not give rise to a fiduciary obligation and without an agreement providing for a relationship of trust, or special circumstances indicating the same, none can be inferred." *Apogee Handcraft, Inc. v. Verragio, Ltd.*, 155 A.D.3d 494, 496 [1st Dept. 2017]. Defendant argued that Plaintiff had dominance and control over the wedding, but this conclusory statement fails to distinguish the nature of their relationship from that of a standard arms-length business relationship. Event planners, while having certain control over aspects of the event they plan, do not exercise such dominion and control that would create a fiduciary rather than contractual relationship. Because

facts have not been alleged that support a finding of a fiduciary relationship, the third counterclaim necessarily fails to allege a viable claim.

The Breach of Contract Counterclaim Fails to State a Cause of Action

Defendant's fourth counterclaim is for breach of the implied warranty of good faith and fair dealing in their oral contract. Plaintiff moves to dismiss this claim for several reasons, including a failure to allege that Defendant performed under the contract. Required elements for a claim of breach of contract are a performance by the pleading party and a breach by the other. *EXRP 14 Holdings LLC v. LS-14 Ave LLC*, 228 A.D.3d 498, 498 [1st Dept. 2024]. Here, Defendant fails to allege that he performed under the contract, or indeed, to identify what provisions of the contract were breached by Plaintiff. Furthermore, to allege a breach of the implied covenant of good faith and fair dealing, a pleading party would need to allege facts showing that their right to "receive the fruits of the contract" was destroyed or injured. *111 W. 57th Inv. LLC v. 111 W57 Mezz Inv. LLC*, 220 A.D.3d 435, 435 [1st Dept. 2023]. The fruits of the contract would be the wedding, which Defendant does not allege he failed to receive. Because essential elements of the claim have not been alleged, the fourth counterclaim fails to state a viable cause of action. The failure to allege the proper elements of a breach of contract claim is further bolstered by Defendant's counterclaim seeking punitive damages, which are not available for a breach of contract claim. *See, e.g., Mulder v. Donaldson, Lufkin & Jenrette*, 208 A.D.2d 301, 308 – 09 [1st Dept. 1995] (explaining that punitive damages are not available for a breach of contract unless "egregious tortious conduct" was part of a pattern of behavior that was "directed at the public generally").

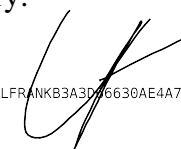
The Fraud Counterclaim Fails to Allege Damages

Defendant’s fifth and final counterclaim alleges that the invoices submitted by Plaintiff are fraudulent misrepresentations aimed at deceiving Defendant. Fraud claims must be alleged with specificity. CPLR § 3016(b). Plaintiff moves to dismiss this counterclaim on the grounds that it failed to allege a false representation with the required specificity. Defendant here alleges that “the invoices” contained false charges and entries such as vendor fees, that the 150,000 Euros management fee was fabricated, and that the 15% additional fee was likewise fabricated. A fraudulent billing claim that fails to specify which invoices are inflated is not pled with specificity. *Lax v. Design Quest N.Y. Ltd.*, 101 A.D.3d 431, 431 [1st Dept. 2012]. Furthermore, a failure to allege that the moving party actually paid the allegedly fraudulent invoices and therefore suffered damages as a result is grounds for dismissal. *Knobel v. Wei Group, LLP*, 160 A.D.3d 409, 409 [1st Dept. 2018]. Here, Defendant never alleges that he paid the invoices in question and as a result suffered damages. Therefore, the fifth counterclaim fails to plead a viable cause of action. Accordingly, it is hereby

ADJUDGED that the motion to dismiss the counterclaim is granted in part; and it is further

ADJUDGED that the third, fourth, and fifth counterclaims are hereby dismissed; and it is further

ORDERED that plaintiff is directed to serve an answer to the remaining counterclaims within 20 days after service of a copy of this order with notice of entry.


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LYLE E. FRANK, J.S.C.

7/30/2025
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
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"/> REFERENCE