

Bowen v Fabiani, Cohen & Hall, LLP

2025 NY Slip Op 33339(U)

September 4, 2025

Supreme Court, New York County

Docket Number: Index No. 650647/2025

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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ANITA BOWEN, ESQ.

Plaintiff,

- v -

FABIANI, COHEN & HALL, LLP, STEPHEN M. COHEN,
ESQ. JOHN V. FABIANI, ESQ., and THOMAS J. HALL,
ESQ.

Defendants.

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INDEX NO. 650647/2025

MOTION DATE 05/02/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24,
26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of June 13, 2025,
Defendants Fabiani, Cohen & Hall, LLP (the "Firm"), Stephen M. Cohen, Esq. ("Cohen"), John
V. Fabiani, Esq. ("Fabiani"), and Thomas J. Hall, Esq.'s (collectively "Defendants") motion to
dismiss Plaintiff Anita Bowen, Esq.'s ("Plaintiff") Complaint is granted. Plaintiff's cross-motion
seeking leave to amend is denied.

I. Background

Plaintiff, who is an attorney proceeding pro se, was formerly a partner at the Firm pursuant
to a partnership agreement dated January 1, 2019 (see generally NYSCEF Docs. 1-2). Plaintiff
alleges that pursuant to that agreement, she was guaranteed yearly compensation that was either
equal to her salary in 2018 or 7% of the Firm's profits, whichever was greater, and she claims the
agreement required her to be paid equally to two similarly situated white male colleagues. Plaintiff,
an African American woman, claims she was told in February 2021 that her two male colleagues

were paid more than her and that she would be made whole for being paid less. She claims this did not happen.

Plaintiff sued Defendants in the United States District Court for the Southern District of New York on April 30, 2024, alleging racial and gender discrimination, and violations of the New York Labor Law and the Fair Labor Standards Act, amongst other causes of action (the “SDNY Action”). On May 14, 2024, Plaintiff was fired from the Firm. In this lawsuit, commenced on January 31, 2025, Plaintiff seeks damages for defamation arising from Defendants’ alleged statement regarding Plaintiff’s billable hours, and damages from breach of contract for unpaid compensation. Defendants now move to dismiss Plaintiff’s Complaint pursuant to CPLR 3211(a)(4) and (a)(7) while Plaintiff cross moves to serve an Amended Complaint.

II. Discussion

A. Defendants’ Motion

i. Defamation

Defendants’ motion to dismiss Plaintiff’s defamation claim is granted. Plaintiff alleges she was defamed in or around December 2024 and January 2025 when Defendants communicated to third parties that Plaintiff billed zero hours in May of 2024 and her billable hours were low in March and April 2024. In her opposition, Plaintiff confirms that the allegedly defamatory statements were made to Defendants’ attorneys (NYSCEF Doc. 23 at p. 17). The allegedly defamatory statements made by Defendants to their defense attorneys about Plaintiff’s professional conduct and profit generation were germane to the ongoing litigation in the SDNY action and are subject to the absolute litigation privilege (*Ivancev v Garrido*, 184 AD3d 422, 423 [1st Dept 2020]). Nor can a statement made by a defendant to their attorney, with the intention the statement

remain privileged or be disclosed through the course of litigation to further a legal defense, be considered “publication to a third-party” for purposes of defamation.

Plaintiff’s claims that the absolute litigation privilege should not apply because they were made in bad faith and malice – however the requisite facts supporting claims of bad faith and malice are not pled. Moreover, the letter correspondence between Defendants’ attorney and Plaintiff’s former attorney, which forms the basis of Plaintiff’s defamation claim, make clear the statements regarding Plaintiff’s billable hours were not made maliciously but were set forth in a good faith defense of Plaintiff’s claims for damages in the SDNY action (*see* NYSCEF Doc. 16). Therefore, Plaintiff’s defamation claim is dismissed.

ii. Breach of Contract

Plaintiff’s breach of contract cause of action is dismissed. As a preliminary matter, Defendant Fabiani is not a signatory to the contract. There being no contract between Defendant and Fabiani, the breach of contract claim must be dismissed as to him. The breach of contract claim is dismissed as to the remainder of the Defendants pursuant to CPLR 3211(a)(4). On a CPLR 3211(a)(4) motion, the Court is granted wide discretion to dismiss an action “on the ground that another action is pending between the same parties” and arises “out of the same subject matter or series of alleged wrongs” (*Shah v RBC Capital Markets LLC*, 115 AD3d 444 [1st Dept 2014]). “It is inconsequential that different legal theories or claims are set forth in the two actions” (*id.* citing *Whitney v Whitney*, 57 NY2d 731 [1982] *see also Syncora Guar. Inc. v J.P. Morgan Sec. LLC*, 110 AD3d 87, 96 [1st Dept 2013]). Dismissal is also proper under CPLR 3211(a)(4) to avoid conflicting rulings (*Eurotech Const. Corp. v Illinois National Insurance Co.*, 187 AD3d 664 [1st Dept 2020]).

Here, the parties in both this action and the SDNY action are identical, and there is no dispute that this action and the SDNY action both arise out of Plaintiff's employment relationship with Defendants. Moreover, Plaintiff elected to first litigate her claims in the SDNY action before filing this action. Further, in the SDNY action, Plaintiff is seeking overlapping if not identical damages through her Amended Complaint and Proposed Second Amended Complaint (NYSCEF Docs. 30-31). The Amended Complaint pending in SDNY seeks damages for unequal pay based on sex in violation of the New York Labor Law and Fair Labor Standards Act, and violations of the New York Labor Law for failure to pay all wages owed.¹ This is identical to the damages sought here for alleged breach of contract – namely that she was to be paid equal to two white male colleagues but was not. In her Proposed Second Amended Complaint (NYSCEF Doc. 31) Plaintiff expressly seeks leave in SDNY to plead a breach of contract cause of action identical to the cause of action pled here. Thus, to avoid conflicting rulings, and because Plaintiff elected to seek relief first in SDNY against the same parties and based on the same relationship, series of wrongs, damages, parties, Plaintiff's breach of contract cause of action is dismissed pursuant to CPLR 3211(a)(4).

B. Plaintiff's Cross-Motion

Plaintiff's cross-motion seeking leave to amend is denied. While leave to amend is freely granted, leave to amend should be denied if the proposed amendment is palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that the proposed amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. v National Union Fire Ins. Co.*, 298 AD2d 180, 181

¹ Although a Magistrate Judge in the SDNY action recommended that Plaintiff's Amended Complaint be dismissed, the parties have not informed the Court the District Judge presiding over the SDNY action has dismissed the Amended Complaint, nor does the NYSCEF docket reflect that the Amended Complaint has been dismissed.

[1st Dept 2002]). Here, the proposed pleadings merely amplify the prior causes of action which this Court already found must be dismissed pursuant to CPLR 3211(a)(4) and (a)(7). There are no real substantive allegations or new causes of action which would warrant granting leave to amend in lieu of the Court’s analysis of the pleadings under Defendants’ motion to dismiss. Therefore, Plaintiff’s cross-motion seeking leave to amend is denied.

Accordingly, it is hereby,

ORDERED that Defendants’ motion to dismiss Plaintiff’s Complaint is granted in its entirety, and the Complaint is hereby dismissed; and it is further

ORDERED that Plaintiff’s cross motion seeking leave to amend is denied; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/4/2025
DATE

Mary V Rosado, J.S.C.
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input 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	