

Melnyk v Elate Moving LLC

2025 NY Slip Op 33550(U)

September 19, 2025

Supreme Court, Kings County

Docket Number: Index No. 524828/2024

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19th day of September, 2025

PRESENT: HON. CAROLYN E. WADE, J.S.C

SUPREME COURT OF THE
STATE OF NEW YORK COUNTY OF KINGS

-----X
MYKOLA MELNYK, MAKSIM PYERVAK
and MARTINS OZOLS,

Plaintiffs,

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-against-

DECISION and ORDER

ELATE MOVING LLC, KEVIN BRITT,
individually, and JULIA BRITT, individually,

Motion Seq. 1

Defendants,
-----X

Plaintiffs MYKOLA MELNYK, MAKSIM PYERVAK, and MARTINS OZOLS (“Plaintiffs”) move for an Order, pursuant to CPLR § 3211(a)(7) and 3016 (a), to dismiss Defendants’ ELATE MOVING LLC, KEVIN BRITT, individually, and JULIA BRITT, individually (“Defendants”) counterclaims for failure to state a claim, and pursuant to CPLR § 3024(a), for a more definitive statement in Defendants’ Answer. Upon a reading of the foregoing papers, and all other papers and proceedings in this action, and after oral argument, it is hereby

ORDERED:

Plaintiffs’ Motion to Dismiss Defendants’ counterclaims is **GRANTED** in its entirety and Defendants’ counterclaims are **DISMISSED WITHOUT PREJUDICE**, pursuant to CPLR §

3211 and § 3016, with costs and disbursements to Plaintiffs, as taxed by the Clerk upon submission of an appropriate bill of costs, because, *inter alia*:

1. With Respect to Breach of Fiduciary Duty Counterclaims (Counterclaims I and II):
 - a. Defendants fail to plead the existence of a special fiduciary relationship between Plaintiffs and Defendants, or any compensable harm resulting from an alleged breach. See *Rather v. CBS Corp.*, 68 A.D.3d 49 (1st Dept 2009); *Freedman v. Pearlman*, 271 A.D.2d 301 (1st Dept 2000).
 - b. Defendants also fail to allege that Plaintiffs acted against the employer's interest. Defendants merely assert that Plaintiffs breached their duties by "stopping to work," but quitting does not give rise to a breach of fiduciary duty claim. *Veritas Capital Mgmt., L.L.C. v. Campbell*, 82 A.D.3d 529 (1st Dept 2011).
 - c. Finally, Defendants fail to allege damages resulting from the alleged breach of fiduciary duty. See *Laub v. Faessel*, 297 A.D.2d 28 (1st Dept 2002).
 - d. Because the breach of fiduciary duty counterclaim fails, the related "aiding and abetting" counterclaim (Counterclaim II) necessarily fails, as well.
2. With Respect to Defamation (Counterclaim III):
 - a. CPLR § 3016(a) requires a defamation claim to identify (a) the specific defamatory statement, (b) to whom it was made, or (c) when, where, and how it was made. The pleading requirements of CPLR §3016(a) are "strictly enforced." *Horbul v. Mercury Ins. Grp.*, 64 A.D.3d 682 (2nd Dept 2009).
 - b. Defendants have not met their burden under CPLR § 3016(a). The only allegation in the counterclaim alleges that Plaintiff "was defaming the Defendant, Kevin, by degrading him in the eyes of other Plaintiffs and Elate workers, stating that he is a

bad manager.” Even if this allegation were deemed sufficiently specific to satisfy CPLR § 3016(a), it is not actionable because it constitutes an expression of opinion, which, by definition, is not defamatory. *Mann v. Abel*, 10 N.Y.3d 271 (2008).

- c. Moreover, the statement that Mr. Britt is “a bad manager” is subject to a qualified privilege, as it concerns a matter (Mr. Britt’s management abilities) in which both parties had a shared interest. *Shapiro v. Health Ins. Plan of Greater N.Y.*, 7 N.Y.2d 56 (1959).

3. As to Breach of Contract (Counterclaim IV):

- a. New York law does not recognize implied contracts in at-will employment. *Murphy v. American Home Prods. Corp.*, 58 N.Y.2d 293 (1983); *Wood v. Duff-Gordon*, 222 N.Y. 88 (1917); *Sabetay v. Sterling Drug*, 69 N.Y.2d 329 (1987). Simply put, no contract exists.
- b. Moreover, Defendants fail to allege any damages resulting from the purported breach, which is a necessary element of a breach of contract claim.

4. As to Negligent Infliction of Emotional Distress (Counterclaim V):

- a. To state a claim for Negligent Infliction of Emotional Distress (NIED), Defendants must allege (a) extreme or outrageous conduct or (b) any resulting injury—both of which are essential elements of an NIED claim. *Howell v. New York Post Co.*, 81 N.Y.2d 115 (1993); *Berrios v. Our Lady of Mercy Med. Ctr.*, 20 A.D.3d 361(1st Dept 2005); *Lau v. S&M Enters.*, 72 A.D.3d 497 (1st Dept 2010).
- b. Defendants’ assertion that Plaintiffs disrupted Kevin Britt’s vacation falls far short of the level of extreme and outrageous conduct required to sustain such a claim. Even if accepted as true, their allegations describe routine employment disputes,

which are insufficient to support an NIED claim. Moreover, Defendants fail to allege any actual injury resulting from the purported negligent infliction of emotional distress.

Accordingly, it is **ORDERED** that Plaintiffs' Motion for a more definitive statement is **GRANTED** in its entirety pursuant to CPLR § 3024. Defendants are ordered to meaningfully Answer the Complaint in this matter within twenty-one (21) calendar days of entry of this Order.

This constitutes the Decision and Order of the Court.

ENTER:

A handwritten signature in black ink, consisting of the letters 'C' and 'W' intertwined, enclosed within a hand-drawn oval. The signature is positioned above a horizontal line that serves as a separator between the signature and the printed name.

Honorable Carolyn E. Wade, J.S.C.

**Hon. Carolyn E. Wade
Supreme Court Justice**