

27-21 27th St. Sponsors, LLC v Kanta

2025 NY Slip Op 33770(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 652475/2023

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

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INDEX NO. 652475/2023

27-21 27TH STREET SPONSORS, LLC,

10/03/2024,

Plaintiff,

MOTION DATE 10/31/2024

- v -

MOTION SEQ. NO. 004 005

JANOS KANTA, KENNETH TOLLEY, KST2 PROPERTIES,
LLC, SZILVIA BARNETT, KERABAN, LLC, 2219 33RD
STREET LLC, SILVER HEIGHTS DEVELOPMENT, LLC

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 75, 76, 77, 79, 80
were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 82, 83, 84, 85, 86,
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101
were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

This matter was administratively transferred to Part 31 in late January.

Upon the foregoing documents, the motion by plaintiff 27-21 27th Street Sponsors, LLC
("27th Street Sponsors") for an order, pursuant to CPLR § 3211(a)(7), dismissing the
counterclaims asserted by defendants KST2 Properties, LLC ("KST2"), Janos Kanta ("Kanta"),
Szilvia Barnett ("Barnett"), Keraban LLC ("Keraban"), and 2219 33RD Street LLC ("2219
33RD Street") (Motion Seq. 004), is granted.

Upon the same record, and following an on-the-record oral argument before this Court on
June 3, 2025, plaintiff's motion for leave to reargue the prior jurist's Decision and Order dated
September 11, 2024, dismissing the complaint against defendant Kenneth Tolley ("Tolley") (the
"September 2024 Decision") (Motion Seq. 005), is denied.

Background

This matter arises out of 27th Street Sponsors' investment in the construction of a
condominium building located in Queens, New York via a convertible promissory note issued by
KST2 (the "Note"; NYSCEF Doc. No. 5). Tolley, the minority member of KST2, and Kanta, the
managing member of KST2, executed a guaranty (the "Guaranty"), in which they personally
guaranteed KST2's obligations under the Note (NYSCEF Doc. No. 6). Pursuant to the Note,
KST2 promised to pay 27th Street Sponsors the principal sum of \$850,000 "together with interest
thereon at the highest rate permissible by law per annum, accruing monthly in a separate capital

account created by [27th Street Sponsors], and payable during the term in a maximum capped payment of” \$306,000.

27th Street Sponsors commenced this action to recover under the Note and the Guaranty, as well as its share of the profits from the sale of the condominium building. The complaint also seeks a declaratory judgment that 27th Street Sponsors is a member of KST2. In their answer, KST2, Kanta, Barnett, Keraban, and 2219 33RD Street assert counterclaims for malicious prosecution, tortious interference with business relationships, and defamation (NYSCEF Doc. No. 63).

Before the administrative transfer of this matter, Tolley moved to dismiss the complaint as against him (Motion Seq. 001). In support, Tolley argued, *inter alia*, that the Note is usurious because \$306,000 in interest on a principal amount of \$850,000 over one year yields an interest rate of 36%. In opposition, 27th Street Sponsors argued that: it proposed language setting the interest rate at 16% but KST2 drafted the language in the Note; Tolley should be precluded from raising usury as a defense because of his own inequitable conduct; and Tolley owed 27th Street Sponsors a fiduciary duty as a member of KST2.

Pursuant to the September 2024 Decision, the prior jurist dismissed as against Tolley the first cause of action for a declaratory judgment; the fourth cause of action for breach of KST2’s operating agreement (NYSCEF Doc. No. 14) (the “Operating Agreement”); the sixth cause of action for breach of the Guaranty; and the eleventh cause of action for unjust enrichment (NYSCEF Doc. No. 65). The prior jurist found the Note criminally usurious and, consequently, deemed both the Note and Guaranty void and unenforceable. The Court also determined that Tolley, as minority member of KST2, is not personally liable under the Operating Agreement.

27th Street Sponsors now moves to reargue the September 2024 Decision, contending that the fourth and sixth causes of action as against Tolley (breach of the Operating Agreement breach of the Guaranty, respectively) should be reinstated because the prior jurist misapprehended relevant facts and misapplied relevant law. Tolley opposes, arguing that 27th Street Sponsors: fails to identify any facts or law that the Court did not consider; and asserts essentially the same arguments it did in opposition to the prior motion.

27th Street Sponsors now moves to dismiss the malicious prosecution, tortious interference with business relationships, and defamation counterclaims because they are “devoid of all factual detail.” KST2, Kanta, Barnett, Keraban, and 2219 33RD Street oppose and contend that the motion is premature as the parties have not exchanged discovery or held depositions.

Discussion

Reargument

A motion to reargue a jurist’s order must be made to the jurist who signed the order unless that jurist is unable to hear it (CPLR 2221[a]). The prior jurist is unable to hear this reargument motion as he is no longer a Supreme Court Civil Term Justice. Accordingly, it is proper for this Court to address this motion.

The purpose of reargument is to provide “a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied principles of law” (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]; CPLR 2221[d][2]). “Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided” (*id.*). Nor is reargument a proper forum to present arguments different from those originally asserted (*William P. Pahl Equip. Corp. v Kassiss*, 182 AD2d 22 [1st Dept 1992] *lv. dismissed in part and denied in part* 80 NY2d 1005 [1992]).

Leave to reargue is denied. The prior jurist neither misapprehended the facts nor misapplied the law in dismissing the fourth and sixth causes of action against Tolley (breach the Operating Agreement and breach of the Guaranty, respectively). Consequently, the motion for leave to reargue is denied.

Dismissal

On a motion to dismiss for failure to state a cause of action under CPLR § 3211(a)(7), the pleading is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference (*M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1 [1st Dept 2020]; *Anderson v Edmiston & Co.*, 131 AD3d 416, 417 [1st Dept 2015]; *Askin v Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The court must deny the motion if, from the four corners of the pleadings, “factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]; *R.H. Sanbar Proj., Inc. v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989] [dismissal not warranted when “allegations are given the benefit of every possible inference, a cause of action exists”]). Bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

To withstand dismissal of its malicious prosecution counterclaim under CPLR § 3211(a)(7), defendants must show: (1) the commencement or continuation of a proceeding by the 27th Street Sponsors against defendants; (2) termination of the proceeding in favor of defendants; (3) the absence of probable cause for the proceeding; and (4) actual malice (*Wilhelmina Models, Inc. v Fleisher*, 19 AD3d 267 [1st Dept 2005]). The defendants are also required to allege and prove a special injury (*Facebook, Inc. v DLA Piper LLP (US)*, 134 AD3d 610, 613 [1st Dept 2015]). Here, the defendants fail to allege that a separate action was terminated in favor of 27th Street Sponsors. The defendants’ pleading solely references the instant action. Accordingly, the counterclaim for malicious prosecution must be dismissed (*Rockwell Glob. Cap., LLC v. Soreide L. Grp., PLLC*, 100 AD3d 448, 499 [1st Dept 2012] [counterclaim for malicious prosecution dismissed because defendants failed to allege all required elements; namely, the termination of prior proceeding]).

To withstand dismissal for tortious interference with business relationships, the defendants are required to demonstrate: (1) the existence of a contract between them and a third-party; (2) 27th Street Sponsors’ knowledge of that contract; (3) 27th Street Sponsors’ intentional inducement of the third-party to breach the contract or otherwise render the defendants’ performance thereunder impossible; and (4) damages (*see Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 94 [1993]). Here, the pleading vaguely references the defendants’ business relationships in

connection with a Westport, Connecticut project, as well as relationships with banks, investors, and other financial institutions. The defendants do not allege that 27th Street Sponsors had knowledge of any contracts with such third parties. Consequently, the counterclaim for tortious interference must also be dismissed (*Reeves v Associated Newspapers, Ltd.*, 232 AD3d 10, 16 [1st Dept 2024], *lv. dismissed* No. 2025-254, 2025 WL 2664547 [N.Y. Sept. 18, 2025] [tortious interference claim failed on its face because plaintiff “did not plead the requisite elements, including defendants’ knowledge of [plaintiff’s] business relationships and/or contracts with third parties”]).

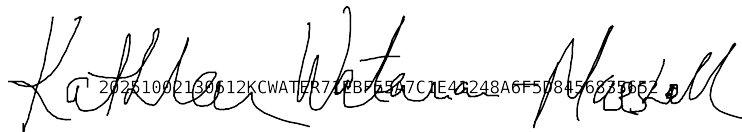
The defendants’ counterclaim for defamation is also subject to dismissal. To withstand dismissal for defamation, the defendants are required to show that: (1) 27th Street Sponsors made a false statement; (2) published without privilege or authorization to a third party; and (3) “which either causes special harm or constitutes defamation per se” (*Dillon v City of New York*, 261 AD2d 34 [1st Dept 1999]). It is well-settled that a claim for defamation must be pled with specificity, and that the claim should be dismissed if the claimant fails “to allege the precise words allegedly giving rise to defamation and fail[s] to allege in the [pleading] the time, place and manner of publication” (*Khan v Reade*, 7 AD3d 311, 312 [1st Dept 2004]). Here, the defendants failed to allege the time, place, and manner by which 27th Street Sponsors allegedly referred to the defendants as “fraudulent” to the unnamed third parties. As a result, the defendants’ defamation claim must be dismissed (*Offor v Mercy Med. Ctr.*, 171 AD3d 502, 503 [1st Dept 2019] [dismissal of defamation claim warranted because claimant failed to set forth the “time, place and manner of the purported defamation”] [internal citations and quotations omitted]).

Accordingly, it is

ORDERED that the motion to dismiss the defendants’ counterclaims for malicious prosecution, tortious interference, and defamation, is granted; and it is further

ORDERED that leave to reargue the September 2024 Decision is denied; and it is further

ORDERED that this matter is set down for a **Status Conference on November 5, 2025 at 10:00 a.m.** Counsel are reminded of the Part Rules, specifically those governing conferences and conference orders.



10/2/2025
DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE