

**Balestriere PLLC v Ray**

2025 NY Slip Op 34005(U)

October 15, 2025

Supreme Court, New York County

Docket Number: Index No. 154425/2023

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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BALESTRIERE PLLC,

Plaintiff,

- v -

AMES RAY, DAVID B ANZISKA

Defendant.

-----X

INDEX NO. 154425/2023

MOTION DATE 10/20/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after a final submission date of July 18, 2025, Defendants Ames Ray ("Ray") and David B. Anziska, Esq. ("Anziska") (collectively "Defendants") motion to dismiss Plaintiff Balestriere PLLC's ("Plaintiff") Amended Complaint and seeking sanctions is granted in part and denied in part.

I. Background

Plaintiff is a law firm that formerly represented Ray in a litany of lawsuits against Ray's ex-wife. As alleged in the Complaint, Ray retained Plaintiff on October 3, 2010, and Plaintiff continued to represent Ray until January 2016. As a result of that litigation, a judge issued sanctions in favor of Ray's ex-wife and against Plaintiff. Plaintiff settled the sanctions order against it. Ray fired Plaintiff, retained another firm, and appealed the sanctions order, which the First Department reversed. As Plaintiff no longer represented Ray, Plaintiff issued a final invoice, which Ray allegedly refused to pay.

On December 3, 2018, Ray retained Anziska to file a lawsuit in Federal Court against Plaintiff alleging breach of fiduciary duty, conversion, and violations of Judiciary Law § 487,

allegedly based on failure to disclose conflicts of interest, the abandonment of Ray on the eve of a sanctions hearing, and that Plaintiff used threats to strong-arm Ray into settling (*see Ray v Balestriere Fariello*, 2021 WL 3810640 [SDNY August 26, 2021]). Ray's Judiciary Law § 487 claim was dismissed and the remaining claims proceeded to trial.

After a jury trial, the jury returned a verdict in favor of Plaintiff on Ray's unpaid legal fees and dismissed all of Ray's claims against Plaintiff. Ray appealed to the Second Circuit, which affirmed the jury's findings (*see Ray v Fariello*, 2024 WL 390293 [2d Cir 2024]). During the pendency of the appeal before the Second Circuit, Plaintiff sued Defendants in New York State Court for malicious prosecution, tortious interference with prospective business relations, and Judiciary Law § 487. Defendants move to dismiss and seek the imposition of sanctions. Defendants' motion is granted in part and denied in part.<sup>1</sup>

## II. Discussion

### A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). However, conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

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<sup>1</sup> This matter was previously assigned to Hon. Richard G. Latin on September 14, 2023, and was reassigned to this Court on March 19, 2025.

## B. Malicious Prosecution

Defendants' motion to dismiss Plaintiff's malicious prosecution claim is granted. To assert a cause of action for malicious prosecution, it must be alleged that there was "an entire lack of probable cause in the prior proceeding" and the lack of probable cause must be "patent" (*Facebook, Inc. v DLA Piper LLP (US)*, 134 AD3d 610, 613-13 [1st Dept 2015] quoting *Engel v CBS, Inc.*, 93 NY2d 195, 204 [1999]). The Court of Appeals has maintained stringent pleading requirements with regard to malicious prosecution claims to serve as "a buffer to insure against retaliatory malicious prosecution claims and unending litigation" (*Engel, supra* at 205).

While Plaintiff prevailed in front of a jury in the underlying action, Defendants' causes of action survived multiple rounds of dispositive motion practice, including summary judgment and a motion for a directed verdict (*see, e.g. Crown Wisteria, Inc. v F.G.F. Enterprises Corp.*, 168 AD2d 238, 241 [1st Dept 1998] [prior court orders in defendants' favor give rise to presumption of probable cause]). Therefore, the mere fact that a jury ultimately found in favor of Plaintiff is not sufficient to allege the prior action was patently devoid of probable cause (*Web Management LLC v Sphere Drake Ins. Ltd.*, 302 AD2d 273 [1st Dept 2003]).

Plaintiff fails to address this in its opposition and in the Amended Complaint and instead relies on conclusory allegations, claiming only "Defendants commenced the 2018 Action with no good faith basis" and "there was no probable cause for the prosecution of the claims." But multiple United States District Court judges, who were confronted with both sides' evidence, found there was enough to let Defendants' claims go to a jury. These countervailing facts, coupled with Plaintiff's conclusory allegations, require dismissal of the malicious prosecution claim. Plaintiff failed to allege adequately a patent lack of probable cause in bringing the underlying litigation (*see*

*Shaw v Elting*, 161 AD3d 585, 587 [1st Dept 2018]; *Wilhelmina Models, Inc. v Fleisher*, 19 AD3d 267 [1st Dept 2005]).

### C. Tortious Interference with Prospective Business Relations

Defendants' motion to dismiss Plaintiff's claim for tortious interference with prospective business relations is granted. To adequately allege this claim, there must be a specific and factual allegation that some party would have entered a contract with Plaintiff but for Defendants' lawsuit (see *Vigoda v DCA Productions Plus Inc.*, 293 AD2d 265, 266-67 [1st Dept 2002]). Plaintiff has not alleged any facts in this regard, alleging in conclusory fashion that Defendants' lawsuit harmed Plaintiff's "ability to retain and attract new business" (NYSCEF Doc. 2 at ¶ 43). But there is no particularized allegation as to what new business Defendants lost. Despite having an opportunity in their opposition to remedy this defect, Plaintiff remained silent as to what specific business relations were interfered with, which is fatal to its tortious interference with prospective business relations claim (see also *Inspirat Dev. & Constr., LLC v GMF 157 LP*, 203 AD3d 430, 432 [1st Dept 2022] citing *Matter of Soames v 2LS Consulting Eng'g, D.P.C.*, 187 AD3d 490, 491 [1st Dept 2020]).

### D. Judiciary Law § 487

Plaintiff's Judiciary Law § 487 claim is dismissed. It is well established that a violation of Judiciary Law § 487 does not give rise to a separate plenary action but must be brought in the action where the alleged deceit or misconduct in violation of the statute occurred, in this case, in the Southern District of New York (see *Chibcha Restaurant, Inc. v David A. Kaminsky & Associates, P.C.*, 102 AD3d 544, 545 [1st Dept 2013] quoting *Yalkowsky v Century Apartments Associates*, 215 AD2d 214 [1st Dept 1995]; see also *Menitzky v Owen*, 19 AD3d 201 [1st Dept 2005]). Plaintiff likewise could have sought sanctions against Defendants in the underlying action

for what it deemed to be inappropriate or deceitful comments made during closings. Therefore, this branch of Defendants' motion is granted.

**E. Sanctions**

The branch of Defendants' motion seeking sanctions is denied. The decision whether to impose sanctions for frivolous conduct is generally left to the sound discretion of the Court (*Flowers v 73rd Townhouse, LLC*, 227 AD3d 568 [1st Dept 2024] *see also Constantini v Constantini*, 44 AD3d 509, 509-10 [1st Dept 2007]). The Court finds issuing sanctions here would be pouring fuel onto fire. These parties have been engaged in litigation now for years. In the interest of encouraging the parties to put some finality to their disputes, the Court denies issuing sanctions and encourages the parties to move on from their prior professional, and later adversarial relationships.

Accordingly, it is hereby,

ORDERED that Defendants' motion is granted to the extent that Plaintiff's Amended complaint is dismissed in its entirety; and it is further

ORDERED that Defendants' motion for sanctions 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.

10/15/2025  
DATE

Mary V Rosado JSC  
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