

Black v Ganieva

2025 NY Slip Op 34626(U)

November 28, 2025

Supreme Court, New York County

Docket Number: Index No. 654108/2022

Judge: David B. Cohen

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

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X

LEON D. BLACK,

Plaintiff,

- v -

GUZEL GANIEVA, WIGDOR LLP

Defendants.

INDEX NO. 654108/2022

MOTION DATE 04/09/2024,
04/10/2024,
03/14/2025

MOTION SEQ. NO. 007 008 011

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 117, 119, 178

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 111, 112, 113, 114, 115, 116, 118, 120

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 127, 128, 129, 130, 131, 132, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166

were read on this motion to/for MISCELLANEOUS.

In this case arising from defendants’ alleged actions related to plaintiff’s relationship with defendant Ganieva, which involved the signing of a non-disclosure agreement (NDA) and Ganieva’s violation thereof, defendant Wigdor LLP, Ganieva’s then-law firm, moves pursuant to CPLR 3211(a)(7) and (g) (the “Anti-SLAPP” statute) and Civil Rights Law 76-a for an order dismissing count three in plaintiff’s second amended complaint with prejudice and granting Wigdor attorney fees (mot. seq. 007).

In motion sequence 008, Ganieva moves, pursuant to CPLR 3211(a)(1) and (7), for dismissal of plaintiff’s claims against her in his second amended complaint

Plaintiff opposes both motions, and in motion sequence 011, seeks leave to supplement his opposition to Wigdor's motion. Wigdor opposes.

I. PRIOR ACTIONS

The salient facts are set forth in decisions rendered in two prior actions involving the parties.

In the first action, Ganieva sued plaintiff for defamation, among other claims, arising from their personal relationship (first action). By decision and order dated June 2, 2023, the complaint was dismissed in its entirety, based on the determination that the NDA was valid and enforceable and precluded all of Ganieva's claims against plaintiff. On January 16, 2025, the Appellate Division, First Department, affirmed the dismissal (234 AD3d 553).

In the second action, plaintiff sued defendants for malicious prosecution (malicious prosecution action). In September 2024, this court denied defendants' motions to dismiss. The Appellate Division, First Department, reversed the dismissal and granted the motions to dismiss pursuant to CPLR 3211(g)(1) and Civil Rights Law 76-a, and remanded for a proceeding as to attorney fees owed by plaintiff to defendants pursuant to Civil Rights Law 70-a(1)(a) (236 AD3d 427). As pertinent here, the Court held that:

Plaintiff's malicious prosecution claim involves "public petition and participation" so as to trigger the procedural requirements of New York's amended anti-strategic lawsuits against public participation (anti-SLAPP) (*see* Civil Rights Law § 76-a and CPLR 3211[g][1]). The claim, rooted in allegations involving defendants' commencement and prosecution of a legal action, is a claim based upon communications made in a public forum and conduct in furtherance of the exercise of the constitutional rights of free speech and petition (*see Sweetpea Ventures Inc. v. Belmamoun*, 231 A.D.3d 460, 461, 217 N.Y.S.3d 568 [1st Dept. 2024]).

Plaintiff's malicious prosecution claim is properly dismissed under CPLR 3211(g)(1), as his opposition failed to show that the claim has a "substantial basis" (*see Reeves v. Associated Newspapers, Ltd.*, 232 A.D.3d 10, 218 N.Y.S.3d 19 [1st Dept. 2024]). "Substantial basis" under the anti-SLAPP law means "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*id.* at 22, 218

N.Y.S.3d 19 [internal quotation marks omitted]), which is the same “substantial evidence” standard that “has been equated with the ordinary summary judgment standard” (*id.* at 23, 218 N.Y.S.3d 19), and it requires the submission of evidence such as an affidavit rather than reliance on the mere allegations in the complaint (*id.* at 24–25, 218 N.Y.S.3d 19).

Plaintiff failed to meet this burden under CPLR 3211(g), and this entitles defendants to dismissal of the claim and for attorneys’ fees pursuant to Civil Rights Law § 70–a (1)(a). Accordingly, we remand the action for further proceedings for that limited purpose (*see Reeves*, 232 A.D.3d at 25, 218 N.Y.S.3d 19).

II. INSTANT ACTION

In this action, plaintiff alleges in his second amended complaint that he seeks to recover the more than \$9 million he paid to Ganieva under the NDA, and additional damages from defendants based on Ganieva’s breach of the NDA and resulting harm to plaintiff. He asserts claims against Ganieva for breach of contract and unjust enrichment, and against Wigdor for tortious interference with contract (NYSCEF 100).

A. Claims against Ganieva

Plaintiff sues Ganieva for breach of the NDA as well as unjust enrichment. Given the factual findings made in the decision dismissing the case in the first action, in which the NDA was found to have been an enforceable agreement, and as affirmed by the Appellate Division, there is no basis upon which to dismiss plaintiff’s breach of contract claim against Ganieva. Indeed, it is undisputed that she breached the NDA by public disclosing and discussing her relationship with plaintiff.

There is no merit to Ganieva’s claim that the non-disclosure provision in the NDA was not addressed in the first action. Rather, the entirety of the NDA was found enforceable, including the non-disclosure provision.

At the pleading stage, a party may plead alternative theories of recovery, such as breach of contract and unjust enrichment. However, given the validity of the NDA, and as both of

plaintiff's claims against Ganieva are based on the same facts and seek the same damages, the unjust enrichment claim is dismissed as duplicative (*Herman v Judlau Contracting, Inc.*, ___ AD3d ___, 2025 WL 3166020 [1st Dept 2025]).

As a breach of contract claim may not support a request for punitive damages, absent the implication of a public right or conduct directed at the public generally, neither of which are alleged here, that aspect of plaintiff's claim against Ganieva is dismissed (*see Hobish v AXA Equitable Life Ins. Co.*, 43 NY3d 442 [2025]).

Finally, as the NDA contained an implied covenant not to sue, based on the explicit prohibition against both past and future claims by Ganieva against plaintiff, Ganieva is not entitled to dismissal of plaintiff's claim against her for attorney fees related to her breach of the covenant not to sue (*see generally, McMahon & Co. v Bass*, 250 AD2d 460 [1st Dept 1998] [covenant not to sue is implied when release applies to future claims, and thus defendants could be liable for plaintiff's attorney fees based on their breach of covenant not to sue]).

B. _____ Wigdor's and plaintiff's motion

Following the Appellate Division's dismissal of plaintiff's malicious prosecution claim, Wigdor now argues that the same reasoning underlying that decision compels the dismissal of plaintiff's tortious interference claim against it, as it is based on the same facts as in the prior claim.

In opposition, plaintiff seeks leave to supplement his opposition to Wigdor's motion by submitting or relying on evidence to establish a substantial basis for his claim against Wigdor, sufficient to defeat its anti-SLAPP defense. Plaintiff claims that the Appellate Division's decision constituted a change in the law that warrants his request to supplement the record.

As discussed above, the Court held that plaintiff's malicious prosecution claim had to be dismissed as barred by the Anti-SLAPP law as plaintiff had failed to submit "evidence, such as an affidavit" in order to show that his claim had a substantial basis. Plaintiff argues that the requirement of such evidence constituted new law or a change in the law, observing that his second amended complaint was filed in March 2024, while the Court's dismissal order was issued in March 2025.

The case upon which the Court relied in its 2025 malicious prosecution decision was *Reeves v Associated Newspapers, Ltd.*, which was decided in August 2024. In *Reeves*, the Court, stated that it was presented with "the issue of what constitutes a 'substantial basis in the law' under the anti-SLAPP law," and ruled that it meant "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (232 AD3d at 12). In so ruling, the Court sought to discern the definition of "substantial basis" by legislative history, ultimately concluding that CPLR 3211(g) contemplated "an adjudication based upon the submission of affidavits, with special provision for discovery upon an application by the party opposing the CPLR 3211(g) motion" (*id.* at 24).

Thus, for the first time, the Court held that affidavits were required to demonstrate that a claim had a substantial basis in order to avoid dismissal under the anti-SLAPP law. While the *Reeves* court cited a prior First Department decision, there was no mention there that an affidavit was required; rather, the Court held that the plaintiffs' "meticulously detailed complaint satisfied the requirements of CPLR 3211(g)(1)" (*Smartmatic USA Corp. v Fox Corp.*, 213 AD3d 512 [1st Dept 2023]).

Plaintiff therefore sufficiently establishes that there was a change in the law after he had already filed his second amended complaint, thus entitling him to supplement his pleading and/or

opposition to defendants’ motion to dismiss by submitting an affidavit and evidence to support his claims against defendants.

Given this outcome, Wigdor’s motion to dismiss plaintiff’s third claim in his second amended complaint is held in abeyance pending the submission by Wigdor of supplemental briefing as to the impact of plaintiff’s affidavit on Wigdor’s arguments in favor of dismissal.

II. CONCLUSION

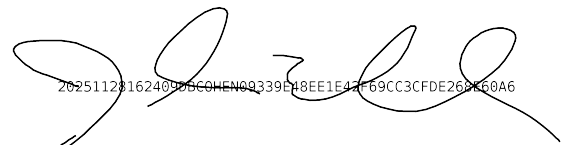
Accordingly, it is hereby

ORDERED that defendant Ganieva’s motion to dismiss (seq. 009) is granted to the extent of dismissing plaintiff’s claims against her for unjust enrichment and punitive damages, and those claims are severed and dismissed, and the motion is otherwise denied; it is further

ORDERED that plaintiff’s motion for leave to supplement his papers in opposition to defendant Wigdor LLP’s motion to dismiss (seq. 011) is granted, and the supplemental papers are deemed filed and served, nunc pro tunc; and it is further

ORDERED that defendant Wigdor’s motion to dismiss plaintiff’s claim against it in his second amended complaint (seq. 007) is held in abeyance, and Wigdor is directed to supplement its papers to address plaintiff’s new arguments and evidence within 30 days of the date of this order.

11/28/2025
DATE


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DAVID B. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
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	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE	
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