

GS Plasticos Limitada v Bureau Veritas
2012 NY Slip Op 33590(U)
March 15, 2012
Sup Ct, New York County
Docket Number: 650242/09
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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GS PLASTICOS LIMITADA,

Plaintiff,

INDEX NO. 650242/09

-against-

BUREAU VERITAS AND BUREAU VERITAS
CONSUMER PRODUCTS SERVICES,

Defendants

-----X
JOAN A. MADDEN, J.:

Defendant Bureau Veritas Consumer Products Services (“BVCPS”) moves to dismiss the remaining claim of plaintiff GS Plasticos Limitada (“GS”) seeking to recover damages for tortious interference with existing contract or, in the alternative, to strike GS’s amended prayer for relief for consequential and reputational damages. GS opposes the motion, which is denied.

GS is a Brazilian manufacturer of toy “premiums” for the promotional market, which are small plastic toys like those found McDonald’s Happy Meals. BVCPS is a provider of testing and inspection services for consumer products. This action arises out of allegations that, *inter alia*, between August 2006 and October 2006, BVCPS issued various reports to Kellogg Brazil, a subsidiary of the Kellogg Company (“Kellogg”), that incorrectly found that GS’s stamps which were to be used in promotional inserts in Kellogg’s products contained dangerously high levels of arsenic. It is alleged that as a result of these reports, which were subsequently determined to be false, Kellogg cancelled its contract with GS to manufacture the stamps and lost future business opportunities with Kellogg.

The original complaint asserted causes of action for negligence, *res ipsa loquitor*, tortious interference with existing contractual relations, and tortious interference with prospective

business relations.

BVCPS moved to dismiss the complaint on various grounds. In its decision and order dated April 7, 2010, the court granted the motion to the extent of dismissing all of GS's claims except for the claim seeking to recover for tortious interference with existing contractual relations. In that decision, the court rejected, *inter alia*, BVCPS's argument that since it alleged damage to GS's reputation the tortious interference claim was governed by the one-year limitations period for defamation claim, citing Amaranth LLC v. J.P. Morgan Chase & Co., 71 AD3d 40 (1st Dept), lv denied in part and dismissed in part, 14 NY3d 736 (2010). The court wrote that:

...in this case, the one-year statute of limitations is not applicable since the "gravamen of the complaint is economic injury, rather than merely reputational harm." Amaranth LLC v. J.P. Morgan Chase & Co., 71 AD3d at 48. As recently explained by the Appellate Division, First Department the law distinguishes between cases in which the alleged harm to plaintiff's business reputation "has an indirect effect on the [plaintiff's] ability to form business relationships" in which case the complaint sounds in defamation and those claims in which the harm impacts on "a specific business relationship." Id.; Mannix Industries, Inc. v. Antonicci, 191 AD2d 482 (2d Dept), lv dismissed, 82 NY2d 846 (1993).

Here, as the complaint alleges harm to specific business relationships, and in particular, GS's relationship with Kellogg and Kraft, GS's claims are not governed by the one-year limitations period applicable defamation claims. Instead, the claims are governed by the three-year limitations period applicable to claims for injury to property. See CPLR 214(4); Amaranth LLC v. J.P. Morgan Chase & Co., 71 AD3d at 48 (claim for tortious interference with a specific business relationship arising out of purported misrepresentations made by defendant concerning prospective business deal between plaintiff and a third-party is governed by the three-year limitations period governing actions for injury to property) Classic Appraisals Corp v. DeSantis, 159 AD2d 537 (2d Dept 1990)(where the complaint alleged harm to economic interests, it is governed by the three-year statute of limitations).

BVCPS now argues that the tortious interference claim is governed by the one-year statute of limitations as the prayer for relief in the amended complaint adds \$30 million damages to reputation and only \$800,000 for damages resulting from the loss of the contract, and that the prayer for damages is a “backdoor attempt” to reassert the dismissed claim for tortious interference with prospective business relationships. BVCPS further argues that the harm to GS’s reputation was not a foreseeable consequences of the alleged interference, and that the pleading does not adequately allege that the interference would result in consequential damages.

These arguments are unavailing. First, as the court found in its April 7, 2010 decision and order the tortious interference claim is governed by the three-year statute of limitations, and GS’s request for damages to its reputation does not alter this court’s ruling. Next, under New York law, consequential damages and damages to reputation can be recovered from a party found liable for tortious interference with contract. See Guard Life Corp. v. Parker Hardware Mfg. Corp., 50 NY2d 183, 197 (1980); Intern. Minerals & Resources. S.A. v. Pappas, 96 F3d 586, 597 (2d Cir 1996); Haig 4 NY Prac. Comm. New York Courts § 46:42.

In Guard Life Corp, *supra*, the Court of Appeals held that a plaintiff seeking to recover for tortious interference with contract is not entitled to “simply lost profits” but to the full pecuniary benefits of the contract with which [defendant] interfered.” In a footnote, the Court of Appeals noted that “[i]n an action against the third party for tortious interference, however, the elements of damages, including consequential damages, would be those recognized under the more liberal rules applicable to tort actions (Restatement, Torts 2d, § 774A, Comment c).” The court also cited with approval, Restatement, Torts 2d, § 774A(1), which provides that a party found liable to another for interference with a contract (or prospective business relation) is liable

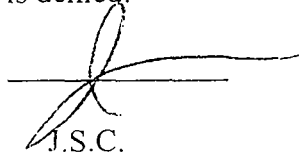
for damages for “pecuniary loss of benefits of the contract... consequential losses for which the interference is a legal cause; and emotional distress or actual harm to reputation, if they are reasonably to be expected as a result of the interference.”

Moreover, contrary to BVCPS’s position, it cannot be established at this juncture in the litigation and, in particular before the completion of discovery, whether consequential damages and/or damages to reputation sought by GS could have been reasonably expected as a result of the alleged interference.¹ Finally, the court finds that GS’s request for consequential and reputation damages is adequately pleaded.

In view of the above, it is

ORDERED that BVCPS’s motion to dismiss the tortious interference claim and/or to strike the request for consequential and reputation damages is denied.

DATED: March 15 2012



J.S.C.

¹In this regard BVCPS’s reliance on IMAF S. P.A. v. J.C. Penney Co. Inc., 1991 WL 66892 (SD NY 1991) and Kleartex (USA) Inc. v. Kleartex SDN BHD, 1994 WL 733688 (SD NY 1994) is misplaced as those holdings are based on the particular facts before the courts in those cases.