

Sehgal v Tansey

2013 NY Slip Op 33253(U)

December 20, 2013

Supreme Court, New York County

Docket Number: 156477/12

Judge: Paul Wooten

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: PAUL WOOTEN J.S.C.

PART 7

Justice

JEFFREY B. SEHGAL,

Plaintiff,

INDEX NO. 156477/12

- against -

MOTION SEQ. NO. 001

BRIAN TANSEY,

Defendant.

The following papers were read on this motion for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).

Answering Affidavits— Exhibits No(s).

Replying Affidavits — Exhibits No(s).

Cross-Motion: Yes No

On December 17, 2010 Jeffrey B. Sehgal (plaintiff), the former President and Chief Executive Officer of The Corporate Presence (TCP), commenced this action Brian Tansey (defendant) the President of Admento, Inc., a colleague and competitor of TCP in the Lucite memorabilia business asserting claims for slander per se, tortious interference with a business relationship and prima facie tort. Before the Court is a motion by the defendant to dismiss the complaint in its entirety, pursuant to CPLR 3211(a)(7), for failure to state a cause of action. Plaintiff is in opposition to defendant's motion and also cross-moves for leave to serve an amended complaint, pursuant to CPLR 3025, to amplify the pleading in response to certain issues raised in defendant's motion.

STANDARD

CPLR 3025(b) provides that "[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court . . . [and] [l]eave

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

shall be freely given upon such terms as may be just” (see *Ancrum v St. Barnabas Hosp.*, 301 AD2d 474, 475 [1st Dept 2003]; *Crimmins Constr. Co. v City of New York*, 74 NY2d 166, 170 [1989]. The First Department has “consistently held, however, that in an effort to conserve judicial resources, an examination of the proposed amendment is warranted” (*Ancrum*, 301 AD2d at 475; *Thompson v Cooper*, 24 AD3d 203, 205 [1st Dept 2005]). “Leave will be denied where the proposed pleading fails to state a cause of action, or is palpably insufficient as a matter of law (*Bishop v Maurer*, 83 AD3d 483, 485 [1st Dept 2011]; *Thompson*, 24 AD3d at 205; see *Ancrum*, 301 AD2d at 475; *Davis & Davis v Morson*, 286 AD2d 584, 585 [1st Dept 2001]).

When determining a CPLR 3211(a) motion, “we liberally construe the complaint and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]; see *Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409 [2001]; *Wieder v Skala*, 80 NY2d 628 [1992]). To defeat a pre-answer motion to dismiss pursuant to CPLR 3211, the opposing party need only assert facts of an evidentiary nature which fit within any cognizable legal theory (see *Bonnie & Co. Fashions v Bankers Trust Co.*, 262 AD2d 188 [1st Dept 1999]). Further, the movant has the burden of demonstrating that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (see *Guggenheimer v Ginzburg*, 43 NY2d 268 [1997]; *Salles v Chase Manhattan Bank*, 300 AD2d 226 [1st Dept 2002]).

Upon a 3211(a)(7) motion to dismiss for failure to state a cause of action, the “question for us is whether the requisite allegations of any valid cause of action cognizable by the state courts ‘can be fairly gathered from all the averments’” (*Foley v D’Agostino*, 21 AD2d 60, 65 [1st Dept 1964], quoting *Condon v Associated Hosp. Serv.*, 287 NY 411, 414 [1942]). “However imperfectly, informally or even illogically the facts may be stated, a complaint, attacked for insufficiency, is deemed to allege ‘whatever can be implied from its statements by fair and reasonable intendment’” (*Foley v D’Agostino*, 21 AD2d at 65, quoting *Kain v Larkin*, 141 NY 144, 151 [1894]). “[W]e look to the substance [of the pleading]

rather than to the form (*id.* at 64). A 3211(a)(7) motion to dismiss “is solely directed to the inquiry of whether or not the pleading, considered as a whole, fails to state a cause of action. Looseness and verbosity must be overlooked on such a motion if any cause of action can be spelled out from the four corners of the pleading” (*id.* at 64-65 [internal citation omitted]).

DISCUSSION

The Court finds that plaintiffs' Verified Complaint is insufficient to withstand the particularity requirements of the causes of action that he seeks, however the Court will turn to the proposed Amended Verified Complaint to determine whether it is sufficient. The alleged slanderous statement that defendant says about plaintiff is as follows “Jeremy Wiland told me that he and Jeff Sehgal are in business selling lucites” and this statement was allegedly told to “TCP employees and current Admento employees, including on information and belief Sally Burtonshaw, Jill Agnello, Sanville Vernon, and Theresa Santoro, that Plaintiff was employed by a company that was in direct competition with TCP and working with a former TCP employee who was also subject to a noncompetition agreement” (Proposed Amended Verified Complaint at ¶ 11).

The Court finds that in looking to the substance of the pleading rather than to its form (*see Foley v D'Agostino*, 21 AD2d at 64), and in viewing the amended complaint in the light most favorable to the plaintiff and affording the plaintiff the benefit of every possible inference (*see Leon v Martinez*, 84 NY2d at 87-88), the Court finds that the plaintiffs' claims cannot survive a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), as the amended complaint fails to raise cognizable legal theories upon which relief can be granted. Despite the amplifications of the alleged slanderous statement that defendant said, the proposed Amended Verified Complaint is still insufficient to solve the issue of lack of particularity required for each of the causes of action that plaintiff asserts in his Verified Complaint. Thus, plaintiffs' cross-motion for leave to serve and file a Amended Verified Complaint, pursuant to CPLR 3025(b), is denied.

CONCLUSION

Accordingly, it is hereby

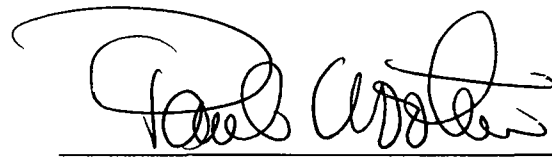
ORDERED that defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(7) is granted and the complaint is dismissed in its entirety; and it is further,

ORDERED the cross-motion by plaintiff for leave to serve an amended complaint, pursuant to CPLR 3025, is denied; and it is further,

ORDERED that counsel for defendant is directed to serve a copy of this Order with Notice of Entry upon the plaintiff and upon the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 12/20/13


PAUL WOOTEN J.S.C.

- 1. Check one:
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE