SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 60

PRESENT: Hon. Marcy Friedman, J.S.C.

LINDA GRANT WILLIAMS,

Plaintiff,

– against –

CITIGROUP, INC., et al.,

Defendants.

Index No.: 650481/2010

DECISION/ORDER

In this antitrust action, brought under New York's Donnelly Act, plaintiff Linda Grant Williams (Williams) alleges that defendants Citigroup, Inc. (Citigroup), Citigroup Global Markets, Inc. (CGM), JP Morgan Securities, Inc. (JP Morgan), JP Morgan Chase & Co. (JPMC), and Goldman Sachs & Co. (Goldman) engaged in a conspiracy with investment banks and others to boycott the use of Williams' patented airline special facility (ASF) municipal bond structure to finance airline terminal construction. Plaintiff moves for leave to file a proposed second amended complaint (SAC), pleading a fourth cause of action for tortious interference with prospective economic advantage against Citigroup, CGM, JP Morgan, and JPMC.

The proposed fourth cause of action alleges that defendants tortiously interfered with plaintiff's

> "existing working relationship with key members of Defendants' Municipal Bond Groups; bankers at other investment banks, including BAS; various airlines, including American Airlines; and municipal authorities including the Port Authority, pursuant to which they were working with Plaintiff to conduct ASF Bond issuances that employed Plaintiff's structure. Had any such issuances been completed, Plaintiff would have earned substantial licensing fees and other revenues."

(SAC ¶ 178.) In moving to amend, plaintiff relies on previously pleaded allegations, and does

not seek to plead additional allegations.[1]

To state a claim for tortious interference with prospective economic advantage, a plaintiff must allege: "(a) the plaintiff had business relations with a third party; (b) the defendant interfered with those business relations; (c) the defendant acted with the sole purpose of harming the plaintiff or by using unlawful means; and (d) there was resulting injury to the business relationship." (Zetes v Stephens, 108 AD3d 1014, 1020 [1st Dept 2013].)

As defendants correctly contend, the fourth cause of action is impermissibly vague to the extent that it alleges defendants' interference with plaintiff's working relationships with unspecified investment banks, airlines, and municipal authorities. (Defs.' Memo. In Opp. At 8.) Claims regarding these unidentified entities cannot be maintained as they do not provide defendants with sufficient notice of the transactions sought to be proved. (See generally CPLR 3013; Zetes, 108 AD3d at 1020 [requiring plaintiff to "identify a specific customer that the plaintiff would have obtained 'but for' the defendant's wrongful conduct"]; Korn v Princz, 226 AD2d 278, 278-279 [1st Dept 1996] [dismissing tortious interference with prospective business relations cause of action "since there is no allegation that plaintiff was actually and wrongfully prevented from entering into or continuing in a specific business relationship"].) Allegations of interference with "key members of Defendants' Municipal Bond Groups" fail for the additional reason that conduct directed at defendants' own employees, rather than a third party, cannot support a tortious interference claim. (See Carvel Corp. v Noonan, 3 NY3d 182, 192 [2004].)

As noted above, the tortious interference claim is based on defendants' alleged interference with plaintiff's relationship with only three specifically identified entities – Banc of

[1] Prior to her filing of this motion, the court directed plaintiff to provide a redline of the original and proposed complaints, and also to highlight the factual allegations supporting the new cause of action. In response, plaintiff submitted a version of the SAC in which virtually every paragraph of the approximately 60-page complaint is underlined, including material related solely to other causes of action.

America Securities (BAS), American Airlines, and Port Authority of New York and New Jersey (Port Authority). On the reply, plaintiff submits an affidavit in support of the amendment in which she identifies one additional third party, US Airways. (Williams Aff. ¶¶ 7-10.) Plaintiff also specifies portions of the complaint that she asserts are relevant, and annexes documents to evidence the alleged business relationship with the third parties she has named. (Id.)

While new factual matter is ordinarily not properly considered on a reply (see Ritt v Lenox Hill Hosp., 182 AD2d 560, 562 [1st Dept 1982]), plaintiff's reply responds to defendants' arguments in opposition to plaintiff's motion. The new evidence on the reply is therefore properly entertained. (See Galdamez v Biordi Constr. Corp., 50 AD3d 357 [1st Dept 2008]; Ticor Tit. Guar. Co. v Bajraktari, 261 AD2d 156 [1st Dept 1999].) Moreover, the proposed second amended complaint, like the prior complaint, pleaded allegations regarding US Airways, although US Airways was not specifically named in the proposed fourth cause of action. (See SAC ¶¶ 88-94.) Defendants therefore will not be prejudiced if the cause of action is also maintained with respect to US Airways. As plaintiff calls this court's attention only to four specifically named entities, however, the court will consider the proposed fourth cause of action only insofar as it relates to those entities.

First, defendants are alleged to have successfully pressured BAS to terminate its license agreement with plaintiff to promote the use of her ASF structure. (Williams Aff. ¶¶ 13-17; SAC ¶ 9 [e].) This claim is analogous to a cause of action for tortious interference with prospective economic advantage previously held to be sufficiently pleaded in a related action by plaintiff. (Williams v Barclays Capital, Inc., 2015 WL 1439473, *11 [Mar. 31, 2015].) There, this court declined to dismiss a claim based on wrongful interference directed at M.R. Beal & Co., another investment bank, which, like BAS, was working to promote plaintiff's structure. On the reasoning of this court's prior decision in the related action, this branch of the claim is

maintainable.[2]

Second, plaintiff alleges a series of dealings with US Airways and Port Authority. In her affidavit, plaintiff attests to meeting with the Treasurer of US Airways, Tom Weir, on December 7, 2005, about the use of her structure to refinance specific ASF bonds. (Williams Aff. ¶¶ 7-8.) In December 2006, after plaintiff and Crystal Mullins, a JP Morgan employee, met with the Port Authority, Mullins sent Weir an analysis stating that Port Authority was "willing to facilitate a refunding" using plaintiff's structure. (Id. ¶ 8; Mullins' Dec. 8, 2006 Memo. at 3 [annexed as Ex. 2 to Williams Aff.].) Plaintiff further alleges that US Airways retained a consultant, Tom Petersen of Lift Aviation, to analyze her structure, but that despite his determination that it would provide "considerable savings," US Airways decided not to go forward. (Id. at ¶ 10; Email chains between Williams and Weir dated Jan. 30, 2007 and May 9, 2007 [annexed as Exs. 6, 7 to Williams Aff.].) With respect to the Port Authority, plaintiff attests that her structure was approved at a meeting on December 6, 2006, "subject to working out 'operating details,'" but that Aviation Department Assistant Director David Kagan later advised her that "after discussions with US Air and 'their investment bankers at Citibank,' the Port Authority decided not to use [her] structure." (Williams Aff. ¶¶ 8, 11; Email chain between Williams and Kagan dated Jan. 2008 [annexed as Ex. 8 to Williams Aff.].) The court finds that these allegations make a sufficient showing at this stage that defendants tortiously interfered with and prevented plaintiff from entering into a specific business relationship.

Third, similarly, with respect to American Airlines, plaintiff alleges that American Airlines was actively considering her structure, but that CGM managing director Robert

[2] In the decision in the related action, this court dismissed a claim for tortious interference with contract based on the BAS license agreement. The decision held that plaintiff had not alleged a breach of the contract, an element of that cause of action. As discussed there, the requirements for the maintenance of a claim for tortious interference with contract differ from those for a claim for interference with prospective economic advantage. (Williams v Barclays Capital, Inc., 2015 WL 1439473, at *11.)

DeMichiel advised the airline that the structure had no merit and that plaintiff's calls should be ignored. (Williams Aff. ¶ 18; DeMichiel Emails dated Mar. 6, 2007 and Sept. 13, 2007 [allegedly acknowledging interference] [annexed as Ex. 14 to Williams Aff.]; SAC ¶¶ 54, 101-104.) This allegation is also sufficient at this juncture to support the proposed tortious interference cause of action.

Finally, in granting leave to amend, the court rejects defendants' contention that the required evidentiary showing on a motion for leave to amend is similar to that made on a motion for summary judgment. The required evidentiary showing is discussed in this court's recent decision (Ambac Assur. Corp. v. Nomura Credit & Capital, Inc., 2016 WL 7475831, at *3 n 4 [Dec. 29, 2016]), to which the parties are referred. To the extent that this Department continues to require a showing of merit on a motion for leave to amend, Williams' affidavit is sufficient. The court also holds that the amendment does not prejudice the defendants, given pleading of the factual basis for the tortious interference cause of action in the prior complaint. If defendants demonstrate that further depositions are required on the limited new claims that will proceed, however, the court will entertain an application for costs to be borne by the plaintiff.

It is accordingly hereby ORDERED that plaintiff's motion for leave to amend is granted to the extent that the proposed second amended complaint annexed to the moving papers as Exhibit E shall be deemed served upon service of a copy of this decision and order with notice of entry.

This constitutes the decision and order of the court.

Dated: New York, New York
April 10, 2017

MARCY FRIEDMAN, J.S.C.