

Sprecher v Thibodeau
2018 NY Slip Op 32205(U)
September 5, 2018
Supreme Court, New York County
Docket Number: 158846/14
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 47

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BENNETT SPRECHER,

Plaintiff,

-against-

Index No.: 158846/14

MARC THIBODEAU,

Defendant.
-----X

PAUL A. GOETZ, J.

Defendant moves for summary judgment pursuant to CPLR § 3212 on plaintiff’s remaining claim of tortious interference with business relations. By decision and order entered March 30, 2017, the First Department modified this court’s order entered August 2, 2016, which granted defendant’s motion to dismiss the plaintiff’s negligence claim and denied the motion as to the tortious interference claim. The First Department modified this court’s order by granting the motion to dismiss as to the tortious interference claim insofar as it was premised on attorney comments quoted by the press; the remainder of the claim premised on emails sent by defendant was sustained (148 AD3d 654 [1st Dept 2016]).

BACKGROUND

The dispute between the parties arises from the unsuccessful creation of a Broadway show, Rebecca- the Musical (the “Show”). Sprecher Organization LLC, the principle of which is plaintiff, and Louise Forlenza Productions, Inc. formed Rebecca Broadway Limited Partnership (“RBLP”) to finance, produce and manage the Show. RBLP engaged defendant to serve as the Show’s press publicist in 2008, a role he served in until 2012. In its efforts to raise the capital needed to open and sustain the Show, RBLP experienced many problems, which resulted in

delaying the Show, and ultimately to its cancellation.

In early 2012, after a delay due to insufficient capitalization, RBLP entered into a consulting agreement with Mark Hotton. Hotton provided RBLP with four investors, one of whom, Paul Abrams, became the largest single investor. Abrams agreed to invest more than \$4 million in the Show. However, that money was never received by RBLP after Abrams reportedly died of malaria overseas. Following Abrams's alleged death, the Show was again delayed. In the aftermath of Abrams's alleged death, stories in the New York Times and the New York Post detailed the nature of Abrams's investments and RBLP's difficulties in securing the investment from Abrams's estate.

RBLP subsequently procured another investor, Laurence Runsdorf, who committed to invest \$2.5 million. Runsdorf's investment, memorialized in a September 19, 2012, agreement, was conditioned upon RBLP's meeting its \$12 million minimum capitalization target by October 5, 2012. Following Abrams's alleged death, defendant became suspicious of Hotton, the Abrams affair and RBLP's investment efforts, and conducted his own investigation. Defendant discovered that Hotton had a history of fraud charges, and that Abrams was a fictitious person. After discussing his findings with RBLP, defendant sent two emails under a fictitious name to Runsdorf's attorneys, alerting them to a September 25, 2012, New York Times article that suggested that Abrams was not real. Defendant also sent an email under another fictitious name directly to Runsdorf, alerting him to the Abrams fiction, implicating that plaintiff was involved in this fiction, and warning him that the prospects of the Show were "doomed." Thereafter, Runsdorf withdrew his investment in the Show. In October, 2014, Hotton plead guilty to wire fraud for his involvement in the fraudulent investment scheme in connection with the Show.

Prior to this action, defendant was discharged by RBLP, which sued him, along with Mark Hotton in Supreme Court, New York County (*Rebecca Broadway Limited Partnership v Hotton*, Index No. 653659/12). Following a trial, a jury awarded RBLP \$5,000 in damages for its breach of contract claim;¹ found defendant tortiously interfered with RBLP's business relationships, and awarded it \$85,000 in compensatory damages on that claim; and that defendant had not defamed RBLP. By decision and order entered May 21, 2018, the court denied RBLP's motion to set aside the damages verdict on RBLP's tortious interference claim.

Plaintiff now brings this action in his individual capacity, claiming that defendant's actions tortiously interfered with RBLP's and his own personal business relationships. In his motion for summary judgment, defendant argues that plaintiff is seeking the same relief sought by RBLP and has no personal standing to bring this suit. Defendant also argues that plaintiff has no claim for damages, since all damages were allegedly suffered by RBLP.

ANALYSIS

"It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues" (*Birnbaum v Hyman*, 43 AD3d 374, 375 [1st Dept 2007]). "The substantive law governing a case dictates what facts are material, and '[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment [citation omitted]'" (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008]). "Where a defendant is the proponent of a motion for summary judgment, it has the burden of establishing that there are no material issues of facts

¹ Defendant's liability for breach of contract was decided as a matter of law before the trial, leaving for the jury the amount of damages to be awarded.

in dispute and thus that it is entitled to judgment as a matter of law” (*Flores v City of New York*, 29 AD3d 356,358 [1st Dept 2006]). “Once the defendant demonstrates its entitlement to summary judgment, the burden then shifts to the plaintiff to present facts, in admissible form, demonstrating that genuine, triable issues precluding the granting of summary judgment” (*id.*).

The cause of action for tortious interference with prospective business relationships entails a higher standard of culpable conduct than would a claim for tortious interference with a contract, as a plaintiff must set forth that the claimed interference constituted a crime or independent tort (*see Mitzvah Inc. v Power*, 106 AD3d 485, 487 [1st Dept 2013]). “To establish such a claim, a plaintiff must demonstrate that the defendant’s interference with its prospective business relations was accomplished by ‘wrongful means’ or that defendant acted for the sole purpose of harming the plaintiff” (*GS Plasticos Limitada v Bureau Veritas*, 88 AD3d 510, 510 [1st Dept 2011] [internal quotation marks and citation omitted]). “‘Wrongful means’ includes physical violence, fraud, misrepresentation, civil suits, criminal prosecutions and some degree of economic pressure, but more than simple persuasion is required” (*Snyder v Sony Music Entertainment, Inc.*, 252 AD2d 294, 300 [1st Dept 1999]).

The complaint alleges that defendant engaged in culpable conduct when he sent an email to Runsdorf, using a fake name and accusing plaintiff of participating in a fraud. Plaintiff alleges that he was a victim of, and not a participant in, Hotton’s fraud. According to the complaint, this conduct resulted in emotional distress to plaintiff; the loss of income and profits that he would have received from the Show; the inability to repay certain loans totaling approximately \$425,000 made by third-parties to the producers of the Show; loss of personal assets including his home in order to keep the Show moving towards production; the inability to raise funds for

two other shows plaintiff was producing, *The Exorcist* and *Little House on the Prairie*; the inability to find employment in the theater community resulting in ongoing lost income in the amount of approximately \$250,00 per year.

Defendant argues that his motion should be granted because the business relationship that was tortuously interfered with was RBLP's business relationship not plaintiff's personal business relationship and that plaintiff is not permitted to bring a personal action based on claims that belong to RBLP even though he may suffer a loss of value in his investment or incur personal liability.

It is black letter law that a stockholder has no individual cause of action against a person or entity that has injured the corporation. This is true notwithstanding that the wrongful acts may have diminished the value of the shares of the corporation, or that the shareholder incurs personal liability in an effort to maintain the solvency of the corporation. An exception exists, however, where the wrongdoer has breached a duty owed directly to the shareholder which is independent of any duty owing to the corporation.

(*Serino v Lipper*, 123 AD3d 34, 39 [1st Dept 2014] [citations omitted]). "If there is any harm caused to the individual, as opposed to the corporation, then the individual may proceed with a direct action" (*id.* at 40). Plaintiff's claim of loss of income and profits that he would have received from the Show are not recoverable in this action since loss of value of his investment in RBLP is not a claim he may assert individually (*Abrams v Donati*, 66 NY2d 951, 953 [1985] [holding: "[f]or a wrong against a corporation a shareholder has no individual cause of action, though he loses the value of his investment or incurs personal liability in an effort to maintain the solvency of the corporation"]). Likewise, plaintiff may not seek to recover based on his alleged inability to repay loans associated with the Show totaling approximately \$425,000 and his loss of

personal assets including his home (*id.*). Consequently, summary judgment on these claimed losses must be granted in favor of defendant.

On the other hand summary judgment to defendant must be denied on plaintiff's claim that he was unable to raise funds for the productions of *The Exorcist* and the *Little House on the Prairie* and his claim that he was unable to find employment in the theater community because these claims are personal to plaintiff and independent from any claim RBLP has (*Serino*, 123 AD3d at 39). As the First Department stated in its March 30, 2017, decision and order in this case "the claim in the instant action relates to interference with plaintiff's relationships with parties who would otherwise have been willing to work with him on theater projects [had defendant not sent the emails accusing plaintiff of fraud, thus] . . . the damages sought in the instant action are to plaintiff himself and his career . . ." (148 AD3d at 656). Moreover, defendant does not submit any evidence contradicting plaintiff's allegations in the complaint concerning these claims. Therefore, as to plaintiff's claim that he was unable to raise funds for the two other productions and his claim that he was unable to find employment in the theater community, defendant fails to meet his *prima facie* burden and summary judgment on those claims must be denied.

Accordingly, it is hereby

ORDERED that defendant's motion for summary judgment is GRANTED as to plaintiff's claims that he lost income and profits from the Show, was unable to repay loans associated with the Show and that he lost personal assets; and it is further

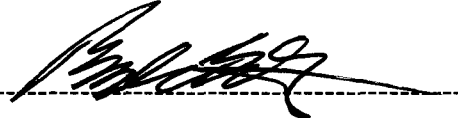
ORDERED that defendant's motion for summary judgment is DENIED as to plaintiff's claim for damages resulting from his inability to raise funds for the productions of *The Exorcist*

and the Little House on the Prairie and his claim for damages resulting from the lose of income due to an inability to find employment in the theater community.

Dated:

9/5/18

ENTER:



Hon. Paul A. Goetz, JSC