

Matamoro v Horatio Mgt., LLC
2018 NY Slip Op 33478(U)
December 10, 2018
Supreme Court, Queens County
Docket Number: 706458/2018
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

Derrick Matamoro,

Index No.: 706458/2018

Plaintiff,

Motion Date: 11/15/2018

- against -

Motion No.: 18

Horatio Management, LLC,
Amir Meiri,
Launch Development, LLC,
Mario Alvarenga, Spencer J. Strum,
Knickerbocker Abstract Co., Inc.
Harriet Grunfeld, and
Deutsche Bank National Trust Company,

Motion Seq.: 2

Defendant.

The following electronically filed documents read on this Order
to Show Cause by defendants Knickerbocker Abstract Co.
Inc. (herein "Knickerbocker"), and Harriet Grunfeld (herein
"Grunfeld") for an Order dismissing all claims asserted against
the Defendants Knickerbocker and Grunfeld in the complaint of
Derrick Matamoro dated April 25, 2018 pursuant to: CPLR
3211(a)(7) as plaintiff fails to state a claim; and CPLR 3016(b)
as plaintiff fails to plead fraud with particularity:

Papers
Numbered

Notice of Motion-Affirmation-Memorandum of Law-
Exhibits.....EF 45-48

On August 2, 1995, Plaintiff became the fee simple owner of
real property located at 58-35 78th Avenue, Ridgewood, New York,
New York 11385. On December 20, 2005, plaintiff gave a mortgage
to non-party New Century Mortgage Corporation which was assigned
to defendant Deutsche Bank National Trust Company on February 8,
2008. On November 10, 2014, Plaintiff was contacted by Homeowners
Assistance Services allegedly regarding a potential loan
modification. Plaintiff subsequently signed documents for which
he believed to be a loan modification. However, in July 2015,
plaintiff received documentation from a loan servicer informing
him that his property had been sold. Thereafter, Plaintiff

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QUEENS COUNTY

complaint only states that defendant Grunfeld is an "officer, director, shareholder, employee managing agent, and/or agent aiding the principal contractor" of Knickerbocker.

Therefore, all claims made against defendant Grunfeld shall be dismissed because of the protection afforded to her by the corporate veil.

Fraud and Common Law Fraud

To plead fraud, a plaintiff must establish: "(1) that the defendant made a misrepresentation or a material omission of fact which was false and which the defendant knew to be false; (2) that the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it; (3) that there was justifiable reliance of the plaintiff on the misrepresentation or material omission, and (4) injury" (In re Imperato, 53 N.Y.S.3d 661, 663-64 [2d Dep't 2017]). "Each of the foregoing elements must be supported by factual allegations containing the details constituting the wrong sufficient to satisfy CPLR 3016(b)" (Cadet-Duval v. Gursim Holding, Inc., 45 N.Y.S.3d 585, 586 [2d Dep't. 2017] (internal citation and quotation omitted)). CPLR section 3016(b) requires that a fraud claim be pled with heightened specificity. Particularly, where a cause of action is based on fraud, CPLR section 3016(b) requires that the "circumstances constituting the wrong" must be "stated in detail," including "specific dates and items" (Swartz v. Swartz, 44 N.Y.S.3d 452, 461 [2d Dep't 2016]).

Plaintiff's third and eleventh causes of action, allege fraud and common law fraud against defendant Knickerbocker.

Here, aside from the heading plaintiff fails to mention Knickerbocker when pleading the third cause of action. Pursuant to the pleadings, plaintiff fails to mention a single element of fraud relating to Knickerbocker. Additionally, plaintiff even mentions that he never even met with anyone who worked for Knickerbocker. Due to the fact that plaintiff had never met with anyone associated with Knickerbocker, plaintiff failed to allege Knickerbocker made a misrepresentation or a material omission of fact which was false and which it knew to be false, of which plaintiff justifiably relied upon.

Therefore, plaintiff's third cause of action for fraud, and tenth cause of action of common law fraud shall be dismissed against Knickerbocker.

Forgery

Plaintiff's first cause of action against defendant

Knickerbocker is forgery.

The Court of Appeals in Marden v Dorothy, 160 NY 39, 53 [1899], has defined forgery in various different terms. These include "fraudulent making of a writing to the prejudice of another's rights, . . . the false making or material alteration, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. . . [and], that forgery may be committed by fraudulently procuring the signature of another to an instrument which he has no intention of signing." Id. "Indeed, a review of the case law clearly indicates that the concepts of 'forgery' and 'fraud' are closely related, . . . [and] [i]t is clear from these definitions that "forgery" is but one species of "fraud" (Piedra v Vanover, 174 AD2d 191, 194 [2d Dept 1992]). Therefore, CPLR section 3016(b) and its requirements that fraud claims be made with specific particularity, are applicable here.

Here, plaintiff fails to provide in his complaint facts that are specific enough in detail to show that a forgery occurred. Defendant Knickerbocker is not even mentioned anywhere in the section for the first cause of action aside from the heading.

Therefore, the plaintiff's first cause of action titled forgery shall be dismissed as against defendant Knickerbocker for failure to state a claim with the requisite specificity.

Conspiracy to Commit Fraud

In plaintiff's fourth cause of action, he alleges conspiracy to commit fraud against defendant Knickerbocker.

New York does not recognize a separate cause of action for civil conspiracy, however, "a plaintiff may plead the existence of a conspiracy in order to connect the actions of the individual defendants with an actionable, underlying tort and establish that those actions were part of a common scheme" (Faulkner v. City of Yonkers, 105 AD3d 899, 900 [2d Dep't 2013]). To properly plead a cause of action for conspiracy, "the plaintiff must allege a cognizable tort, coupled with an agreement between the conspirators regarding the tort, and an overt action in furtherance of the agreement" (Id. at 340 quoting Perez v. Lopez, 97 A.D.3d 558, 560 [2d Dep't 2012]). Accordingly, a cause of action for conspiracy to commit fraud "stands or falls with the underlying tort, fraud." McSpedon v. Levine, 158 A.D.3d 618, 621, [2d Dep't 2018]).

Here, Knickerbocker was not involved in the underlying fraudulent conduct as per the pleadings, yet plaintiff conclusory states that defendant Knickerbocker was involved in a conspiracy to commit fraud. Since the pleadings fail to state what, if any,

material misrepresentation or material omission of fact were made by Knickerbocker, this Court cannot allow the claim of conspiracy to continue in this action.

Therefore, plaintiff's fourth cause of action of conspiracy to commit fraud against defendant Knickerbocker shall be dismissed.

Tortious Interference

The required elements of a cause of action for tortious interference with prospective business relations are as follows: (a) business relations with a third party; (b) the defendant's interference with those business relations; (c) the defendant acting with the sole purpose of harming the plaintiff or using wrongful means; and (d) injury to the business relationship (Advanced Glob. Tech. LLC v Sirius Satellite Radio, Inc., 15 Misc 3d 776, 779 [Sup Ct N.Y. Cnty 2007], affd as mod, 44 AD3d 317 [1st Dept 2007]; see Guard-Life Corp. v. S. Parker Hardware Mfg. Corp., 50 N.Y.2d 183, [1990]; Carvel v. Noonan, 3 N.Y.3d 182, [2004]).

Here, plaintiff fails to allege the elements of tortious interference

Therefore, the eleventh cause of action for tortious interference against defendant Knickerbocker shall be dismissed as plaintiff failed to state a claim for such.

Attorney's Fees

Plaintiff's fourteenth cause of action requests an award of court costs and attorneys' fees. It is a well-settled rule in New York that "attorneys' fees are considered an incident of litigation and, unless authorized by statute, court rule, or written agreement of the parties, are not recoverable." (Culinary Connection Holdings, Inc. v. Culinary Connection of Great Neck, Inc., 1 A.D.3d 558, 559, 769 [2d Dep't 2003]).

Here, there is no agreement providing for attorney's fees. Plaintiff likewise does not assert any cause of action warranting a statutory award of costs and fee. The cause of action for attorneys fees shall be dismissed against defendants Grunfeld and Knickerbocker.

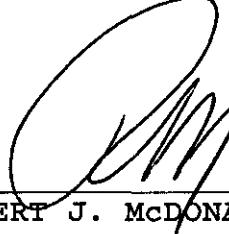
No opposition has been filed.

Accordingly, the motion is granted; and it is further

ORDERED, all claims made against defendant Grunfeld in this action are hereby dismissed; and it is further

ORDERED, all claims made against defendant Knickerbocker in this action are hereby dismissed.

Dated: December 10, 2018
Long Island City, NY



ROBERT J. McDONALD
J.S.C.

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