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| Itria Ventures LLC v Provident Bank |
| 2019 NY Slip Op 33636(U) |
| December 10, 2019 |
| Supreme Court, New York County |
| Docket Number: 653667/2018 |
| Judge: Andrew Borrok |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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ITRIA VENTURES LLC,
Plaintiff,

- v -

PROVIDENT BANK,
Defendant.

-----X

PROVIDENT BANK
Plaintiff,

-against-

BIZ2CREDIT INC., RAMIT AURORA, HIGHCREST CAPITAL,
LLC, JIFFER SMALL BUSINESS LENDING FUND, LP,
MARKETPLACE SPV, LLC, PRIME MERIDIAN CAPITAL
MANAGEMENT, LLC, RANGER DIRECT LENDING FUND
TRUST

Defendant.

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INDEX NO. 653667/2018
MOTION DATE 10/04/2019
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

Third-Party
Index No. 595127/2019

The following e-filed documents, listed by NYSCEF document number (Motion 006) 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents and for the reasons set forth on the record (12/6/2019), Biz2Credit Inc. (Biz2Credit) and Ramit Arora (collectively, the Third Party Defendants)'s motion to reargue the court's decision and order (NYSCEF Doc. No. 139, the Prior Decision), dated September 9, 2019, is denied.

To succeed on a motion to reargue, a party must demonstrate that the court either (1) overlooked or misapprehended the relevant facts, or (2) misapplied a controlling principle of law (William P.

Paul Equip. Corn. v Kassis, 182 AD2d 22, 27 [1st Dept 1992]). Reargument is not intended to afford a “party an opportunity to advance arguments different from those tendered on the original application” (*Foley v Roche*, 68 AD2d 558, 568 [1st Dept 1979]).

In motion sequence 003, the court granted Provident Bank (**Provident**)’s motion to dismiss certain counterclaims but denied the motion with respect to the second counterclaim for tortious interference against Biz2Credit and Mr. Arora (NYSCEF Doc. No. 139, at 6). In the Prior Decision, the court explained:

According to Provident every favorable inference, Provident has sufficiently alleged that Biz2Credit was aware of the Agreement and interfered with the same by orchestrating certain misrepresentations by Itria, which constituted a breach of the Agreement (NYSCEF Doc. No. 48, ¶¶ 31-32, 133, 119). With respect to Mr. Arora, the pleadings state that he orchestrated certain misrepresentations, acted with malice and benefited from the transactions (NYSCEF Doc. No. 48, ¶¶ 116-117, 120, 130). Accordingly, the Itria Defendants’ motion to dismiss the second counterclaim for tortious interference as against Biz2Credit and Mr. Arora is denied. (*id.*).

In their moving papers, the Third Party Defendants assert that the court misapprehended Provident’s failure to plead two aspects of its claim for tortious interference: (i) Provident did not allege that the Third Party Defendants interfered with an existing enforceable contract, and (ii) Provident failed to state a claim for tortious interference against Mr. Arora individually.

Nothing submitted by the Third Party Defendants on this motion to reargue changes the outcome of the Prior Decision. The court did not overlook or misapprehend any matters of fact or law so as to warrant leave to reargue. To the extent that the Third Party Defendants assert that Provident’s alleged interference pre-dated the relevant loan agreement, those portions of the answer and counterclaims cited in the Prior Decision were not meant to be the sole basis on

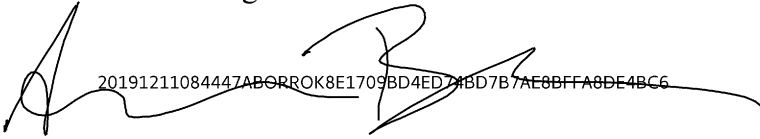
which the claim for tortious interference was sustained. In sum and substance, the court determined that Provident had a cause of action grounded in tortious interference against Biz2Credit because Biz2Credit participated in concealing Itria's interest in future receivable sales agreements (FRSAs) that were negotiated after and in derogation of the existing loan agreement between Provident and Lotus Exim which Ramit Arora, Biz2Credit's principal, negotiated with Provident previously. In addition, the Third Party Defendants cannot use this motion as an opportunity to assume a position inconsistent with that taken on the original motion – *i.e.*, that the claim for tortious interference involved interference that pre-dated the loan agreement, while the Third Party Defendant's original motion to dismiss argued the very opposite in that the alleged interference solely concerned FRSAs that post-dated the loan agreement (NYSCEF Doc. No. 141, at 20-21; *Foley*, 68 AD2d at 568).

With respect to the claim of tortious interference against Mr. Arora personally, the Third Party Defendants rely primarily on *Joan Hansen & Co. v Everlast World's Boxing Headquarters Corp.* where the First Department dismissed a claim for tortious interference against individual defendants because there was “no allegation that either of these defendants sought to obtain a personal benefit, as opposed to a benefit to the corporation he represented” (296 AD2d 103, 110 [1st Dept 2002]). However, here, Provident sufficiently alleged that (i) Mr. Arora as a “principal of both Biz2Credit and Itria orchestrated the fraud and personally benefited from the transactions,” (ii) Mr. Arora assisted with the loan post-closing conduct “while secretly self-dealing to Provident's direct and substantial detriment,” (iii) Biz2Credit of which Mr. Arora is a principal received “\$255,000 commission and fees” as a result of the loan, and (iv) that Itria of which Mr. Arora is a principal received more than “\$1,000,000 in A/R Proceeds” collateral

previously pledged to Provident (NYSCEF Doc. No. 140, ¶¶ 37, 118, 130-131, 137). Moreover, during oral argument in Mtn. Seq. 003, the court referred to certain emails from Mr. Arora during the relevant transactions in which it was unclear whether such emails originated from Itria or Biz2Credit (NYSCEF Doc. No. 148, 34:7-34:10). According Provident every favorable inference, the pleadings and documentary evidence provide a factual basis for the court’s finding that Mr. Arora sought to obtain a personal benefit by receipt of the monies collected by the two companies of which he is a principal: Itria and Biz2Credit. Under these circumstances, Provident stated a cognizable claim for tortious interference that did not warrant dismissal at that early stage of the proceedings.

Accordingly, it is

ORDERED that Biz2Credit Inc. and Ramit Arora’s motion to reargue is denied.



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12/10/2019
DATE

ANDREW BORROK, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> GRANTED | | <input type="checkbox"/> GRANTED IN PART | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER | | <input type="checkbox"/> SUBMIT ORDER | |
| | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |