

Ford Models, Inc. v Wilhelmina Models, Inc.

2019 NY Slip Op 33737(U)

December 18, 2019

Supreme Court, New York County

Docket Number: 653277/16

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

FORD MODELS, INC.

INDEX NO. 653277/16

- v -

MOT. DATE

WILHELMINA MODELS, INC.

MOT. SEQ. NO. 002

The following papers were read on this motion to/for
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits
Replying Affidavits

This is a dispute between two modeling agencies. Defendant now moves for summary judgment. Plaintiff opposes the motion and cross-moves for summary judgment on liability on its sole cause of action and dismissing defendants' first through fifth affirmative defenses. The motion and cross-motion were timely brought after note of issue was filed. Therefore, summary judgment relief is available. For the reasons that follow, the motion is granted and the cross-motion is denied.

By way of background, defendant previously moved to dismiss pursuant to CPLR 3211[a][7]. In a decision/order dated March 8, 2017, the Honorable Joan Kenney dismissed all but plaintiff's first cause of action for tortious interference with existing contractual relations.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; Winegrad v. NYU Medical Center, 64 NY2d 851 [1985]; Zuckerman v. City of New York, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (Zuckerman, supra). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]; Ayotte v. Gervasio, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (Rotuba Extruders v. Ceppos, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (Sillman v. Twentieth Century Fox Film, 3 NY2d 395 [1957]).

Defendant argues that it cannot be held liable for non-party Francisco Lachowski's alleged act of breaking his contract with plaintiff early. At all times herein, the court's characterization of Lachowski's actions as a breach is merely in the interest of judicial economy, as that issue is plainly not before the

Dated: 12/18/19

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [X] GRANTED [X] DENIED [] GRANTED IN PART [] OTHER
3. Check if appropriate: [] SETTLE ORDER [] SUBMIT ORDER [] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

court. As such, the court does not pass on the alleged impropriety of Lachowski's actions.

Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom (*Lama Holding Co. v. Smith Barney Inc.*, 88 NY2d 413 [1996]). This case turns on whether defendant "procured" Lachowski's breach.

The record reveals that Lachowski was dissatisfied with plaintiff's representation and left plaintiff of his own accord. Numerous emails support this finding: [1] from Lachowski's mother agent Manuela Martinez: "I'm 100% supportive of him switching to you. I honestly feel it would be a great match and the timing couldn't be better." (October 30, 2015); [2] Taylor Hendrich, defendant's employee "Can we get some sort of idea on his contractual obligations." (November 2, 2015); [3] Manuela Martinez: "As far as I know it's the basic Ford contract rolling over..." (November 2, 2015); [4] Taylor Hendrich: "Is he sure he did not sign another contract?" (November 2, 2015); [5] Francisco Lachowski: "Can I send other email now?" (November 4, 2015); Olga Tavarez, defendant's employee: "No not yet - don't worry, we will be able to give you news tomorrow - after our lawyers look at your contract, Hang tight! Thanks Francisco!" (November 4, 2015).

The "other email" Lachowski referenced was addressed to plaintiff's employee, Karen Belman, and reads as follows:

Hi Karen

I just wanted to send you this email explaining all my frustration. Since I moved here I was expecting to be busy, meet everyone in the city and do a great job with all the team at ford - but that didn't really happen. On the other side you were the only one in the agency that always did everything for me and took amazing care and I'm super grateful for that. My issues are really with Sam [Dorfler] and the way he handles me! I never felt like he really wanted to work with me and always had a feeling that he only pushes other guys. After all the doubts I had I still was hoping for him to change his ways and work more on me, giving me important go and sees and trying to make my career progress. Still, after what happened with the all balmain situation I completely lost my hopes! Him booking a ecommerce on top of h&m x balmain show, a really important option I had, and even telling me by phone that he wasn't sure I could book it really destroyed every little trust I had on him and ford, and it showed me he don't believe on me as a model. And how much he was wrong, because not only did I book the show but I booked the balmain campaign after that. And if it wasn't for me begging him to trust me I would be in Ohio doing the same job I do and re do it every month!!! The most frustrating is 2 days before he made the decision(without telling me or you) of booking an ecommerce on top of a great option we had a 4hour meeting with you and Manu asking to prioritize my image jobs, to meet major photographer and clients! Balmain is a client I got in France and he should have checked with me before trying to overbook it with ecommerce. If I didn't know of the option I wouldn't even be able to argue for it. After all that happened I was waiting for an email or a call from him at least apologizing for his mistake but I got nothing! I tried to reach out to him by having lunch but that day of the lunch he asked if I could do it the another day instead, and that was another thing that made me mad because it felt like he has more important things to do then to make the things right with me!

I have a lot of respect for you and really couldn't thank you enough for all what you did for me! But all this situations really toke a big toll on me and got me thinking a lot.

Hope you understand the way I feel.

Lachowski sent the above email to Belman on November 5, 2015. Belman wrote back, wanting more information and offering to meet with Lachowski. Lachowski wrote back:

Hi Karen
My decision its made.
I've been thinking about these for a long time and the only thing that kept me in the agency was you. But what happened with balmain just confirmed my thoughts.
I dont have much to say anymore regarding this decision.
Thanks for understanding

David Chase, plaintiff's contracts manager, sent a letter to Lachowski dated November 10, 2015, which demanded that Lachowski honor the terms of his current contract with Ford through August 17, 2016. The letter further states:

Please know that any other agency with which you seek representation during the term of your contract with Ford will be deemed to be unlawfully interfering with Ford's contract and could be subject to a lawsuit by Ford. Ford is prepared to enforce its rights under the management agreement to the fullest extent possible.

On November 12, 2015, Chase sent defendant a letter advising that plaintiff had "seen" on defendant's website that defendant is "purporting to represent Francisco Lachowski in in (sic) the pursuit of income-earning opportunities as a mode." Chase further advised that plaintiff "hereby demands" that defendant "immediately cease and desist from any and all interference or attempted interference" with Ford's contract with Lachowski.

At his deposition, Hendrich testified in relevant part:

- Q. And your testimony is that Mr. Lachowski told you on November 4th that he had already terminated?
- A. He said that he had – well, he said he was not going back to Ford.
- Q. So it wasn't clear to you whether it was terminated on November 4th or not?
- A. It was cleart to me that he – after the meeting at the Hamilton Inn that he had terminated.
- Q. Well, when was that meeting? Which date was that?
- A. That would have been October 28th.
- Q. So just I want to be clear. On November 4th –
- A. Uh-huh.
- Q. -- when you and Chico spoke about the Ford agreement –
- A. Uh-huh.
- Q. -- what was your understanding of the status of the agreement between Lachowski and Ford at that date?
- A. At that date?
- Q. Yes, on the 4th.
- A. That he was leaving. That he was leaving.
- Q. But was his contract still effective or not?
- A. He didn't tell me about his contract being effective or not.
- Q. And did you take any steps to determine it was or it was not?
- A. Not at that point.
- Q. Did you at any point?
- A. The only time that I had said that I was interested in representing Francisco Lachowski was towards the end, which would have been

November 9th. And then that would have gone to Dawn. And then Dawn would have then executed the process of checking on those issues.

On this record, defendant has established that it did not procure Lachowski's breach. In turn, plaintiff has wholly failed to raise a triable issue of fact. Certainly, inferences that a jury might draw from the fact that defendant signed Lachowski nearly contemporaneously with Lachowski's breach of his contract with plaintiff are insufficient, standing alone, to support a verdict in plaintiff's favor. Such inferences would be based only on speculation and not fact. Nor is it of any moment that Lachowski's current contract had automatically renewed just a few months prior to his breach, since this fact is not dispositive.

The emails plaintiff relies on show that it was working with Lachowski during the time period Lachowski was meeting with defendant's employees. However, these emails do not raise a factual dispute as to whether Lachowski was dissatisfied with plaintiff's representation. Indeed, that plaintiff and his mother agent asked for a meeting with Belman and Doerfler in mid-October, the substance of which concerned Lachowski's booking opportunities, is consistent with defendant's defense.

Plaintiff's cause of action against defendant is highly anti-competitive. As defense counsel explained at oral argument, claims such as this have a chilling effect on any industry where talent is being represented so that companies would be discouraged from taking on new clients with ties to their competitors, leaving talent in the wind.

Most importantly, it is well settled that a third-party does not procure a breach of contract by merely "welcome[ing] the breaching [party]" and even agreeing to more favorable terms (*Cantor Fitzgerald Assoc. v Tradition N. Am.*, 299 AD2d 204 [1st Dept 2002]; see also *Michele Pommier Models, Inc. v. Men Women Ny Model Management, Inc.*, 173 F3d 845 [2d Cir 1999]). Absent any evidence that it was defendant who sought out Lachowski in an effort to sign him, knowing that Lachowski would thereby breach his contract with plaintiff, plaintiff's claim cannot survive summary judgment.

Accordingly, defendant's motion is granted and plaintiff's cross-motion is denied as moot.

CONCLUSION

In accordance herewith, it is hereby

ORDERED that defendant's motion is granted and plaintiff's cross-motion is denied as moot; and it is further

ORDERED that plaintiff's complaint is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated:

12/18/19
New York, New York

So Ordered:



Hon. Lynn R. Kotler, J.S.C.