

Ollier v Barclay Pharmaceuticals Ltd.

2020 NY Slip Op 31850(U)

June 10, 2020

Supreme Court, New York County

Docket Number: 150300/2019

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

MARTINE OLLIER,

Plaintiff,

- v -

BARCLAY PHARMACEUTICALS LIMITED, BURFORD CAPITAL, LLC, KELLNER HERLIHY GETTY & FRIEDMAN, LLP, SEQUOR LAW, EVERSHERDS SUTHERLAND (INTERNATIONAL) LLP, NEVILLE BYFORD, and GRANT THORNTON,

Defendants.

INDEX NO. 150300/2019
MOTION DATE 04/05/2019
MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 56, 58, 60, 61, 62

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 59, 63, 64, 65

were read on this motion to/for DISMISS

ORDER

Upon the foregoing documents, it is

ORDERED that the motions of defendants Burford Capital LLC, Kellner, Herlihy, Getty & Friedman LLP (Motion Seq No. 1) and Sequor Law, P.A. (Motion Seq. No. 2) to dismiss the complaint are GRANTED; and it is further

ORDERED that the complaint is DISMISSED in its entirety against defendants Burford Capital LLC, Kellner, Herlihy, Getty & Friedman LLP and Sequor Law, P.A., with costs and disbursements to each such defendant as taxed by the Clerk of the Court, and the

Clerk is directed to enter judgment accordingly in favor of such defendants; and it is further;

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for either of the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, pursuant to CPLR 3211(f), the remaining defendants shall serve and file an answer within twenty (20) days of service of a copy of this order with notice of entry; and it is further

ORDERED that counsel shall appear in IAS Part 59, Room 331, 60 Centre Street, New York, New York, on a court approved video platform, or, if court operations permit, in person, for a preliminary conference on August 11, 2020, 11:00 A.M.

DECISION

Defendants Burford Capital LLC and Kellner, Herlihy, Getty & Friedman LLP (Motion Seq No. 1) and Sequor Law, P.A. (Motion Seq. No. 2) (collectively the "movants") move to dismiss the complaint against them pursuant to CPLR 3211. The court shall grant the motion.

In her complaint, plaintiff alleges suffering injury from defendants' attempts to collect judgments from her estranged spouse. Plaintiff's complaint takes particular issue with defendants' use of numerous information subpoenas and judgment enforcement mechanisms in various tribunals in this country and state and abroad. Based upon the actions of defendants and their attorneys, plaintiff seeks redress in the complaint on causes of action for (1) abuse of process, (2) tortious interference with contract, (3) trade libel and (4) intentional infliction of emotional distress.

"To sustain a cause of action for abuse of process, the plaintiff must demonstrate the deliberate premeditated infliction of economic injury without economic or social excuse or justification. Commencement of an action, even with

malicious intent, is insufficient. In addition, the process employed must entail some unlawful interference with one's person or property." Walentas v Johnes, 257 AD2d 352, 354 (1st Dept 1999); Bd. of Ed. of Farmingdale Union Free School Dist. v Farmingdale Classroom Teachers Ass'n, Inc., Local 1889 AFT AFL-CIO, 38 NY2d 397, 403 (1975).

In a case similar to that asserted here, the Court found that the mere issuance of information subpoena's to the estranged spouse of a judgment debtor is insufficient to support a cause of action for abuse of process stating:

"[n]o citation is required for the proposition that an attempt to collect a money judgment is a traditionally accepted economic justification for the use of a third-party subpoena in supplementary proceedings. Were it otherwise the provisions of CPLR article 52 relating to the enforcement of judgments would be totally emasculated. Moreover, the third element of the tort of abuse of process -- that a party must be seeking some collateral advantage or corresponding detriment to the plaintiff which is outside the legitimate ends of the process -- is similarly lacking."

Roberts v Pollack, 92 AD2d 440, 445 (1st Dept 1983) (internal citations and quotations omitted).

The allegations set forth in the instant complaint as to abuse of process in this action are similarly unavailing as the complaint itself sets forth that the process complained of was in the service of collecting unchallenged judgement debts of plaintiff's estranged spouse. The Court in Roberts further found that "[p]laintiff's allegation that the subpoena was

intended to inflict emotional harm does not suffice since defendant had reason, legitimate and indisputable, to subpoena parties that may have had assets of the judgment debtor. Furthermore, "defendant's service of a subpoena . . . [was] not corrupt, but instead merely constituted a legitimate attempt to collect a judgment." Id. at 447. Therefore, the first and fourth causes of action in the complaint fail to plead sufficient facts to survive dismissal.

Plaintiff's second cause of action for tortious interference with contract is also inadequately plead. "Ever since tortious interference with contractual relations made its first cautious appearance in the New York Reports . . . our Court has repeatedly linked availability of the remedy with a breach of contract." NBT Bancorp Inc. v Fleet/Norstar Fin. Group, Inc., 87 NY2d 614, 620 (1996) (citation omitted). Here, plaintiff's allegations of generalized injury are insufficient to meet the breach pleading standard required of this claim and thus the second cause of action shall also be dismissed.

Plaintiff also fails to plead the special damages required to maintain the third cause of action for trade libel, which is therefore also subject to dismissal.

"The tort of trade libel or injurious falsehood consists of the knowing publication of false matter derogatory to the plaintiff's business of a kind calculated to prevent others from dealing with the business or otherwise interfering with its relations

with others, to its detriment. The communication must play a material and substantial part in inducing others not to deal with the plaintiff, with the result that special damages, in the form of lost dealings, are incurred. In pleading special damages, actual losses must be identified and causally related to the alleged tortious act." Waste Distillation Tech., Inc. v Blasland & Bouck Engineers, P.C., 136 AD2d 633, 633 (2d Dept 1988) (citations omitted).

6/10/2020

DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE