

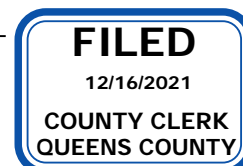
Kirin Transp., Inc. v Qian Wang
2021 NY Slip Op 33131(U)
December 16, 2021
Supreme Court, Queens County
Docket Number: Index No. 714391/2021
Judge: Denis J. Butler
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER
Justice

IAS Part 12



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KIRIN TRANSPORTATION, INC.,
Plaintiff(s),

Index
Number: 714391/2021

-against-

Motion Date:
November 30, 2021

QIAN WANG, TIANDE WANG, LU YANG,
YA XU, ZHANWEN CHI,

Motion Seq. No.: 001

Defendant(s).

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The following papers were read on this motion by defendants for an order dismissing plaintiff's third cause of action pursuant to CPLR §3016(b), and dismissing plaintiff's first, second, and fourth causes of action against defendants pursuant to CPLR §3211(a)(7).

	Papers Numbered
Notice of Motion, Affirmation, Exhibits.....	E8-10
Affirmation In Opposition.....	E11
Reply Affirmation.....	E

Upon the foregoing papers, it is ordered that this motion by defendant is determined as follows:

The first branch of the motion seeks to dismiss plaintiff's third cause of action alleging fraud pursuant to CPLR 3016(b).

"The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation, and damages. A fraud claim 'must be supported by factual allegations containing the details constituting the wrong' in order to satisfy the pleading requirements of CPLR 3016(b)." J.P Morgan Chase N.A. v. Hall, 122 A.D. 3d 576 (2d. Dept.2014)).

With respect to plaintiff's third cause of action, plaintiff failed to "plead specific factual allegations that would establish that defendants knowingly misrepresented a material fact for the purpose of inducing the plaintiffs' reliance, actual justifiable reliance on the part of the plaintiffs, and damages." (Weinstein v. CoinReznick, LLP, 144 A.D. 3d 1140 (2d. Dept. 2016)).

As such, the first branch of the motion seeking to dismiss plaintiff's third cause of action alleging fraud is granted.

The remaining branches of the motion seek to dismiss plaintiffs first, second and fourth causes of action pursuant to CPLR 3211(a)(7). Pursuant to CPLR 3211(a)(7), "the complaint must be liberally construed in the light most favorable to the plaintiff and all allegations must be accepted as true." (Leon v Martinez, 84 NY2d 83, 87 [1994]). "The sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail." (Hersh v. Cohen, 131 A.D. 3d 1117 (2d. Dept. 2015)).

The second branch of the motion seeks to dismiss plaintiff's fourth cause of action alleging tortious interference with prospective economic advantage pursuant to CPLR 3211(a)(7). "To establish a claim of tortious interference with prospective economic advantage, a plaintiff must demonstrate that the defendant's interference with its prospective business relations was accomplished by wrongful means or that [the] defendant acted for the sole purpose of harming the plaintiff." (Tsatskin v. Kordonsky, 189 A.D. 3d 1296 (2d. Dept. 2020)).

Plaintiff's fourth cause of action contends defendants destroyed documents and files, created fake documents to defraud plaintiff and threatened physical violence against plaintiff. Defendants, seeking to dismiss this cause of action, fail to address the elements of tortious interference with prospective economic advantage as alleged by plaintiff in its fourth cause of action and merely cite inapplicable case law regarding tortious interference with a contract.

As such, construing plaintiff's fourth cause of action alleging tortious interference with prospective economic advantage, "in the light most favorable to the plaintiff and accepting allegations must be accepted as true," plaintiff states a cause of action for tortious interference with prospective economic advantage against defendants. (Yenrab Inc., v. 794 Linden Realty,

LLC 68 A.D. 3d 755 (2d. Dept. 2009)). (Hersh v. Cohen, 131 A.D. 3d 1117 (2d. Dept. 2015)).

As such, the second branch of the motion seeking to dismiss plaintiff's fourth cause of action is denied.

The third branch of the motion seeks to dismiss plaintiff's first cause of action alleging breach of loyalty pursuant to CPLR 3211(a)(7). A claim for breach of loyalty requires a plaintiff to demonstrate that, "an employee has acted directly against the employer..." (Veritas Capital Management LLC V. Campbell, 82 A.D. 3d 529 (1d. Dept. 2011)).

Plaintiff contends in the summons and complaint that defendants' destroyed documents and files while employed by plaintiff. Defendant contends plaintiff fails to demonstrate "a cognizable tort coupled with an agreement between the defendants and an over act in furtherance of the agreement." (NYSCEF Doc. 9).

Construing plaintiff's first cause of action "in the light most favorable to plaintiff accepting the allegations must be accepted as true, the four corners of the complaint manifest a cognizable cause of action" for breach of loyalty against defendants. (Hersh v. Cohen, 131 A.D. 3d 1117 (2d. Dept. 2015)).

The third branch of the motion seeking to dismiss plaintiff's first cause of action is therefore denied.

The fourth branch of the motion seeks to dismiss plaintiff's second cause of action alleging breach of contract pursuant to CPLR 3211(a)(7).

"The essential elements for pleading a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his or her contractual obligations, and damages resulting from the breach." (Dee v. Rakower, 112 A.D. 3d 204 (2d. Dept. 2013)).

As plaintiff failed to submit a contract between plaintiff and defendants and failed to contend an oral contract existed between plaintiff and defendants, plaintiff fails to state a cause of action for breach of contract, and the fourth branch of the motion seeking to dismiss plaintiff's second cause of action alleging breach of contract is granted. (Dee v. Rakower, 112 A.D. 3d 204 (2d. Dept. 2013)).

Accordingly, the first branch of the motion is granted. The second and third branches of the motion are denied, and the fourth branch of the motion is hereby granted.

This constitutes the Decision and Order of the court.

Dated: December 16, 2021



Denis J. Butler, J.S.C.

