

American Water Enter. Inc. v Tectura Corp.

2014 NY Slip Op 32182(U)

August 4, 2014

Sup Ct, NY County

Docket Number: 654459/2013

Judge: Melvin L. Schweitzer

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This opinion is uncorrected and not selected for official publication.

The complaint alleges that, separate and apart from these initial breaches and before its thirty day cure period expired, Tectura proceeded to abandon the Master Agreement due to Eclipse's planned acquisition of Tectura's assets. Specifically, the complaint alleges the following time line of events in the days leading up to Eclipse's acquisition:

- December 16, 2013: Tectura's Corporate Vice President advises AWE that, after Eclipse closes its Acquisition, all "employment agreements" for Tectura personnel assigned to Project Evolution "will shift to Eclipse" and Tectura's employees will thus stop working on Project Evolution.
- December 18, 2013: Certain Tectura employees assigned to Project Evolution turn in their security badges, showing that they are not returning to work. Separately, Tectura's Corporate Vice President again threatens that Tectura's employees will "stand down" after Eclipse's Acquisition closes.
- December 19, 2013: Tectura's employees stop working on Project Evolution, both remotely and in person, and never return to work. Separately, one of Tectura's employees tells AWE in writing, that Tectura's employees had been told to "stop working on the Project due to the Acquisition" by Eclipse.
- December 20, 2013: According to Eclipse, the Acquisition closes and Eclipse acquires the bulk of Tectura's North American assets (though not the Master Agreement).

The complaint alleges that, taken together, this conduct reflects that Tectura abandoned the Master Agreement due to Eclipse's contemplated acquisition in the days leading up to that transaction. The complaint alleges that this abandonment violated several specific contract rights running to AWE under the Master Agreement.

For example, under the Master Agreement, Tectura agreed to provide AWE with ongoing IT services regardless of whether Tectura had a present dispute with AWE. The Master Agreement provides that:

Section 9.01 Continuity.

In the event of a dispute between [AWE] and [Tectura], [Tectura] shall continue to so perform its obligation under the [Master] Agreement... during the resolution of such dispute unless and until the Agreement has expired or is terminated in accordance with its terms and, in either case, any applicable Disengagement Period has expired.

Similarly, Tectura also agreed to provide “Disengagement Services” to AWE after any termination of the Master Agreement, and to make Tectura personnel available to facilitate any transition from Tectura to another IT provider:

Section 18.01 Disengagement Services.

Upon [AWE]’s request at any time during a Disengagement Period [running from the date AWE terminates the Master Agreement until up to 60 days thereafter], [Tectura] shall provide the Disengagement Services [to enable AWE to transition to another provider]... If a Disengagement Period extends beyond the expiration or effective date of the termination of the Agreement, the provisions of the Agreement shall remain in full effect for the entire duration of such Disengagement Period. [Tectura] shall comply with the provision of this Article regardless of the reason for the [transfer of services provided under the Master Agreement to AWE or its designee].

Section 18.03 Supplier [Tectura] Personnel.

[Tectura] shall, at [AWE]’s request, make available to AWE and [AWE]’s designees any [Tectura] Personnel, on a full or part time basis and for an agreed period following the applicable Disengagement Period, in order to facilitate such transfer of knowledge and skills in relation to providing the replacement services for the applicable Services to [AWE]’s and [AWE]’s designee’s personnel.

According to the complaint, Eclipse’s planned acquisition caused Tectura’s employees to stand down from and ultimately abandon the Master Agreement in the days before Eclipse’s acquisition closed. This rendered it impossible for Tectura to (a) provide AWE with ongoing services despite the parties’ dispute, and (b) provide AWE with Disengagement Services and personnel, if requested, regardless of the basis for AWE’s transition to another provider.

Based on the allegations above, the complaint alleges for its second cause of action that, given the terms of the Master Agreement and the circumstances of Tectura's Abandonment:

- Tectura and AWE had a valid and binding contract in the form of the Master Agreement.
- Eclipse knew about the Master Agreement based on Tectura's representations to AWE leading up to Eclipse's Acquisition.
- Tectura's Abandonment of the Master Agreement would not have occurred "if not for Eclipse's Acquisition."
- Eclipse "intentionally sought and procured" Tectura's Abandonment of the Master Agreement by way of the Acquisition, and such Abandonment was "without justification."
- Eclipse's interference with the Master Agreement was "intentional and tortious" and caused substantial harm to AWE.

Shortly after serving the complaint, Eclipse filed its motion to dismiss AWE's second cause of action.

Discussion

On a motion to dismiss for failure to state a claim, the court accepts all factual allegations pleaded in plaintiff's complaint as true and gives plaintiff the benefit of every favorable inference. CPLR 3211 (a) (7); *Sheila C. v Povich*, 11 AD3d 120 (1st Dept 2004). The court must determine whether "from the [complaint's] four corners[,] 'factual allegations are discerned which taken together manifest any cause of action cognizable at law.'" *Gorelik v Mount Sinai Hosp. Ctr.*, 19 AD3d 319, 319 (1st Dept 2005) (quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)). Vague and conclusory allegations, however, are not sufficient to sustain a cause of action. *Fowler v American Lawyer Media, Inc.*, 306 AD2d 113 (1st Dept 2003).

To state a claim for tortious interference with contract, plaintiff must allege (1) existence of a contract between plaintiff and a third party, (2) defendant's knowledge of the contract, (3) defendant's intentional inducement of the third party to breach or otherwise render performance impossible, and (4) damages to plaintiff. *Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 94 (1993); *National Australia Bank Limited v J.E. Robert Company, Inc.*, Misc 3d 2013 NY Slip Op 31483(U)(Sup Ct, NY County 2013).

AWE fails to sufficiently plead the third element, that Eclipse intentionally interfered with Tectura's performance of the contract. AWE relies on a statement by one of Tectura's employees that Tectura's employees had been told to "stop working on the Project due to the Acquisition" by Eclipse. AWE asserts elsewhere, however, that AWE has no way of knowing who gave those instructions to Tectura's employees. These instructions, without allegations that Eclipse told Tectura employees to stop working, does not state a claim for tortious interference with contract. A company's decision not to acquire certain assets during an acquisition, particularly the decision not to accept assignment of a contract that is already in default, cannot itself be considered tortious interference with a contract.

Even if this court found otherwise, that AWE sufficiently pleaded tortious interference by demonstrating that Eclipse had affirmatively instructed Tectura employees to cease work, the defendant's motion to dismiss would be granted because Eclipse put forth a valid economic interest defense. *National Australia Bank Limited v J.E. Robert Company, Inc.*, Misc 3d 2013 NY Slip Op 31483(U) (Sup Ct, NY County 2013).

A plaintiff need not plead that defendant's actions are not economically justified, rather economic justification is a defense to a claim of tortious interference with contract. *See White Plains Coat & Apron Co., Inc. v Cintas Corp.*, 8 NY3d 422 (2007) (economic justification is a

defense to a claim of tortious interference with contractual relations). AWE was therefore not required to plead that Eclipse lacked an economic justification for its alleged actions. *See Fallon v Wall Street Clearing Co.*, 182 AD2d 245, 250 (1st Dept 1992) (“The motion court improperly shifted th[e] burden to plaintiffs to plead and prove a lack of justification...”).

It is well settled that a corporation that acquires another corporation and then causes one of the acquired corporation’s contracts to be terminated, is not liable for interference with that contract, because it had an economic justification for its actions. *Felsen v Sol Café Mfg. Corp.*, 24 NY2d 682 (1969). While the facts here present a case of first impression, in that Eclipse’s acquisition of Tectura was not yet finalized when the alleged interference occurred, the law in cases where the interference occurred after a merger closed is equally applicable here. Eclipse was in the process of acquiring Tectura’s assets and had an existing economic interest in the affairs of Tectura, which it was privileged to attempt to protect. It is immaterial that the acquisition was not finalized when the alleged interference occurred. Even if Eclipse interfered with the contract between AWE and Tectura, although this court finds that it did not, it had an economic justification for doing so.

ORDERED that defendants’ motion to dismiss is granted; and it is further

ORDERED that the motion of defendant UXC Eclipse (USA), Inc. to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; 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 following amended caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

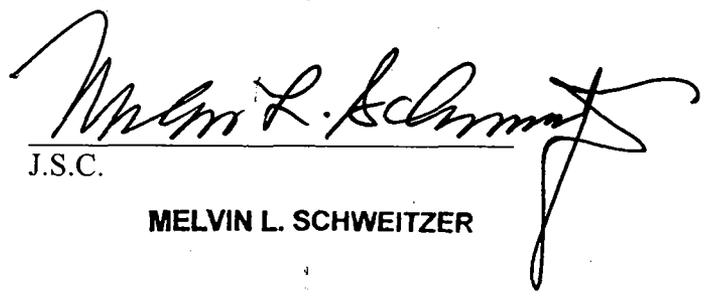
-----X	
AMERICAN WATER ENTERPRISES,	:
Plaintiff,	:
-against-	:
TECTURA CORPORATION,	:
SERVICES, L.L.C.	:
Defendant.	:
-----X	

; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the ~~Trial Support Office~~ ^{General Clerk's Office} Room 119 (Room 158), who are directed to mark the court's records to reflect the change in the caption herein.

Dated: August 4, 2014

ENTER:



J.S.C.

MELVIN L. SCHWEITZER