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Tri-City ValleyCats, Inc. v Houston Astros Inc.
2021 NY Slip Op 50802(U)
Decided on August 24, 2021
Supreme Court, New York County
Ostrager, J.
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Decided on August 24, 2021

Supreme Court, New York County

Tri-City ValleyCats, Inc., Plaintiff,

against

Houston Astros Inc., HOUSTON ASTROS, LLC, THE OFFICE OF THE COMMISSIONER OF BASEBALL, AN UNINCORPORATED ASSOCIATION D/B/A MAJOR LEAGUE BASEBALL, Defendants.

Index No. 650308/2021

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Barry R. Ostrager, J.

This vigorously litigated action involves steps recently taken by Major League Baseball and various major league baseball teams such as the Houston Astros to significantly alter or completely end the affiliation between certain minor league baseball teams, such as the Tri-City ValleyCats ("the ValleyCats"), and their major league counterparts, here the Houston Astros. Before the Court is a pre-Answer motion by defendants Houston Astros, LLC ("the Astros") and The Office of the Commissioner of Baseball, an unincorporated Association d/b/a Major League Baseball ("MLB"), to dismiss this action for failure to state a claim.[FN1] A related action entitled *Nostalgic Partners, LLC, d/b/a The Staten Island Yankees v New York Yankees Partnership, et al.,* Index No. 656724/2020, is also pending before this Court, and oral argument was held simultaneously on the instant motion and the motion to dismiss the *Nostalgic* action (see Transcript efiled on June 10, 2021, NYSCEF Doc. No. 25). However, the two motions are being decided separately because each motion relies on different documents and each Complaint alleges different causes of action. For the following reasons, defendants' motion to dismiss this action is granted in part and denied in part.

Background Facts and Key Documents

The following facts are alleged in the Complaint or stated in the documents referenced therein (NYSCEF Doc. Nos. 1, 10-12, and 16). As defendants readily acknowledge in their moving papers (Doc. No. 18, fn 1), the well-pled allegations in the Complaint must be accepted as true for purposes of this pre-Answer motion to dismiss, and the Court may consider the contents of the documents cited in the Complaint when determining the motion.

Leon v Martinez, 84 NY2d 83, 87-88 (1994); *see also, Pullman Group v Prudential Ins. Co. of Am.,* 288 AD2d 2, 3 (1st Dep't 2001).

For more than 100 years, MLB and minor league baseball — organized under the umbrella of the National Association of Professional Baseball Leagues (the "National Association" or "MiLB") — have promoted professional baseball in North America. As of 2020 when this dispute arose, professional baseball had grown to include 30 MLB and 160 MiLB teams throughout the United States, Canada, Mexico, Venezuela, and the Dominican Republic. Despite the strong business relationship between them, MLB and MiLB are separate and independent entities, and the MiLB teams and leagues have been represented in their dealings with MLB by the National Association, as reflected in the National Association Agreement ("NAA", Doc. No. 16) most recently revised as of December 31, 2017. (Compl. ¶¶ 1-2).

The relationship between MLB and MiLB was governed until recently by various documents, but principally by the Professional Baseball Agreement ("PBA", Doc. No. 10), which outlined the terms of the parties' relationship and incorporated the Major League Baseball Rules ("MLR", Doc. No. 11). Article III(A) of the PBA in effect during the period relevant to [*2]this dispute states in the section entitled "Term of Agreement" that the "Agreement shall be effective as of October 1, 2004 and shall terminate September 30, 2020, subject to the rights to effect an earlier termination of this Agreement described in this Section (A)."

Pursuant to Rule 56 of the MLR, each MiLB club was required to sign a one-page standard form Player Development Contract with the MLB team with which it was affiliated ("PDC") agreeing to the highly detailed provisions set forth in Rule 56 at pages 185-197 of the MLR. Among other things, the MiLB teams helped to develop talent for their MLB affiliates and also paid MLB eight percent of their ticket sales, which allegedly was the "overwhelming majority" of the revenue for most MiLB teams. (Compl. ¶27).

According to Rule 56(c), the term of any PDC shall be two years or four years (with limited exceptions) and shall "automatically be renewed" for a two-year or one-year term unless terminated. The Rule further provides that: "No PDC may have a term extending beyond the expiration of the PBA " The PDC most recently signed by the parties in this case indicates it was effective from August 31, 2018 through August 31, 2020 (Doc. No. 12), and, as previously noted, the PBA states that it "shall terminate September 30, 2020."

The relationship between the ValleyCats and MLB dates back to 1977, when the team was an affiliate of the New York Mets. The team was purchased by Bill Gladstone, known in the industry as the "King of Baseball", and his partners in 1992, and the team remained affiliated with the Mets until 2002 when it changed its affiliation to the Astros, moved to Troy, NY, and adopted the name "Tri-City ValleyCats" in homage to the three major cities in the Capital Region. Since 2002, until late 2020, the ValleyCats were a Single-A team affiliated with the Astros, playing at a Stadium located on the campus of Hudson Valley Community College, with the parties renewing their PDC on a regular basis. (Compl. ¶¶9-11).

The relationship between the ValleyCats and MLB was successful, in terms of the sport and the revenue it generated. Since 2002, the ValleyCats have won eight NYPL [New York-Pennsylvania League] Stedler Division titles and three NYPL championships. Eighty-one former ValleyCats have gone on to play in the MLB, 42 with the Astros, including three-time batting champion and American League MVP Jose Altuve and World Series MVP George Springer. (Compl. ¶30, fn 3). In 2018, MLB revenue reportedly exceeded $10 billion, and the value of the 30 teams reportedly exceeded $54 billion, with the value of the Astros alone reported to be $1.85 billion. (Compl. ¶31, fn 6).

Despite this success, rather than automatically renewing the PBA upon its September 30, 2020 termination date consistent with past practice, MLB instead had allegedly been "secretly planning for years to take over MiLB and reduce the number of MiLB teams (the 'Houston Plan,' which is also referred to internally by Defendants as the 'Crane Plan,' after Astros owner Jim Crane)." (Compl. ¶33; see also article cited at fn 14 describing the Astros as the "ringleaders" of the Houston Plan). In the Houston Plan, MLB allegedly proposed making significant changes to the longstanding relationship between MLB and MiLB, which included the reorganization of MiLB to reduce the number of leagues (then 20) and to reduce the total number of affiliated MiLB teams from 160 to 120, ending MLB's affiliation with 40 MiLB teams, including the ValleyCats and the Staten Island Yankees. (Compl. ¶33). According to plaintiff, the Houston Plan also sought to replace the Professional Baseball Agreement, based on an independent MiLB, with a system "where MLB directly controlled minor league baseball, and MLB would deal with individual MiLB owners on a team-by-team basis, maximizing MLB's leverage and control while destroying the balance of power MiLB clubs received from having the National [*3]Association protect their interests." *Id.*

Objections to the Houston Plan were vigorous and widespread, with strongly-worded protests from the National Association representing MiLB and with even 100 members of Congress writing to MLB to object to the substantial negative social and economic impacts that the loss of minor league play would have on communities. (Compl. ¶¶ 34-35, fn 8, 9). Senator Charles Schumer also reportedly spoke with the MLB Commissioner to urge the continued affiliation between the New York-based ValleyCats and the Astros. (Compl. ¶ 45, fn 16). The Houston Plan nevertheless was put into place in substantial part in late 2020, ending the ValleyCats' affiliation with the Astros, with the Astros purportedly reaping significant financial benefits while the value of the ValleyCats' enterprise declined precipitously and the surrounding communities lost jobs and tax revenue. (Compl. ¶¶ 50-51, fn 20).

Plaintiff owner of the ValleyCats commenced this action against the Astros and MLB on January 14, 2021, asserting ten causes of action sounding in promissory estoppel/breach of implied-in-fact contract, breach of fiduciary duty, violations of the New York State Franchise Act, tortious interference with contract and business relations, and unjust enrichment. (Compl., Doc. No. 1). The ValleyCats seek to recover at least $15 million in damages to compensate for losses allegedly caused by the termination of their relationship with the Astros and MLB. Those losses include investments the ValleyCats made to improve wireless technology at the Stadium, with the Astros' alleged encouragement, costs to renovate facilities, and other expenses incurred in reliance on purported assurances by the Astros of a continued relationship between the parties. The ValleyCats also allegedly face the potential loss of lucrative sponsorship agreements, ticket revenue, and team value now that their affiliation with the Astros and MLB has ended. (Compl. ¶¶ 52-53).

Analysis

In the First Cause of Action, titled "Promissory Estoppel" but later described as "Implied-in-Fact Contract"[FN2] , plaintiff alleges that defendants' "words, conduct, and actions" created an implied agreement that defendants would maintain the MLB/MiLB "joint venture" with the ValleyCats included as a part of it. (TR. 51-52). In support of the argument, plaintiff cites the Astros' alleged encouragement for the ValleyCats to invest in improvements at the Stadium and various public statements and press releases wherein the Astros purportedly acknowledged the "instrumental" role the ValleyCats played in player

development and the Astros' success, implying an intent to continue the parties' relationship and renew the PDC, as had been done repeatedly in the past. (*Id*., *see also* Compl. ¶¶ 55-60, Memorandum in Opp. at pp 5-8). Citing cases such as *Beth Israel Med. Ctr. v Horizon Blue Cross and Blue Shield of N.J., Inc*., 448 F.3d 573, 582 (2d Cir. 2006), plaintiff correctly confirms that New York law recognizes the concept of a binding agreement implied from the parties' words and conduct.

Whether viewed through the lens of promissory estoppel or an implied-in-fact contract, the First Cause of Action fails. The cases are legion which hold that that "[a] contract cannot be implied in fact where there is an express contract covering the subject matter involved." *Julien J. Studley, Inc. v NY News,* 70 NY2d 628, 629 (1987); *see also, Peter Lampack Agency, Inc. v [*4]Grimes,* 93 AD3d 430, 431 (1st Dep't 2012). As detailed above, various written agreements exist that cover the nature and duration of the parties' relationship. None describe the relationship as a "joint venture". What is more, as noted above, the PDC signed by the parties expressly provided that the agreement would terminate on August 31, 2020 (Doc. No. 12), and the PBA expressly provided that "no affiliation between any major league club and minor league club could extend beyond September 30, 2020" (Doc. No. 10 at p 2). Rule 56 also provides for termination, stating that: "No PDC may have a term extending beyond the expiration of the PBA and the rights and obligations of all parties to a PDC shall terminate (and be of no force and effect) as of the expiration of the PBA." (Doc. No. 11). Based on the express terms of these contracts, plaintiff's claim of an implied agreement to maintain the parties' relationship must be dismissed.

In the Second Cause of Action, plaintiff claims that defendants, as "joint venture partners" of the ValleyCats, breached their fiduciary duty by ousting the ValleyCats out of the MLB/MiLB relationship for no legitimate reason, notwithstanding various indications that the affiliation between the ValleyCats and the Astros would continue unchanged as it had for decades. (Compl. ¶¶ 61-68). This claim, too, must be dismissed. First, as indicated above, the written agreements control, and the agreements create neither a joint venture nor an obligation to maintain the affiliation in perpetuity. The absence of any agreement to share losses, an "essential" element of a joint venture, is further evidence that no joint venture exists that would create a fiduciary duty. *See Lebedev v Blavatnik,* 193 AD3d 175, 185-86 (1st Dep't 2021).

In the Third and Fourth Causes of Action, plaintiff claims that MLB and the Astros, respectively, violated the New York Franchise Sales Act [General Business Law ("GBL") § 680 *et seq*.] by having failed in the first instance to register as a franchisor and file an offering prospectus giving notice of the conditions allowing for nonrenewal of the parties' agreement and later by having failed to renew. These statutory claims fail, as neither defendant qualifies as a "franchisor" who sold or offered to sell anything to the ValleyCats. Plaintiff purchased the team from a private party, and defendants' purported indirect control cannot impose liability on defendants absent liability on the part of the seller, which is not alleged. *See* GBL § 691(3).

Even if the payment of a franchise fee sufficed on its own, the claims must be dismissed as time-barred. Pursuant to GBL § 691(4), the applicable statute of limitations period is three years. The period begins to run when the franchise contract is entered into, which in this case was 1992, far more than three years before this 2021 action was commenced. *United Mag. Co. v Murdoch Mags. Distrib., Inc.*, 146 F. Supp. 2d 385, 407 (SDNY 2001), *aff'd sub nom. United Mag. Co, Inc. v Curtis Circulation Co.,* 279 F. App'x 14 (2d Cir. 2008).

Citing GBL § 691(4), plaintiff counters that the limitations period begins to run from the "act constituting the violation", which was the failure to continue the parties' affiliation. (Memo in Opp at p 19). But the initial breach alleged is the failure to comply with the rules governing the creation of the franchise in the first instance, and the alleged later breach would not extend the statute of limitations. Also, plaintiff has made no effort to distinguish the case law cited by defendants establishing that the cause of action accrues when the contract is entered into.

Equally unavailing is plaintiff's reliance on provisions in GBL § 691(5) that generally maintain other common law rights to urge the application of the common law statute of limitations — six years from the date of the fraud or, if the fraud is concealed, two years from the date plaintiff discovered or could have discovered the fraud with reasonable diligence (the "fraud" being the plotting to develop the Houston Plan and end the parties' affiliation). A general provision such as that cited here cannot be construed to override the extremely specific three-[*5]year statute of limitations set forth in the Franchise Act. Therefore, the Third and Fourth Causes of Action are dismissed.

In the Tenth Cause of Action, plaintiff seeks damages against the Astros for unjust enrichment, claiming that it is "against equity and good conscience to permit the Astros to

retain the increase in franchise value that it has obtained directly due to their improper termination of the ValleyCats and the ValleyCats loss of franchise value." (Compl. ¶ 138). As defendants correctly assert: "An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim." *Corsello v Verizon NY, Inc.*, 18 NY3d 777, 790 (2012). Plaintiff counters that the governing contracts had expired before the Astros formally terminated their relationship with the ValleyCats. But plaintiff cannot reasonably claim that the contracts do not cover the dispute at issue here; i.e., the nature and duration of the relationship between the ValleyCats and the Astros. Therefore, the Tenth Cause of Action is dismissed.

The Court declines to dismiss the Fifth through Eighth Causes of Action sounding in tortious interference with contract in light of the liberal pleading standard and the requirement that the Court accept the allegations pleaded in the Complaint as true. *Leon v Martinez,* 84 NY2d 83, 87-88 (1994). To state a claim for tortious interference with contract, a plaintiff must sufficiently allege "the existence of its valid contract with a third party, defendant's knowledge of that contract, defendant's intentional and improper procuring of a breach [of that contract], and damages." *White Plains Coat & Apron Co, Inc. v Cintas Corp.*, 8 NY3d 422, 426 (2007).

In the Fifth Cause of Action, plaintiff asserts that defendants tortiously interfered with the Stadium Lease between the ValleyCats and Hudson Valley Community College. That Lease requires that the Stadium be used "for play by a short season Class A New York-Pennsylvania professional Baseball League baseball team," a requirement the ValleyCats can no longer fulfill due to the change in the MLB/MiLB relationship.

In the Sixth Cause of Action, plaintiff asserts that defendants tortiously interfered with the contract between the ValleyCats and the NYPL. Pursuant to that contract, the NYPL would "organize, schedule, and operate affiliated professional minor league baseball games, providing a platform for the ValleyCats' business to operate, generate revenue (a portion of which it paid as a royalty to Defendants), and increase in value." (Compl. ¶ 99).

In the Seventh Cause of Action, plaintiff asserts that defendants tortiously interfered with the contract between the ValleyCats and the National Association (the "NAA"). The NAA prohibits the National Association from being a party to any agreement that would result in the immediate cessation of operations of any member league or club that is in full compliance with its obligations under the NAA and the PBA. (Compl ¶ 108). The NAA also

prohibits any party from entering "into any negotiation to become a member of or in any way cooperate with any organization of professional baseball clubs whose existence will in any manner conflict with the letter and spirit of [the NAA], or the interests of any of the clubs operating under it." (Compl. ¶ 110). Plaintiff asserts that defendants, by implementing the Houston Plan, procured a breach of the NAA and forced the effective dissolution of the National Association, depriving the ValleyCats of the rights, benefits, and protections afforded to it by the NAA. (Compl. ¶¶ 111-113).

In the Eighth Cause of Action, plaintiff asserts that defendants tortiously interfered with the contract between the ValleyCats and ticket holders by causing the ValleyCats to breach their contractual obligation to provide ticket holders with access to "affiliated professional minor league baseball games." (Compl. ¶ 121).

In their moving papers, defendants argue that plaintiff has failed to allege any actual breach of any of the contracts or the commencement of any suit against plaintiff by any third party, or by any third party against plaintiff, for an alleged breach of contract. Further, rather than being tortious, defendants' conduct was allegedly consistent with the termination provisions of the contracts and, defendants contend, justified by an economic purpose with no showing of any malice, fraud, or illegality. *See Foster v Churchill,* 87 NY2d 744, 750 (1996) (economic justification may serve as a defense to a tortious interference claim, absent either malice or fraudulent or illegal means). According to defendants, the impacts on Tri-City were merely "incidental" to MLB's broad restructuring plan, which was put into effect for legitimate economic reasons. (See Memorandum in Support at pp 14-17).

But plaintiff mounts persuasive opposition to defendants' arguments that defeats a pre-Answer motion to dismiss, recognizing that plaintiff is entitled to "the benefit of every possible favorable inference." *AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.,* 5 NY3d 582, 591 (2005). Further, "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." *Guggenheimer v Ginzburg,* 43 NY2d 268, 275 (1997). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss." *EBC I, Inc. v Goldman, Sachs & Co.,* 5 NY3d 11, 19 (2005).

Applying this standard, and as confirmed in plaintiff's Memorandum in Opposition (at pp 11- 15), plaintiff has pleaded the elements of tortious interference with contract in a

manner sufficient to state claims in the Fifth through Eighth Causes of Action. While the Hudson Valley Community College may not have declared plaintiff in default of the Lease contract, defendants cannot reasonably dispute that plaintiff no longer qualifies as a "short season Class A New York-Pennsylvania professional Baseball League baseball team" as defined by the contract.[FN3] Thus, the ValleyCats may be evicted from the Stadium at any time, which arguably affects the team's value and its long-term prospects. Further, the ValleyCats potentially face considerable damages because, in reliance of the repeated renewal of their affiliation contract with the Astros, the ValleyCats incurred significant expenses including, but not limited to, improvements to wireless technology at the Stadium and dugout and renovations to the ValleyCats' home clubhouse and training facility. (Compl. ¶ 12). The ValleyCats allegedly face difficulty paying for those improvements due to their loss of revenue and team value. (Compl. ¶ 52). Additionally, the ValleyCats entered into various multiyear sponsorship contracts with well-known corporations, including Dunkin' Brands, Inc., Mohawk Honda, and Valvoline, for promotional advertising at the Stadium based on the team's affiliation with the Astros and MLB, which agreements the sponsors may choose not to honor. (Compl. ¶¶ 13, 53).

In the Sixth Cause of Action, plaintiff has alleged that defendants' restructuring of the MLB/MiLB relationship has caused the NYPL to disband, which has caused the ValleyCats to lose benefits and suffer damages. Those allegations must be accepted as true. And defendants' conduct need not be the "sole proximate cause" of injury to qualify, so long as it is a substantial factor. *Kronish Lieb Weiner & Hellman LLP v Tahari, Ltd.*, 35 AD3d 317, 318 (1st Dep't 2006) (reinstating tortious interference claim based in part on sufficient allegations of causation).

The Complaint (at ¶¶ 105-116) sufficiently alleges tortious interference with the NAA such that the Seventh Cause of Action must survive dismissal. Specifically, plaintiff alleges that "[t]he National Association, by complying with the Houston Plan, ha[s] become party to an agreement that has resulted in the immediate cessation of operations of member leagues and clubs which were in full compliance with their obligations under the NAA and PBA," in violation of section 8.01 of the NAA. (Compl. ¶¶108-109). Defendants unsuccessfully argue semantics when they contend that the NAA merely includes a forfeiture of rights, as opposed to a prohibition of conduct. The cause of action can be discerned from the pleadings, and nothing more is required at this stage of the litigation.

The Eighth Cause of Action alleging breach of the contracts with ticket holders should also survive. Again, defendants unsuccessfully argue semantics when they contend that the ticket holder contracts do not contain any express requirement that the ValleyCats maintain their affiliation with the Astros or MLB. The requirement was implied in the contractual bargain. Defendants cannot deny that the ValleyCats' affiliation added to their value.

To the extent defendants claim that "economic justification" is an absolute defense, they are mistaken. The Appellate Division in recent years has limited the application of that defense. Thus, for example, in *Kronish Lieb,* 35 AD3d at 318-319, the First Department in 2006 modified the trial court's dismissal order and reinstated the cause of action for tortious interference with contract, stating that: "Since the cause of action is for interference with an existing contract, rather than a prospective economic relationship, the defense of economic justification is inapplicable and it is not necessary to allege that defendant used improper means or that its conduct was for the sole purpose of harming plaintiff (*see Carvel Corp. v Noonan*, 3 NY3d 182, 189-190 [2004] ..." (causation was not defeated by fact that owner's conduct was designed in part to mitigate its damages or remedy its own breach); *see also Havana Cent. NY2 LLC v Lunney's Pub, Inc*, 49 AD3d 70, 72-73 (1st Dep't 2007) (finding, based on the above-quoted language in *Kronish Lieb,* that the trial court had properly denied summary judgment dismissing the tortious interference with contract claim based on issues of fact).

Defendants' reliance on the 1996 decision in *Foster* is misplaced, as the "economic justification" was far different from that alleged here. In *Foster,* the respondents "were clearly acting in the economic interest of the [the corporation], which was on the brink of insolvency. To the extent that respondents acted to preserve the financial health of an ailing [company], their actions were economically justified." 87 NY2d at 751. The fact pattern and language used by the Court of Appeals imply a compelling need to act. In contrast here, while defendants' actions served them economically, neither MLB nor the Astros was bordering on insolvency.

According to plaintiff, MLB and the Astros announced they were ending their affiliation with the ValleyCats "in favor of three teams owned by the Astros and one owned by a former U.S. Senator and current Governor, likely in efforts to quell the political discord that has occurred regarding MLB's contraction efforts." (Compl. ¶ 4). The value of the Astros' three new teams has purportedly "substantially increased due to the Houston Plan, to the

ValleyCats' [*6]demise." (Compl. ¶ 50, fn 20). At a minimum, issues of fact exist as to whether the conduct was "economically justified", with the burden remaining on defendants to plead and ultimately prove their affirmative defense. See CPLR 3018(b).

What is more, plaintiff's Complaint is replete with allegations supporting its claim that defendants intentionally and improperly procured a breach of the various ValleyCats contracts, through ongoing conduct beginning in 2019. For example, plaintiff alleges that, in 2019 in the face of early reports of a potential restructuring, defendants "publicly released a list of the teams that would remain affiliated with MLB, which included the ValleyCats, and made other public statements that the ValleyCats would be included." (Compl. ¶¶ 5, 41 and articles cited at fn 11 and 12). "The ValleyCats materially relied on these public disclosures, which Defendants reneged on at the eleventh hour, by making substantial capital improvements to the Stadium, making ongoing lease payments it otherwise may not have made, and continuing to fund a business which was unknowingly on the brink of decimation." (Compl. ¶ 5).

As late as September 2, 2020, after the stated expiration date of the PDC, the ValleyCats were "still confident" the ValleyCats would not be ousted, and they continued to conduct business accordingly. (Compl. ¶ 44 and news article cited at fn 14). After the PBA expired on September 30, 2020, the ValleyCats had still not heard anything definitive, and efforts by many to maintain the affiliation were continuing, as reported by the Times Union on November 16, 2020. (Compl. ¶ 45, fn 16). And on November 24, 2020, the Mayor of the City of Troy wrote to the MLB Commissioner urging MLB to continue its affiliation with the ValleyCats, noting the high attendance and positive social and economic impacts to the surrounding community. (Compl. ¶46, fn 17). On December 1, 2020 the Mayor issued a similar press release, and Councilmember McDermott, whose district includes the Stadium, urged the continued affiliation. (Compl. ¶ 47, fn 18).

According to plaintiff: "Unfortunately, on December 9, 2020, the ValleyCats learned — from a list posted on the internet —it would not be among the MLB's new list of affiliates." (Compl. ¶ 48, fn 19).

Plaintiff in its opposition memorandum (at p 16) has cited case law broadly construing the term "wrongful means" associated with a claim of tortious interference with business relations and has specifically tied the terms to allegations in the Complaint, some of which were cited above. *See, e.g., Out of Box Promotions, LLC v Koschitzki*, 55 AD3d 575, 577 (2d

Dep't 2008) ("Wrongful means" include fraudulent representations [Compl. ¶¶11, 16, 37-41] and threats [Compl. ¶¶ 3, 6 , 34]). According to plaintiff, the MLB Commissioner sent a May 2020 email to the ValleyCats' owner that included "a veiled threat that any public statement made about MLB's contraction efforts would be 'unwise'." (Compl. ¶6).

In addition, "wrongful means" can be shown where the plaintiff alleges "some degree[] of economic pressure." *Guard-Life Corp. v Parker Hardware Mfg. Corp.,* 50 NY2d 183, 191 (1980). Here, plaintiff has alleged that "MLB has explicitly threatened that if MiLB does not comply with its demands, it intends to impose 'crippling economics' on MiLB teams that would force many of those teams out of business and cause others to lose significant value." (Compl. ¶¶ 3-4, 34). And the ValleyCats allege that, by implementing the Houston Plan, MLB caused the Astros to cease its affiliation with the ValleyCats. (Compl. ¶128).

The level of culpability required to sustain a claim of tortious interference with contract — improper conduct — is less than the "wrongful means" needed to sustain a claim of tortious interference with business relations, which is the Ninth Cause of Action. *Carvel Corp. v Noonan,* [*7]3 NY3d 182, 190 (2004). But the Court may consider the allegations throughout the Complaint when evaluating the Fifth through Eighth Causes of Action. Again applying the liberal pleading standard, and there being no documentary evidence disposing of the claims as a matter of law, the Court finds that the Fifth through Eighth Causes of Action against the Astros and MLB survive dismissal based on the above-cited allegations and similar allegations in the Complaint.

In the Ninth Cause of Action against MLB only, plaintiff seeks damages based on MLB's tortious interference with the ValleyCats' business relationship with the Astros. Plaintiff claims that MLB was well aware of the "fruitful relationship" between the ValleyCats and the Astros and "intentionally and improperly interfered in the relationship by implementing the Houston Plan, causing the Astros to cease its affiliation with the ValleyCats and causing the ValleyCats "significant harm" including a "significant reduction in future revenues for the ValleyCats." (Compl. ¶¶ 125-131).

To state a claim for tortious interference with business relations, plaintiff must allege that (1) it had a business relationship with a third party, (2) the defendant knew of that relationship and intentionally interfered with it, (3) the defendant acted solely out of malice or used wrongful, improper, or illegal means that amounted to a crime or independent tort, and (4) the defendant's interference caused injury to the relationship with the third party. *Amaranth LLC*

v J.P. Morgan Chase & Co., 71 AD3d 40, 47 (1st Dep't 2009). Even after giving plaintiff the benefit of every favorable inference, the Court finds the Ninth Cause of Action fails. As discussed at length at the beginning of this decision, the ValleyCats' affiliation contracts expired by their own terms. Thus, it cannot be said that MLB tortiously interfered with the ValleyCats' affiliation with the Astros by restructuring the MLB/MiLB relationship upon the expiration of the PBA. Further, while the ValleyCats have alleged improper conduct by the MLB sufficient to sustain the tortious interference with contract claims against them, the conduct does not amount to a "crime or independent tort" when the circumstances are viewed as a whole. Therefore, the Ninth Cause of Action is dismissed.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted to the extent of severing and dismissing the First, Second, Third, Fourth, Ninth and Tenth Causes of Action, and the Clerk is directed to enter judgment dismissing those causes of action; and it is further

ORDERED that defendants' motion is denied insofar as it seeks dismissal of the Fifth, Sixth, Seventh, and Eighth Causes of Action; and it is further

ORDERED that defendants shall file an Answer within thirty days of entry of this decision addressing the remaining causes of action; and it is further

ORDERED that counsel shall thereafter meet and confer to agree upon a proposed Preliminary Conference Order using the form available on the Part 61 website and appear for a Preliminary Conference on October 7, 2021 at 10:00 a.m.

Dated: August 24, 2021

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Barry R. Ostrager, J.S.C.

Footnotes

Footnote 1: The Complaint also names Houston Astros Inc. as a defendant, but no such entity exists. The named plaintiff is the entity that owns the ValleyCats.

Footnote 2: See Plaintiff's Memorandum of Law in Opposition (Doc. No. 20 at p 5) and the Transcript of the oral argument (Doc. No. 25, "TR", at pp 34-35) wherein the Court agreed to deem the Complaint as alleging an implied-in-fact contract without the need for a formal amendment.

Footnote 3: The cause of action survives even if the alleged breach is viewed as one by plaintiff, rather than the third party. *See Italverde Trading, Inc. v Four Bills of Lading*, 485 F. Supp. 2d 187, 203 (EDNY 2007) ("[T]hose few New York state courts to have considered the issue have held that causing a plaintiff to breach a contract by preventing the plaintiff's performance constitutes tortious interference with a contract, provided that the other elements of the tort are satisfied") (collecting cases).

Return to Decision List