

PREPARED BY THE COURT

LODI-ESSEX, LLC,

Plaintiff/Counterclaim Defendant,

vs.

MICHAEL KOUYOUMDJIAN and
HAGOP KOUYOUMDJIAN,

Defendants/Counterclaim Plaintiffs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: **BER-L-6182-14**

Civil Action

OPINION

THIS MATTER comes before the Court pursuant to a motion to dismiss the Counterclaim of the Defendants with prejudice, brought by Joshua S. Bauchner, Esq. of Ansell Grimm & Aaron, P.C. on behalf of Plaintiff, Lodi-Essex LLC.

FACTUAL BACKGROUND

This matter arises out of a lease for commercial realty in Lodi, New Jersey, where Defendants are alleged to have guaranteed the satisfaction of lease terms on behalf of the tenant(s). Tenants eventually defaulted on the lease and were evicted, and Plaintiff now seeks recovery from the Defendants and alleged Guarantors as a result of the default. Defendants counterclaimed, alleging tortious interference with contract on the part of Plaintiff, who Defendants say actively and maliciously sought to dissuade a prospective buyer from purchasing the business from them in order to obtain a larger judgment and consequently negotiate a deal with the prospective buyer on better terms.

DECISION

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations “to ascertain whether the fundament of a

cause of action may be gleaned even from an obscure statement of claim. . . .” Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Under the New Jersey Court Rules, a Complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The “test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts.” Printing Mart, 116 N.J. at 746. However, “a court must dismiss the plaintiff’s complaint if it has failed to articulate a legal basis entitling plaintiff to relief.” Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

In opposition to the pending motions, Defendants represent that the parties are in the early stages of discovery, and that there are significant factual disputes regarding the alleged tortious interference with contract. Defendants also suggest that additional parties may be impleaded in the case. Movant’s reliance on selected terms of the Lease Agreement is a factor that may bear on the ultimate disposition of this case, but is insufficient at this stage of litigation to bar Defendants’ counterclaim as a matter of law. The movant has failed to demonstrate that the Plaintiff’s claim should be dismissed for failure to state a claim upon which relief can be

granted, and thus the Plaintiff's motion for dismissal is denied without prejudice. All parties are free to file a motion for summary judgment after the exhaustion of discovery.

For the aforementioned reasons, Plaintiff's motion to dismiss Defendants' Counterclaim is **DENIED**.

HON. ROBERT C. WILSON