

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

SEA ISLAND FOOD GROUP, LLC)
doing business as SQUEEZE,)
Plaintiff,)

v.)

YASCHIK DEVELOPMENT)
COMPANY, INC. doing business as)
YASCHIK ENTERPRISES, HILTON)
SMITH, EAST BAY COMPANY,)
LTD., and MICHAEL J. QUILLEN)
FAMILY LIMITED PARTNERSHIP,)
Defendants.)

QUILLEN ENTERPRISES, LLC)
doing business as THE BRICK)
Plaintiff-Intervenor,)

v.)

YASCHIK DEVELOPMENT)
COMPANY, INC. doing business as)
YASCHIK ENTERPRISES, HILTON)
SMITH, EAST BAY COMPANY,)
LTD., and MICHAEL J. QUILLEN)
FAMILY LIMITED PARTNERSHIP,)
Defendants.)

IN THE COURT OF COMMON PLEAS


Case No. 2013-CP-10-101

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OCT 16 2015

SC Court of Appeals

**ORDER GRANTING
MOTION TO DISMISS FIRST
FIRST AMENDED COMPLAINT**

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JULIE J. ARMSTRONG
CLERK OF COURT
BY 

This matter came before the Court on July 7, 2015, for a hearing on the Motion to Dismiss First Amended Complaint filed by Defendants East Bay Company, Ltd. and Hilton Smith (collectively, "EBCO"). At the hearing, the Plaintiff, Sea Island Food Group, LLC, and the Plaintiff-Intervenor, Quillen Enterprises, LLC, were represented by M. Brooks Derrick;

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EBCO was represented by Charles J. Baker III. After reviewing the pleadings and memoranda, hearing arguments from both parties, and considering the law applicable to the issues in this case, the Court grants the motion.

FACTS ALLEGED IN FIRST AMENDED COMPLAINT

Yaschik Development Company, Inc. (“Yaschik”) owns the building at 213 East Bay Street, which it purchased in 2003. At that time, the property was subject to the prior owner’s lease with Charleston T&T, Inc., which had rented the entire building in 1997. In 2006 and 2011, Charleston T&T subleased the premises to two bars, Squeeze and The Brick. In 2012, Michael J. Quillen Family Limited Partnership (“FLP”) assumed the lease held by Charleston T&T for the entire building, and Squeeze and The Brick became its subtenants.

On April 2, 2013, there was a fire at 213 East Bay Street. In the aftermath of the fire, EBCO had discussions with Yaschik concerning EBCO’s possible purchase of 213 East Bay Street. On September 11, 2013, Yaschik informed FLP by letter that its lease was terminated pursuant to a provision requiring termination in the event that the premises “are totally destroyed by fire.” Several months later, on December 30, 2013, EBCO and Yaschik entered into a Real Estate Sales Agreement under which EBCO would purchase 213 East Bay Street pursuant to certain conditions. Squeeze and The Brick allege that the contractual provision conditioning EBCO’s purchase on the cancellation of FLP’s lease with Yaschik constitutes tortious interference with their subleases.

STANDARD OF REVIEW

In deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRCF, the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). This includes exhibits attached to a complaint,

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which are considered to be a part of the pleading for all purposes. Rule 10(c), SCRPC. A 12(b)(6) motion should not be granted if “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.* However, the trial court should dismiss a claim “when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003).

DISCUSSION

EBCO raises three independent grounds for dismissal of the First Amended Complaint, any of which alone dictate that the Court grant the motion.

First and foremost, the allegations of the First Amended Complaint demonstrate, as a matter of law, that Squeeze and The Brick are not third-party beneficiaries of the FLP lease and, therefore, cannot assert rights under it. “South Carolina contract law carries a presumption that an individual who is not a party to a contract lacks privity to enforce it.” *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 553-554, 581 S.E.2d 858, 861 (Ct. App. 2003)(citing *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988)). In some instances, where the contract is made for the benefit of a third person, he may enforce it “if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person.” *Bob Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994). In this case, the FLP lease leaves no doubt that the original contracting parties did not intend to create any direct benefit to subtenants. This 1997 lease was entered into many years before either Squeeze or The Brick came to occupy the premises. Further, the master lease, while acknowledging the tenant’s right to sublease, does not contemplate an actual sublease of the property. Indeed, the master lease provides that the original tenant, Charleston

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T&T, not any subtenants, would renovate the building to accommodate a restaurant and bar. The fact that, many years later, Squeeze and The Brick derive an incidental or consequential benefit from the existence of the master lease is not enough to confer third-party beneficiary status. 312 S.C. at 424, 440 S.E.2d at 891. They are not third-party beneficiaries of that lease and may not assert a claim based on its alleged breach.

Second, the First Amended Complaint alleges facts showing legal justification for EBCO's conduct. The essential elements of a claim for intentional interference with contract are as follows: (1) the existence of a valid contract; (2) the defendant's knowledge of the contract; (3) the intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008). As such, it is a plaintiff's burden to plead and prove the absence of justification. A plaintiff cannot show the absence of justification when a defendant merely exercises the legal right to contract. *Broach v. Carter*, 399 S.C. 434, 443, 732 S.E.2d 185, 189 (Ct. App. 2012). See also, RESTATEMENT (SECOND) OF TORTS § 766, cmt. n ("One does not induce another to commit a breach of contract with a third person . . . when he merely enters into an agreement with the other with knowledge that the other cannot perform both it and his contract with the third person."). EBCO exercised its legal right to contract to buy the property on such terms as were acceptable to it and to Yaschik. The fact that Yaschik could not perform both the contract to sell the property and the FLP lease is immaterial and, as a matter of law, does not give rise to a claim for intentional interference with contract against EBCO.

Last, the First Amended Complaint shows on its face that EBCO's alleged conduct was not the proximate cause of Yaschik's purported breach of contract. Proximate cause is an essential element of a claim for intentional interference with contract. *Smith v. Citizens and*

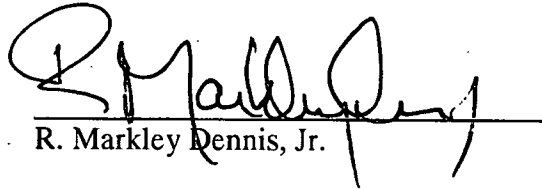
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Southern Nat'l Bank of S.C., 241 S.C. 285, 289, 128 S.E.2d 112, 114 (1962). The facts as alleged indicate that over three months passed between Yaschik's letter terminating the lease on September 11 and the signing of the Real Estate Sales Agreement for the property on December 30. These allegations demonstrate that EBCO's conduct was not the proximate cause of Yaschik's alleged breach of contract.

CONCLUSION

For the reasons set forth above, the Court grants the Motion to Dismiss First Amended Complaint as to Defendants East Bay Company, Ltd. and Hilton Smith.

AND IT IS SO ORDERED.


R. Markley Dennis, Jr.

CHARLESTON, SC
July 10, 2015

mot/s