



**SUPREME COURT - STATE OF NEW YORK**

**PRESENT:**

**Honorable James P. McCormack**

**Justice**

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**280 EAST SHORE REALTY LLC and NORTH  
SHORE AUTO & TOWING, INC.,**

**Plaintiff(s),**

**TRIAL/IAS, PART 18  
NASSAU COUNTY**

**Index No. 615116/19**

**-against-**

**EVANGELOS LIANGAS,**

**Defendant(s).**

**Motion Seq. No.: 001  
Motion Submitted: 1/7/20**

**XXX**

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The following papers read on this motion:

- Notice of Motion/Supporting Exhibits.....X
- Affirmation in Opposition/Supporting Exhibits.....X
- Reply Affirmation.....X

Defendant, Evangelos Liangas (Liangas), moves this court for an order, pursuant to CPLR §3211(a)(7), dismissing the complaint against him. Plaintiffs, 280 East Shore Realty (280 East) and North Shore Auto & Towing, Inc. (North Shore), oppose the motion. Plaintiffs commenced action by summons and complaint dated October 30, 2019. Liangas brought this motion in lieu of an answer. The complaint contains three

causes of action, to wit: 1) Tortious interference with contractual/business relations, 2) Tortious interference with prospective economic advantage and 3) Prima facie tort.

Plaintiffs are owned by Scott Balterman a/k/a Randy Balterman. Plaintiffs allege that they had a contract with a BMW of Bayside (BMW) which allowed BMW to park vehicles on their property at a reduced rate, and in return BMW would bring damaged loaner cars to Plaintiffs to be repaired. Plaintiffs claim this agreement was entered into orally, and then was reduced to a writing, though that writing was not annexed to the complaint or to the opposition papers. Regardless, the parties allegedly operated under this agreement until BMW had a change of management, and Liangas took over as the person in charge of the damaged loaner cars. According to the complaint, Liangas began diverting the damaged vehicles to other providers, even though BMW was still parking its cars on Plaintiffs' property at the reduced rate. Plaintiffs allege Liangas began using other providers in return for a personal financial benefit from these providers. This action ensued.

In moving to dismiss, Liangas initially states that this action is a form of retribution and harassment by Mr. Balterman. It appears Mr. Balterman became so upset by Liangas' decision to use other providers that he went to Liangas' place of employment and assaulted him. Criminal charges were allegedly brought, and Liangas is currently suing Mr. Balterman for his injuries. The court notes that Mr. Balterman does not deny these allegations in this proceeding.

In reviewing a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the court is to accept all facts alleged in the complaint as being true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the alleged facts fit within any cognizable legal theory (see *Delbene v. Estes*, 52 AD3d 647 [2nd Dept. 2008]; see also *511 W.232nd Owners Corp. v. Jennifer Realty Co.*, 98 NY2D 144 [2002]). Pursuant to CPLR § 3026, the complaint is to be liberally construed. *Leon v. Martinez*, 84 NY2d 83 [1994]. It is not the court's function to determine whether plaintiff will ultimately be successful in proving the allegations. *Aberbach v. Biomedical Tissue Services*, 48 AD3d 716 [2nd Dept. 2008]; see also *EBCI, Inc. v. Goldman Sachs & Co.*, 5 NY3D 11 [2005].

The pleaded facts, and any submissions in opposition to the motion, are accepted as true and given every favorable inference (see *511 W. 323rd Owners Corp. v. Jennifer Realty Co.*, 98 NY2d at 151-152; *Dana v. Malco Realty, Inc.*, 51 AD3d 621 [2d Dept 2008]; *Gershon v. Goldberg*, 30 AD3d 372, 373 [2d Dept 2006]). However, a court may consider evidentiary material submitted by a defendant in support of a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7) (see CPLR § 3211[c]; *Sokol v. Leader*, 74 AD3d at 1181). “When evidentiary material is considered” on a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7), the criterion is whether the plaintiff has a cause of action, not whether they have properly stated one, and unless it has been shown that a material fact as claimed is not a fact at all or that no significant dispute exists, the

dismissal should not be granted (*Guggenheimer v. Ginzburg*, 43 NY2d at 275; see *Sokol v. Leader*, 74 AD3d at 1182).

A cause of action for tortious interference with a contract requires showing of: 1) a valid contract between the plaintiff and a third party, 2) the defendant's knowledge of the existence of the contract, 3) the defendant's intentional attempt to have the third party breach the contract without justification and 4) damages. (*Tri-Star Lighting Corp., v. Goldstein*, 151 AD3d 1102 [2d Dept 2015]). Tortious interference with prospective business relations requires interference with prospective business relations through wrongful means or that the defendant's intent was to harm the plaintiff. (*Carper v. Nussbaum*, 36 AD3d 176 [2d Dept 2006]). To establish prima facie tort, a plaintiff must show "...(1) intentional infliction of harm, (2) resulting in special damages, (3) without excuse or justification, (4) by an act or series of acts which are otherwise legal...". (*Diorio v. Ossining Union Free School Dist.*, 96 AD3d 710, 712 [2d Dept 2012])(cites omitted). The allegation of special damages must assert a specific and measurable loss, and that the plaintiff was motivated by malice or "disinterested malevolence". *Id.*

Initially, the cause of action for prima facie tort must be dismissed. The complaint does not allege a specific and measurable loss. Instead, it alludes to "direct financial loss, in an amount be proven at trial". Further, the complaint alleges both that Liangas' actions were taken to benefit himself financially, and that his actions were intended "solely to harm the Plaintiffs." While a complaint can plead in the alternative, this is a direct

contradiction. For these reasons, the Third Cause of Action will be dismissed.

The Second Cause of Action, alleging tortious interference with prospective business relations will also be dismissed. While it is questionable whether this cause of action can lie where there is purportedly an existing contract between the parties whose alleged “prospective business relations” have been interfered with, the court further finds that the complaint fails to adequately allege that Liangas used wrongful means, or acted solely to harm the plaintiffs. As alleged, *supra*, the complaint contradicts the assertions that the “sole” intent was to harm Plaintiffs. As for wrongful means, there are none alleged in the complaint. Instead, the complaint asserts that Liangas “diverted” business away from Plaintiffs to other service providers. The means of this diversion are not described, yet even if they were, the court would still find that choosing other service providers could not rise to the level of conduct required to fulfill the elements of this cause of action. (*Tri-Star Lighting Corp., v. Goldstein, supra*).

As for tortious interference with a contract, the question is not whether the elements have been met, but whether Liangas can be held responsible, as the purported “third party” is his employer, BMW. It is BMW that allegedly breached the contract. To hold Liangas responsible for BMW’s actions, or for allegedly inducing BMW to take certain actions, it must be alleged that Liangas was seeking more than a personal financial benefit. (*Travelsavers Enterprises, Inc. v. Analog Analytics, Inc.*, 149 AD3d 1003 [2d Dept 2017]). To hold an employee or officer personally responsible for inducing a

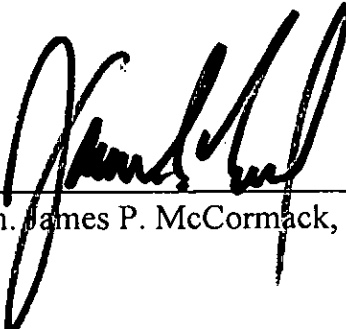
breach, the complaint must allege independent torts were committed in inducing the breach. (*Id.*, *Baer v. Complete Office Supply Warehouse Corp.*, 89 AD3d 877 [2d Dept 2011]). The complaint herein fails to so allege.

Accordingly, it is hereby

**ORDERED**, that Liangas' motion to dismiss the complaint pursuant to CPLR §3211(a)(7) is GRANTED. The complaint is dismissed.

This constitutes the Decision and Order of the Court.

Dated: March 4, 2020  
Mineola, N.Y.



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Hon. James P. McCormack, J. S. C.

**ENTERED**  
JUN 29 2020  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE