

Not Reported in F.Supp.2d, 2008 WL 4642903 (E.D.Cal.)
(Cite as: **2008 WL 4642903 (E.D.Cal.)**)

C

Only the Westlaw citation is currently available.

United States District Court,
E.D. California.
JEWELRY 47, INC., Plaintiff,
v.

Larry BIEGLER, Dione Tillman and Elohim Financial, Inc., Defendant.

No. 2:08-cv-00174-MCE-KJM.
Oct. 16, 2008.

West KeySummaryTorts 379 ↪ 242

[379](#) Torts

[379III](#) Tortious Interference

[379III\(B\)](#) Business or Contractual Relations

[379III\(B\)2](#) Particular Cases

[379k242](#) k. Contracts in General. [Most](#)

[Cited Cases](#)

Emerald marketer failed to establish that buyer had knowledge of marketer's contract with seller, and thus marketer failed to state a cause of action in its willful interference with contractual relations action against buyer. Marketer alleged that buyer knew that marketer entered into an agreement with seller, for marketer to sell and market the emerald. However, marketer also alleged that seller told buyer that marketer lacked the authority to sell the emerald, and thus any inference that buyer had knowledge of marketer's contractual relationship with seller was negated by buyer's alleged false statement. [Fed.Rules Civ.Proc.Rule 12\(b\)\(6\), 28 U.S.C.A.](#)

[Nigel Burns](#), The Law Offices of Nigel Burns, Newport Beach, CA, [Peter S. Gordon](#), PHV, Gordon & Gordon, P.C., Forest Hills, NY, for Plaintiff.

[Charles Lee Rathbun](#), Law Office of Charles L. Rathbun, Oroville, CA, [Robin Kerry Perkins](#), Palmer Kazanjian Wohl Perkins, LLP, Sacramento, CA, for Defendant.

MEMORANDUM AND ORDER

[MORRISON C. ENGLAND, JR.](#), District Judge.

*1 Through the present action, Plaintiff Jewelry

47, Inc. ("Plaintiff") seeks monetary relief against Defendant Larry Biegler ("Defendant Biegler") for breach of contract and for fraud in the inducement to enter contract, and against Defendants Dione Tillman and Elohim Financial ("Defendants Tillman & Elohim") for willful interference with contractual relations.

Defendants Tillman & Elohim now move to dismiss the Third Cause of Action, for willful interference with contractual relations, pursuant to [Fed.R.Civ.P. 12\(b\)\(6\)](#) ^{FN1} on grounds that Plaintiff fails to state a claim on which relief can be granted. Defendants Tillman & Elohim also move to strike the permanent injunction allegations in the prayer for relief pursuant to [Rule 12\(f\)](#). Defendant Biegler joins in both motions. Plaintiff does not oppose Defendant's Motion to Strike. For reasons stated below, Defendant's Motion to Dismiss is GRANTED. ^{FN2}

^{FN1}. Unless otherwise stated, all further references to a Rule are to the Federal Rules of Civil Procedure.

^{FN2}. Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

BACKGROUND ^{FN3}

^{FN3}. The factual assertions in this section are based on the allegations in Plaintiff's First Amended Complaint unless otherwise specified.

Defendant Biegler, during all times pertinent to the case at hand, was and is the owner of the "(w)orld's largest emerald conglomerate ... which is over 840 pounds and 180,000 carats, and known as the 'Bahia Emerald' " ("Emerald"). On May 30, 2007, Plaintiff and Defendant Biegler allegedly entered into an agreement, stating that Plaintiff would promote and sell the Emerald in consideration of a ten percent commission on the sale. Thereafter, Plaintiff claims it promoted and advertised the Emerald, including setting up promotional material over E-Bay. On or about

Not Reported in F.Supp.2d, 2008 WL 4642903 (E.D.Cal.)
(Cite as: **2008 WL 4642903 (E.D.Cal.)**)

September 11, 2007, Defendants Tillman & Elohim allegedly responded to Plaintiff's E-Bay advertisement with an offer to purchase the Emerald for nineteen million dollars (\$19,000,000).

Following Defendants Tillman & Elohim's alleged offer, Defendant Biegler purportedly violated his contract with Plaintiff by declining to sell the Emerald to Defendants Tillman & Elohim and thereafter inducing Defendants Tillman & Elohim to withdraw their offer to Plaintiff "by falsely telling [D]efendants Tillman & Elohim that [P]laintiff had no authority" to sell the Emerald. Defendant Biegler further is alleged to have induced Defendants Tillman & Elohim to "form a conglomeration of investors to purchase the Bahia Emerald for the sum of seventy five million dollars (\$75,000,000)."

Plaintiff also alleges that Defendants Tillman & Elohim (1) "[knew] full well and had reason to know that [P]laintiff entered into an agreement with [D]efendant Biegler ^{FN4}, for [Plaintiff] to sell and market the 'Bahia Emerald' ..." (Am.Compl.¶ 19:24-25.); (2) that Defendants Tillman & Elohim learned of the existence of the Emerald "solely and wholly from advertisements placed on the internet by [Plaintiff]" (Am.Compl.¶ 20:1-2.); and, (3) that Defendants Tillman & Elohim "wrongfully and intentionally inflict[ed] economic harm upon [P]laintiff, by inducing [D]efendant Biegler not to go through with the sale of the Bahia Emerald to [P]laintiff, in order to deprive [P]laintiff of his property interest in the sale." (Am.Compl.¶ 21:3-7.)

^{FN4}. While Plaintiff's Amended Complaint states that Defendants Tillman & Elohim knew that "plaintiff had entered into an agreement with defendant Jewelry 47, Inc.," it appears Plaintiff was referring to the alleged contract between Plaintiff and Defendant Biegler. (See Am. Compl. ¶ 19.)

*2 On January 24, 2008, Plaintiff filed his initial Complaint for Damages and Demand for Jury Trial in this Court based on diversity jurisdiction. Defendants filed a Motion to Dismiss for failure to state a claim, which was granted with leave to amend on June 11, 2008.^{FN5} On July 1, 2008, Plaintiff filed his Amended Complaint. Plaintiff alleges three causes of action: (1) breach of contract against Defendant Biegler; (2) fraud in the inducement to enter contract against De-

endant Biegler; and (3) willful interference with contractual relations against Defendants Tillman & Elohim.

^{FN5}. Plaintiff's initial Complaint alleged four causes of action: (1) breach of contract against Defendant Biegler; (2) fraud in the inducement to enter contract against Defendant Biegler; (3) willful interference with contractual relations against Defendants Tillman & Elohim; and (4) an injunction against the sale of the Emerald. The Third and Fourth Causes of Action were dismissed with leave to amend.

Plaintiff alleges compensatory damage claims of one million nine hundred thousand dollars (\$1,900,000) and seven million five hundred thousand dollars (\$7,500,000), and a punitive damage claim of fifteen million dollars (\$15,000,000). The Amended Complaint alleges claims against Defendants Tillman & Elohim for one million nine hundred thousand dollars (\$1,900,000).

Defendants Tillman & Elohim now move to dismiss Plaintiff's Third Cause of action pursuant to [Rule 12\(b\)\(6\)](#), and to strike the permanent injunction allegations in the prayer for relief pursuant to [Rule 12\(f\)](#). Defendant Biegler joins this motion.

STANDARD

On a motion to dismiss for failure to state a claim under [Rule 12\(b\)\(6\)](#), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. [Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 \(9th Cir.1996\)](#). [Federal Rule of Civil Procedure 8\(a\)\(2\)](#) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." [Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 \(1957\)](#). While a complaint attacked by a [Rule 12\(b\)\(6\)](#) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the "grounds" of his "entitlement to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. [Bell Atl. Corp. v. Twombly, 550 U.S. 544, ----, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 \(2007\)](#) (internal citations and quotations omitted). Factual allegations

Not Reported in F.Supp.2d, 2008 WL 4642903 (E.D.Cal.)
(Cite as: 2008 WL 4642903 (E.D.Cal.))

must be enough to raise a right to relief above the speculative level. *Id.* at 1965 (citing [5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-236 \(3d ed. 2004\)](#)) (“The pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”).

If the court grants a motion to dismiss a complaint, it must then decide whether to grant leave to amend. The court should “freely give” leave to amend when there is no “undue delay, bad faith[,] dilatory motive on the part of the movant ... undue prejudice to the opposing party by virtue of ... the amendment, [or] futility of the amendment...” [Fed.R.Civ.P. 15\(a\); Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 \(1962\)](#). Generally, leave to amend is only denied when it is clear that the deficiencies of the complaint cannot be cured by amendment. [DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 \(9th Cir.1992\)](#).

ANALYSIS

1. Willful Interference with Contractual Relations

*3 Defendants Tillman & Elohim challenge Plaintiff's Third Cause of Action, which alleges willful interference with contractual relations, pursuant to [Rule 12\(b\)\(6\)](#) on grounds that Plaintiff fails to state a claim on which relief can be granted. The parties do not dispute that California Law governs Plaintiff's claims. Under California law, Plaintiff's claim for willful interference with contractual relations requires the following allegations: (1) the existence of a valid contract between Plaintiff and Defendant Biegler; (2) that Defendants Tillman & Elohim have knowledge of the contract's existence; (3) that Defendants Tillman & Elohim intentionally engaged in acts or conduct intended to disrupt the contractual relationship; (3) the actual disruption of the relationship or breach of the contract; and (5) that Plaintiff suffered damages as a result. [Family Home & Finance Center, Inc. v. Federal Home Loan Mortg. Corp., 525 F.3d 822, 825, 2008 WL 1959494, at *2 \(9th Cir.2008\)](#); [Pacific Gas & Electric Co. v. Bear Stearns & Co., 50 Cal.3d 1118, 1126, 270 Cal.Rptr. 1, 791 P.2d 587 \(1990\)](#).

The California Supreme Court addressed whether allegations are sufficient to state a cause of action for willful or intentional interference with contractual relations in [Quelimane Co. v. Stewart Title, 19 Cal.4th 26, 77 Cal.Rptr.2d 709, 960 P.2d 513 \(1998\)](#). The

Court stated that intentional interference with the performance of a contract requires no allegations of independent wrongful purpose other than contract disruption. *Id.* at 56, 77 Cal.Rptr.2d 709, 960 P.2d 513. Contracts, with their exchange of promises, are specially protected under the law, and thus “[i]ntentionally inducing or causing a breach of an existing contract is therefore a wrong in and of itself.” *Id.* at 55-56, 77 Cal.Rptr.2d 709, 960 P.2d 513. It is enough that defendant “knows that the interference is certain or substantially certain to occur as a result of his action.” *Id.* at 56, 77 Cal.Rptr.2d 709, 960 P.2d 513. In *Quelimane*, the court held the plaintiff's allegation of intentional interference with contractual relations sufficient because the plaintiff alleged that the defendant refused to issue a title insurance policy to the third party purchaser of the plaintiff's land without commencement by purchaser of a quiet title action, which resulted in the purchaser's default. *Id.* at 56-57, 77 Cal.Rptr.2d 709, 960 P.2d 513. Further, the defendant's knowledge and disruption of the contract were both alleged impliedly from the same allegation. *Id.* The court noted that if the “factual allegations of the complaint are adequate to state a cause of action” the complaint will survive against a motion to dismiss. *Id.* at 38, 77 Cal.Rptr.2d 709, 960 P.2d 513 (citing [Barquis v. Merchants Collection Ass'n, 7 Cal.3d 94, 103, 101 Cal.Rptr. 745, 496 P.2d 817 \(1972\)](#)) (emphasis in original).

In the instant case, even if all of Plaintiff's factual allegations are taken as true and construed in the light most favorable to Plaintiff, Plaintiff has failed to establish essential elements of the cause of action for willful interference with contractual relations.

Plaintiff has failed to meet his pleading obligation regarding Defendants Tillman & Elohim's knowledge of the contract. Plaintiff alleges that Defendant Tillman & Elohim “[knew] full well and had reason to know that [P]laintiff entered into an agreement with [Defendant Biegler], for [Plaintiff] to sell and market the ‘Bahia Emerald’....” (Am.Compl.¶ 19.) Further, Plaintiff alleges that Defendants Tillman & Elohim “learn[ed] of the existence of the Bahia Emerald and that it was available for sale, solely and wholly from advertisements placed on the internet by [Plaintiff].” (Am.Compl.¶ 20.)

*4 Plaintiff's first allegation is merely a conclusory recitation of a required element of this cause of

Not Reported in F.Supp.2d, 2008 WL 4642903 (E.D.Cal.)
(Cite as: **2008 WL 4642903 (E.D.Cal.)**)

action. Plaintiff's second allegation may show that Defendants Tillman & Elohim were aware of Plaintiff's authority to sell the Emerald, which would support a reasonable inference that Defendants Tillman & Elohim knew that Plaintiff had an agreement with the true owner of the Emerald. However, Plaintiff also alleges that Defendant Biegler told Defendants Tillman & Elohim that Plaintiff lacked the authority to sell the Emerald. (Am.Compl.¶¶ 10, 16.) Any reasonable inference that Defendants Tillman & Elohim had knowledge of Plaintiff's contractual relationship with Defendant Biegler is negated by Defendant Biegler's alleged false statement. Thus, Plaintiff's factual assertions regarding Defendants Tillman & Elohim's knowledge of the contract are contradictory and Plaintiff fails to state a cause of action for willful interference with contractual relations.

Further, Plaintiff has not explained or remedied the inconsistent allegations in his initial Complaint. Again, Plaintiff has failed to properly plead the "intent element" of the willful interference with contractual relations cause of action. Plaintiff alleges that Defendants Tillman & Elohim "wrongfully and intentionally inflict[ed] economic harm upon [P]laintiff, by inducing [D]efendant Biegler not to go through with the sale of the Bahia Emerald to [P]laintiff, in order to deprive [P]laintiff of his property interest in the sale." (Am.Compl.¶ 21.) This allegation conflicts with another allegation in Plaintiff's Amended Complaint, which states that Defendant Biegler induced Defendants Tillman & Elohim "to withdraw their offer ... by falsely telling [D]efendants Tillman [&] Elohim that [P]laintiff had no authority to sell the 'Bahia Emerald,' [sic] and did induce [D]efendants Tillman [&] Elohim to form a conglomeration of investors to purchase the Bahia Emerald for the sum of seventy five million (\$75,000,000), in violation of the agreement to sell the jewel between [P]laintiff and [D]efendants [sic] Biegler." (Am.Compl.¶¶ 10, 16.) Thus, Plaintiff alleges Defendant Biegler induced Defendants Tillman & Elohim not to buy the Emerald from Plaintiff, and that Defendants Tillman & Elohim induced Defendant Biegler not to sell the Emerald to Plaintiff. These allegations are not only conflicting, they are also conclusory, and as such fail to satisfy Plaintiff's pleading obligation to provide the "grounds" of his "entitlement to relief". [Twombly, 127 S.Ct. at 1964-65.](#)

Because Plaintiff has failed to properly plead es-

sential elements of the cause of action of willful interference with contractual relations, he has failed to state a claim upon which relief may be granted. Further, Plaintiff has not cured the defects of his initial Complaint. Accordingly, the Motion to Dismiss Plaintiff's Third Cause of Action will be granted without leave to amend.

2. Permanent Injunction

*5 Defendants Tillman & Elohim move to strike the permanent injunction allegations in the prayer for relief pursuant to [Rule 12\(f\)](#). Plaintiff does not oppose the motion.^{FN6} Accordingly, Defendants Tillman & Elohim's Motion to Strike will be granted.

[FN6.](#) Plaintiff states that they "inadvertently omitted to remove the ... prayer [for] injunctive relief." (Opp'n to Mot. To Dismiss, 1:22-28.) Also, that "[P]laintiff consents to omit from the ad damnum clause a prayer for injunctive relief." *Id.*

CONCLUSION

Defendants Tillman & Elohim's Motion to Dismiss Plaintiff's Third Cause of Action is GRANTED without leave to amend. Defendants' Motion to Strike the permanent injunction allegations from the prayer is also GRANTED.

IT IS SO ORDERED.

E.D.Cal.,2008.
Jewelry 47, Inc. v. Biegler
Not Reported in F.Supp.2d, 2008 WL 4642903
(E.D.Cal.)

END OF DOCUMENT