SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

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3P-733, LLC, COINVESTMENTS PARTNERS, PIYUSH BHARDWAJ,

Plaintiffs,

- v -

TAWAN DAVIS, ROSS LEINHART, ELF INVESTMENTS, LLC., CPG INVEST, LLC,

Defendants.

INDEX NO. 650800/2018

MOTION DATE 06/04/2018, 06/27/2018

MOTION SEQ. NO. 002 003

DECISION AND ORDER

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MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 120, 123, 127, 133, 135, 137, 139, 140, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 124, 125, 126, 128, 134, 136, 138, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 163, 164, 165, 166, 167, 168

were read on this motion to/for DISMISS.

In motion sequence number (Motion) 002, plaintiffs move, pursuant to CPLR 2221, to renew and to reargue their previously-denied motion for a preliminary injunction, Motion 001. Also in Motion 002, plaintiffs move, pursuant to CPLR 6301, for the same preliminary injunctive relief previously sought, and, pursuant to CPLR 6201, for a pre-judgment attachment of assets. In Motion 003, defendants move, pursuant to CPLR 3211 (a) (1) and (a) (7) to dismiss the second amended complaint (SAC) in its entirety.

Background

The facts are taken from the SAC, filed May 16, 2018, unless otherwise noted (NYSCEF Doc. No. [Doc] 74).

This action arises from an alleged real estate development joint venture between plaintiff Piyush Bhardwaj, through his company, plaintiff 3P-733, LLC (3P), and defendant Tawan Davis, through defendant CPG Invest (CPG), a company in which Davis is one of three ownership members. 3P, as 40% member, and CPG, as 60% member, formed a new company, non-party Carbyne Property Group (Carbyne), to invest in an develop real estate.

According to plaintiffs, Carbyne "began operating" under a new name, "The Steinbridge Group," "under the same terms as [Carbyne's] operating agreement" (Doc 74, ¶¶ 1-12). A new company, non-party The Steinbridge Group, LLC (Steinbridge) was formed on March 31, 2016 "with the intent of causing the provisions of [Carbyne's] Operating Agreement, as written, to govern [Steinbridge]"; however, "no actual operating agreement was ever prepared" for Steinbridge (*id.* ¶¶ 12-15). In "2016 or 2017," Steinbridge "entered into" four transactions, incurring costs and expenses, though "none of the deals closed" (*id.* ¶ 16). The costs and expenses for those failed Steinbridge deals were paid from the same Carver Bank account (Account) from which Carbyne's costs and expenses had been paid (*id.* ¶¶ 4, 17). Plaintiffs allege that Bhardwaj and Davis made, "when necessary," capital contributions to the Account for Steinbridge-related expenses (*id.*).

The relationship of Bhardwaj and Davis "soured" around Summer 2017, at which time Steinbridge "still possessed major prospective real estate investments" (*id.* ¶¶ 18-19). In August 2017, Davis "unilaterally and without notice cut off . . . Bhardwaj's access to . . . Bhardwaj's Steinbridge email account and to the Steinbridge shared computer drive" (*id.* ¶ 21), and, ultimately, "Bhardwaj was fraudulently ejected from his forty percent . . . minority stake" in Steinbridge (*see id.* ¶ 29).

The court heard oral argument for Motions 002 and 003 and the so-ordered transcript of that proceeding is incorporated herein for all purposes.

In Motion 003, defendants seek to dismiss all claims in plaintiffs' SAC but for the breach of contract claim against CPG. Plaintiffs' counsel consented to withdraw the contract claim against Davis individually, and that claim now proceeds as raised by 3P against only CPG.

Discussion: Motion 003 – defendants' motion to dismiss

1. First and second count: minority shareholder oppression and breach of fiduciary duty

The parties agree that the rights and obligations of Carbyne's members are controlled by Delaware law as an LLC organized under the laws of that state.

Defendants contend that the claim styled as "minority shareholder oppression" must be dismissed as against all defendants as there is no such independent claim under Delaware law (which the parties agree here applies) or other applicable law, and the claim is duplicative of the breach of fiduciary duty claim. Defendants further contend that the breach of fiduciary duty claim is, itself, precluded by the breach of contract claim.

The parties agree that the breach of contract claim by 3P against CPG will proceed. They further agree that Delaware law applies to the "minority oppression" and breach of fiduciary duty claims because Carbyne is an LLC organized under the laws of that State.

As an initial matter, the court agrees with defendants that the "minority shareholder oppression" claim must be dismissed as duplicative of the breach of fiduciary duty claim: plaintiffs' allegations supporting those claims are premised on

identical underlying conduct (e.g., 3P's purportedly improper expulsion from Carbyne/Steinbridge. executed by CPG as orchestrated by Davis); there are no factual allegations that distinguish the breach of fiduciary claim from the minority oppression claim in the SAC. As plaintiffs do not allege that 3P was oppressed through any conduct by CPG (or on behalf of CPG) that does not constitute a breach of fiduciary obligations, the minority oppression claim is duplicative and superfluous. Moreover, there are no allegations to support plaintiffs' contention that Davis, as one of three owners of CPG, owes a fiduciary duty to either 3P or Bhardwaj, and any fiduciary obligations or rights belong, here, to the members of the LLCs, not Davis or Bhardwaj in their individual capacities. Accordingly, the minority oppression claim is dismissed in its entirety, and the breach of fiduciary duty claim is dismissed against Davis individually.

While the court agrees with defendants that the breach of fiduciary duty claim, itself, is duplicative of and superseded by the breach of contract claim to the extent that the plaintiffs assert fiduciary misconduct under the Carbyne operating agreement, the breach of fiduciary duty claim is not dismissed as to CPG. Plaintiffs allege that the Carbyne members agreed, essentially, to rename Carbyne "Steinbridge" and to transpose/apply the Carbyne operating agreement terms to Steinbridge; however, no operating agreement for Steinbridge was executed. Under either plaintiffs' theory that the Carbyne terms apply to Steinbridge or that a new oral contract between 3P and CPG was entered, the breach of fiduciary duty claim is not dismissed against CPG as duplicative of the contract claim to the extent that Steinbridge's members' fiduciary obligations and rights are not governed by the Carbyne operating agreement (*see Madison Realty Partners 7, LLC v Ag ISA, LLC*, CIV.A. 18094, 2001 WL 406268, at *6, 2001 Del. Ch. LEXIS 37, at *18-20 [Del Ch, Apr. 17, 2001] [breach of fiduciary duty

claims precluded by breach of contract claims where both claims are based on the same underlying conduct and controlled by the LLC's operating agreement]). That is, absent any official operating agreement for Steinbridge, the breach of fiduciary duty claim is not dismissed as duplicative of the breach of contract claim at this time.

2. Third count: fraud against defendants

Defendants argue that the fraud claim must be dismissed as duplicative of the breach of fiduciary duty and breach of contract claims. Plaintiffs respond that the fraud claim is sufficiently pleaded against Davis, alone, and confirmed that position at oral argument; thus, the claim is deemed waived as to any defendant other than Davis in his individual capacity.

Specifically, plaintiffs assert that the fraud claim is adequately pleaded against Davis in that Davis: (1) materially misrepresented to Bhardwaj that the Carbyne agreement would carry over to Steinbridge word-for-word; (2) caused Bhardwaj to contribute considerable labor into building Steinbridge's real estate business; (3) ousted Bhardwaj from the joint venture under the false pretext of petty theft; and (4) reaped the benefits of Steinbridge's transactions himself, to the exclusion of plaintiffs. When asked by the court at oral argument to identify what facts differentiate the fraud claim from the contract claim, counsel answered that "[t]he fraud was committed by . . . Davis" (Doc 168 at 72).

A "fraud claim that 'ar[ises] from the same facts [as an accompanying contract claim], s[eeks] identical damages and d[oes] not allege a breach of any duty collateral to or independent of the parties' agreements' is subject to dismissal as 'redundant of the contract claim' " (*Cronos Group Ltd. v XComIP, LLC*, 156 AD3d 54, 62–63 [1st Dept 2017] [alterations in original], quoting *Havell Capital Enhanced Mun. Income Fund, L.P.*

v Citibank, N.A., 84 AD3d 588, 589 [1st Dept 2011]). Where a fraud claim is supported by allegations that the defendants "misrepresented . . . their intentions with respect to the manner" in which their contractual duties would be performed, it is appropriately dismissed as duplicative of the breach of contract claim because the fraud is premised on the same facts as those that compose the contract claim, the obligations allegedly breached are not collateral to those imposed by the contract, and the damages sought are identical to those recoverable under the contract cause of action (*see Cronos Group Ltd.*, 156 AD3d at 62-63, quoting *Financial Structures Ltd. v UBS AG*, 77 AD3d 417, 419 [1st Dept 2010]).

Here, the fraud claim is duplicative of the breach of contract claim as it is premised on precisely the same facts and alleges the same injuries: CPG, through one of its members (Davis), made misrepresentations to Bhardwaj regarding the transition to and agreements to be utilized for Steinbridge, then falsely accused Bhardwaj of petty theft in a scheme to expel 3P from the business. Thus, the injury that Bhardwaj sustained was only that sustained by 3P, as plaintiffs allege that the membership interest in Carbyne/Steinbrdige was held by 3P, not by Bhardwaj individually. The only glimmer of extra-contractual injury plaintiffs allege in connection with the purported fraud is injury to Bhardwaj's reputation in the real estate business, and those injuries are the subject of various other claims (i.e., for defamation and tortious interference with an unrelated contract) that are distinct from the fraudulent misrepresentation here (application of the Carbyne agreement terms to Steinbridge) and do not establish an adequate extracontractual injury.

The reputational and future business injuries plaintiffs assert are not injuries that arise from the purported reliance on the fraudulent misrepresentations: the defamation and tortious interference claims/injuries relate to articles published and one letter sent after the ouster. Rather, the injuries arising from misrepresentations as to the membership and operating agreement terms applicable to Steinbridge resulted in only those injuries sustained directly by 3P, not by Bhardwaj individually.

Accordingly, the fraud claim is dismissed.

3. Fourth count: defamation/libel

Defendants argue that the defamation claim must be dismissed as improperly pleaded and concerning either true or non-defamatory statements. Plaintiff responds that Davis defamed Bhardwaj through false accusations of petty theft published in the default letter forwarded to a post-ouster prospective business associate and that the article statements are defamatory by implication by virtue of the fact that the articles refer to Steinbridge's success without any reference to Bhardwaj.

"Defamation is the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society" (*Stepanov v Dow Jones & Co., Inc.*, 120 AD3d 28, 34 [1st Dept 2014] [internal quotation marks and citations omitted]). "To prove a claim for defamation, a plaintiff must show: (1) a false statement that is (2) published to a third party (3) without privilege or authorization, and that (4) causes harm, unless the statement is one of the types of publications actionable regardless of harm," such as defamation per se (*id.* at 34 [internal quotation marks and citations omitted]; *see Gentile v Grand St. Med. Assoc.*, 79 AD3d 1351, 1354 [3d Dept 2010] [statements that on their face "allege a serious crime

or relate to a matter of significance and importance in her profession" constitute defamation per se]).

Plaintiffs allege: "In August 2017, Mr. Bhardwaj received correspondence from Davis' attorney containing the outlandish allegations falsely alleging Mr. Bhardwaj of making improper financial withdrawals as a fictitious basis for absorbing Mr. Bhardwaj's share of the Steinbridge Group" (Doc 74, ¶ 30). Plaintiffs further allege that Bhardwaj learned that a prospective investor, non-party Real Capital Solutions (RCS), emailed him on August 28, 2017 to advise that RCS "would not be doing business with Mr. Bhardwaj" (*id.* ¶¶ 41-42). When Bhardwaj asked RCS for "feedback . . . with respect to any resistance . . . in completing the deal," RCS responded by email: " 'This certainly didn't help the matter' " (*id.* ¶¶ 43-44). Plaintiffs assert that the RCS email contained the default letter as an attachment and conclude that Davis, individually, emailed the attorney's default letter to RCS to interfere with the potential deal (*id.* ¶ 45-46).

Even if this claim was adequately pleaded with nonconclusory facts, the default letter is protected by the litigation privilege. Notably, plaintiffs wholly fail to address defendants' litigation privilege argument in their papers submitted in opposition to this motion and plaintiffs' counsel did not argue that the privilege is inapplicable to the default letter at oral argument, despite counsel's acknowledgment that the litigation privilege applies to documents prepared in good faith anticipation of litigation. Accordingly, that prong of plaintiffs' defamation claim is deemed abandoned.

In any event, the litigation privilege "is liberally applied irrespective of an attorney's motive for making the challenged statement, notwithstanding the merits of the underlying action, and whether the challenged statement is made by the attorney or by a party" (*Peck v Peck*, 2018 NY Slip Op 30990[U] [Sup Ct, NY County 2018] [internal

citations and quotation marks omitted]). Furthermore, New York courts have found that statements made in anticipation of litigation–such as cease and desist letters sent to the claimant and a prospective employer–are those protected by the privilege (*see Front, Inc. v Khalil*, 24 NY3d 713, 720 [2015]). Here, even if the argument was not waived, and even if this portion of the defamation claim was adequately pleaded, the litigation privilege applies to the statement (*see id.*).

The court next finds that the statements in the various articles are not defamatory by implication or otherwise. The articles in real estate profession magazines and other periodicals do not make a single mention of Bhardwaj, whether in a quote from Davis or any other manner (*see* Doc 126, exhibits 6-9). The statements contained in those articles do not, furthermore, hold up Bhardwaj to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons and deprive him of their friendly intercourse in society, either by omission or inference (*see Stepanov*, 120 AD3d at 34).

On a motion to dismiss a defamation claim, the court must decide whether the statements, considered in the context of the entire publication, are reasonably susceptible of a defamatory connotation (*see id.*). "Loose, figurative or hyperbolic statements, even if deprecating the plaintiff, are not actionable" (*Jacobus v Trump*, 55 Misc 3d 470, 474 [Sup Ct, NY County 2017], *affd* 156 AD3d 452 [1st Dept 2017], *lv denied* 31 NY3d 903 [2018]).

While statements may be actionable by implication in the sense that an average reader would infer, from the overall context, a defamatory connotation, it does not follow that statements wholly omitting the claimant constitute such defamatory implications here. Foremost, the statements must be capable of being proven true or false. Where,

as here, there are no statements concerning, referencing, or even alluding to the claimant, the statements by "omission" from which plaintiffs argue defamatory inferences are drawn cannot possibly be verified as true or false: the omissions literally do not exist in the articles, and the entirety of the published articles do not provide the necessary contextual information—i.e., a reference to a former business partner, or a change in ownership, etc.—from which to draw defamatory inferences.

Statements "not reasonably susceptible of a defamatory meaning, . . . are not actionable and cannot be made so by a strained or artificial construction" (*Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999]). The strained construction of the statements in these articles, the entirety of the context of these statements, and the inferences to be drawn by an average reader—even one familiar with the real estate market—are not defamatory as a matter of law and so are dismissed.

4. Fifth count: conversion

Plaintiffs' conversion claim is based upon CPG's barring Bhardwaj's access to the Carbyne/Steinbridge bank account, offices, email, and database, and the only things plaintiffs allege were converted are the funds in the bank account and 3P's equity interest in Steinbridge. Lost or misappropriated interests in business opportunities and non-chattel property, such as fungible money in a bank account, are not appropriate subjects for conversion claims (*see C & B Enters. USA, LLC v. Koegel*, 136 AD3d 957, 958[2d Dept 2016]; *9310 Third Ave. Assocs. v Schaffer Food Serv. Co.*, 210 AD2d 207, 208 [2d Dept 1994]). None of the authority relied on by plaintiffs in opposition to this motion demand an alternative result; accordingly, the conversion claim is dismissed.

5. Seventh count: breach of the covenant of good faith and fair dealing

At oral argument, plaintiffs' counsel conceded that the regular contract claim and good faith and fair dealing claim are premised on "the same set of facts" and the same alleged breaches; accordingly, plaintiffs' claim for breach of the covenant of good faith and fair dealing was dismissed at argument (tr at 52-54) and remains so now.

6. Eighth count: tortious interference

Defendants contend that the tortious interference claim, premised on the default letter being published to RCS, must be dismissed as duplicative of the defamation claim and as inadequately pleaded absent factual allegations of culpable intent to satisfy the elements of tortious interference with prospective business relations. Plaintiffs respond that the allegations sufficiently state a claim for tortious interference with prospective economic advantage because defendants directed their attorney's default letter to Bhardwaj's potential business investor in Colorado and must have done so with sheer malicious intent. While the court disagrees with defendants' assertion that the claim must be dismissed as duplicative of the defamation claim above, it agrees that plaintiffs do not adequately allege with nonconclusory facts a cause of action for tortious interference with existing contract or with prospective business opportunity.

As discussed above in connection with the dismissed defamation claim, plaintiffs vaguely allege that the default letter was sent from Davis to an RCS representative at some unidentified time in August 2017 (Doc 74, ¶¶ 41-46). The only facts regarding the prospective business opportunity with RCS plaintiffs allege are the following: Bhardwaj emailed a "term sheet containing a strategy and budget for a prospective deal with an estimated value of" $20-to-30 million to "prospective investors from" RCS on August 25,

2017; Bhardwaj was informed August 28, 2017 that RCS "would not be doing business with" him; on August 29, 2017, Bhardwaj asked RCS for "feedback" as to "any resistance" it had "in completing the deal"; later on August 29, 2017, the RCS representative emailed Bhardwaj with the default letter attached and told Bhardwaj " '[t]his certainly didn't help the matter' " (*id.*). As to the intent of Davis or any defendant, plaintiffs state "Davis derived no discernable personal benefit from interfering with this deal other than what can only be imagined to be some form of diabolical gratification from harming Mr. Bhardwaj" (*id.* ¶ 45; *see also id.* ¶ 46 [surmising that Davis's email to RCS "served no legitimate purpose other than to harm Mr. Bhardwaj's reputation"]).

The elements of a claim for tortious interference with prospective business relations are: "(a) business relations with a third party; (b) the defendant's interference with those business relations; (c) the defendant acting with the sole purpose of harming the plaintiff or using wrongful means; and (d) injury to the business relationship" (*Advanced Global Tech. LLC v Sirius Satellite Radio, Inc.*,15 Misc 3d 776, 779 [Sup Ct, NY County 2007], *affd as mod* 44 AD3d 317 [1st Dept 2007]). The alleged interfering conduct must have been "undertaken for the sole purpose of harming plaintiff, or . . . wrongful or improper independent of the interference allegedly caused" (*Jacobs v Continuum Health Partners, Inc.*, 7 AD3d 312, 313 [1st Dept 2004]).

Here, plaintiffs' conclusory assertions and vague statements surrounding the prospective business opportunity, the alleged interfering conduct, and defendants' malicious motive or independently tortious or criminal purpose of sending the letter to RCS are insufficient to state a claim for tortious interference with prospective business

relations. Accordingly, the claim is dismissed without prejudice to plaintiffs to replead the claim with additional nonconclusory facts.

7. Ninth count: unjust enrichment

The unjust enrichment is dismissed to the extent it is premised on a breach of the written Carbyne operating agreement between 3P and CPG. It is further dismissed as to individual defendant Davis as there are no allegations that Davis has individually benefited from any of the conduct at issue apart from that arising from his membership share of CPG and related proceeds. However, the claim survives the motion to dismiss as raised by 3P against CPG to the extent that it seeks redress for the oral/informal agreement that plaintiffs allege was created in the course of transitioning the company from Carbyne to Steinbridge.

Motion 002: plaintiffs' motion to renew and reargue Motion 001 and to obtain a preliminary injunction and pre-judgment attachment of assets

In Motion 001, plaintiffs previously moved, pursuant to CPLR 6301, for an order awarding a preliminary injunction enjoining defendants from variously continuing to conduct business and to have all Carbyne/Steinbridge assets and income placed in escrow, among other things. Motion 001 was denied by the court for the reasons stated on the record at the May 3, 2018 proceeding (Docs 118, 121 [so-ordered tr]). Specifically, the court found that plaintiffs failed to establish the element of irreparable harm as the injuries then alleged could all be satisfied by simple monetary damages.

Plaintiffs now move, in Motion 002, pursuant to CPLR 2221, for leave to both renew and reargue Motion 001, and, upon renewal and/or reargument, awarding the preliminary injunction relief that was previously denied. Plaintiffs also move, again pursuant to CPLR 6301, for the same injunctive relief they sought in Motion 001, and,

pursuant to CPLR 6201, for a pre-judgment attachment of Davis's assets (*see* Docs 76-115).

The court denied Motion 002 at argument (Doc 168) for the reasons below.

As an initial matter, though not raised by the parties in connection with Motion 002, plaintiffs' motion for leave to renew and to reargue is procedurally defective in that plaintiffs have not attached a copy of the decision and order denying the underlying motion (Motion 001) (*see* CPLR 2214 [c]; *Biscone v JetBlue Airways Corp.*, 103 AD3d 158, 179-180 [2d Dept 2012] [holding that denial of motions to renew and reargue is appropriate in e-filing actions where movant fails to submit the underlying motion papers], *lv dismissed* 20 NY3d 1084 [2013]).

Further, plaintiffs' motion for leave to reargue is defective as plaintiffs do not identify any specific issue of law or fact that the court misapprehended or overlooked (CPLR 2221 [d] [2]); rather, the reargument prong of Motion 002 improperly relies on new evidence and applies and compares new and/or additional arguments to certain new evidence. Plaintiffs' counsel's vague assertions that the court "may have misapprehended matters of fact" because defendants submitted, in opposition to Motion 001, a "mountain of lies" (Doc 77 [mem sup, Motion 002]). In any event, there is no basis to grant leave to reargue motion as to the Carbyne/Steinbridge-related relief sought in Motion 001 (and in Motion 002), as plaintiffs' submissions in support of this motion do not change the court's prior ruling in Motion 001: plaintiffs have not established entitlement to a preliminary injunction because there is no irreparable harm arising from the contract-related claims; that is, any injuries arising from 3P's membership interest or allegedly improper expulsion from either or both of those companies are recompensable with monetary damages.

Plaintiffs' motion for leave to renew must also be denied as the new facts not offered on the prior motion largely repeat the same information offered in support of Motion 001, and fail to demonstrate that the newly-offered facts or a change in the law would change the prior determination (CPLR 2221 [e] [2]). Plaintiffs also vaguely assert that Bhardwaj engaged in a post-Motion 001 "Herculean" task of gathering documents–apparently nearly all of which were in his possession when Motion 001 was filed and argued–by "comb[ing] through the proverbial ruins of the materials that [he] was able to save in order to assemble these applications" (Doc 81, ¶ 3); thus, plaintiffs have not established reasonable justification for their failure to present those facts in the underlying motion (*see* CPLR 2221 [e] [3]).

Further, the new submission of a news article about Davis and Steinbridge published after Motion 001 was decided does not change the court's prior determination denying the preliminary injunction. Even assuming that there is irreparable harm based on defendants' defamatory conduct, there was no likelihood of success on the merits for those claims as pleaded in connection with Motion 001 (in fact, the damages there were alleged to be monetary, only), and there is no likelihood of success on the merits for those claims in Motion 002 as those claims, now restated in the SAC, are dismissed above in Motion 003.

The same reasoning applies to plaintiffs' prong of Motion 002 seeking, successively, the same preliminary injunctive relief that they sought in Motion 001 as an "original" motion, pursuant to CPLR 6301, outside of the lens of CPLR 2221. Absent any irreparable harm for the contract/business claims that survive the motion to dismiss, and absent likelihood of success on the merits for the defamation-related claims (which are, in any event, dismissed above), plaintiffs have not satisfied the necessary elements

for a preliminary injunction, regardless of the amendments in the SAC and the newly-offered facts submitted with Motions 002 and 003.

Finally, the request for an order awarding pre-judgment attachment of Davis's assets because he maintains a residence out of state is denied. First, the claims asserted against Davis, individually, are dismissed as stated above in connection with Motion 003 or were withdrawn on consent by plaintiff's counsel.

Second, Davis's Pennsylvania residence does not compel pre-judgment attachment of his assets; Davis has submitted documents and an affirmation demonstrating that he has maintained for years, and continues to maintain, a New York address, and plaintiffs have not adequately established special circumstances–such as hidden assets–to warrant such relief (*see* CPLR 6201).

Accordingly, it is

ORDERED that Motion Sequence Number 003 is granted in part, and the first, third, fourth, fifth, seventh, eighth, and ninth claims in plaintiffs' second amended complaint are dismissed; and it is further

ORDERED that the second claim is dismissed as against individual defendant Tawan Davis, only; and it is further

ORDERED that Motion Sequence Number 002 is denied; and it is further

ORDERED that plaintiffs may replead their eighth claim for tortious interference against individual defendant Davis within 5 days of entry of this order on NYSCEF or else waived; and it is further

ORDERED that defendant CPG Invest, LLC shall answer the second amended complaint or otherwise respond thereto within 20 days of entry of this decision and order on NYSCEF; and it is further

ORDERED that counsel shall appear for a preliminary conference in Room 242, 60 Centre Street, on MAY 8, 2019, at 9:30 am/pm

4/2/2019
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE