

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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F and N, :  
 : Index No. \_\_\_\_\_  
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 Plaintiffs, :  
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 :  
 -against- :  
 : **ORAL ARGUMENT**  
 B, E, J, M and A, : **REQUESTED**  
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 Defendants. :  
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 X

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**MEMORANDUM OF LAW IN SUPPORT OF THE  
DEFENDANT \_\_\_\_'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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**TABLE OF AUTHORITIES**

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- *Flushing Expo, Inc. v. New World Mall, LLC*, 116 A.D.3d 826 (N.Y. App. Div. 2014)
- *EDP Hosp. Computer Sys. v. Bronx-Lebanon Hosp. Ctr.*, 212 A.D.2d 570 (N.Y. App. Div. 1995)
- *M.J. & K. Co. v. Matthew Bender & Co.*, 220 A.D.2d 488 (N.Y. App. Div. 2d Dep't Oct. 10, 1995)
- *Anesthesia Assoc. of Mount Kisco, LLP v. Northern Westchester Hosp. Ctr.*, 59 A.D.3d 473 (N.Y. App. Div. 2d Dep't Feb. 10, 2009)
- *White v. Ivy*, 63 A.D.3d 1236 (N.Y. App. Div. 3d Dep't June 4, 2009)
- *Moulton Paving, LLC v Town of Poughkeepsie*, 98 A.D.3d 1009 (N.Y. App. Div. 2d Dep't Sept. 19, 2012)
- *3320 Leasehold Corp. v Sahim*, 2016 NY Slip Op 30141(U) (N.Y. Sup. Ct. Jan. 26, 2016)
- *Johnson v Cestone*, 2017 NY Slip Op 30532(U) (N.Y. Sup. Ct. Mar. 17, 2017)
- *BEC Capital, LLC v Bistrovic*, 2017 NY Slip Op 30217(U) (N.Y. Sup. Ct. Jan. 27, 2017)
- *Law Offs. of Ira H. Leibowitz v Landmark Ventures, Inc.*, 131 A.D.3d 583 (N.Y. App. Div. 2015)
- *Global Tech. Fin., LLC v Faisal Syed*, 2011 NY Slip Op 33901(U) (N.Y. Sup. Ct. Aug. 12, 2011)
- *Wayne Thomas Salon, Inc. v Moser*, 2010 NY Slip Op 32872(U) (N.Y. Sup. Ct. Oct. 12, 2010)

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Defendants E (“E”), by their attorneys, \_\_\_\_\_, submit this Memorandum of Law in support of its Motion to Dismiss the Plaintiffs’ Complaint and an Affidavit in Support of E’s Motion by Mr. T (“**T affidavit**”) and an Affirmation of E’s Attorney dated \_\_\_\_\_, with the exhibits attached thereto, in support of their Motion to Dismiss the Verified Complaint (the “**Complaint**”) filed by Plaintiffs F and N (collectively, “N” or “Plaintiffs”), pursuant to New York Civil Practice Law and Rules (“CPLR”) §§ 3211(a)(1) and (a)(7).

**PRELIMINARY STATEMENT**

1. On or about \_\_\_\_\_, Plaintiff N filed a complaint alleging Tortious Interference of Contract and Tortious Interference with Business Relationship against Defendant E. N falsely alleged that E threatened N’s employees they would never work in a B facility again unless they immediately stopped working for N and started working for E. N asserted that such threat was illegal and improper, amounted to extortion and/or blackmail, and further cemented the end of the Business Relationship.
2. Further, N relied on a \_\_\_\_\_ Agreement for asserting that E had actual and constructive knowledge of the \_\_\_\_\_ Agreement still, E acted with the intent of causing Defendant B to both terminate N as B’s general contractor and breach the \_\_\_\_\_

Agreement. N also alleged that E's actions were intentional, illegal, willful and malicious and improperly procured B's termination and breach of its contract with N.

3. E submits that N made groundless contentions and failed to submit any documentary evidence professing the \_\_\_\_\_ Agreement. N relied upon the \_\_\_\_\_ Agreement for asserting E's liability but failed to submit the said Agreement with the complaint. Therefore, N does not possess any evidentiary material backing its assertions in the complaint.
4. As such, E submits that N's cause of action against E should be dismissed because it fails to state a cause of action and is not supported by any documentary evidence.
5. Accordingly, for the reasons detailed below, each of the causes of action alleged against the E should be dismissed in its entirety with prejudice.

#### **STATEMENT OF FACTS**

6. N is a contracting company specializing in carpentry work including, but not limited to, the construction and/or repair of walls, ceilings, architectural woodwork and the installation of plexiglass. Complaint ¶ \_\_
7. Beginning in \_\_\_\_\_, N entered into contractual agreements to perform general contracting services for defendant B at various B owned buildings throughout Manhattan. Said general contracting services included, but was not limited to, the design of proprietary systems to alleviate any and all problems or issues that arose at B owned properties. Complaint ¶ \_\_
8. From \_\_\_\_\_ until \_\_\_\_\_, N performed general contracting services for B and N made itself available twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year in its performance of its general contracting services to B. Complaint ¶ \_\_ and \_\_.
9. Periodically, N and B would execute a Master Services Agreement which governed the duties and responsibilities of each party regarding N's performance of general contracting services for B. Complaint ¶ \_\_. The complaint stated that the latest Master Services Agreement executed between N and B was in \_\_\_\_\_ (the "\_\_\_\_ Agreement") for

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which no evidence was adduced by the N.

10. During the entire time that N performed general contracting services for B, all N employees that performed work at B properties were union members of the New York City District Council of Carpenters, Lathers Local 46 and Tapers Local 1974. Complaint ¶ \_\_
11. During the term of the \_\_\_\_\_ Agreement, defendants J, M and A (collectively the "B Employees") were N's contacts within B regarding performance pursuant to the \_\_\_\_\_ Agreement or any pending Statements of Work. Complaint ¶ \_\_
12. On or about \_\_\_\_\_, the New York City District Council of Carpenters issued N a stop work order with regards to all of its workers (the "Stop Work Order"). Complaint ¶ \_\_
13. B, through the B Employees, informed N that B had a special project it must have completed by the upcoming weekend (\_\_\_\_\_). Complaint ¶ \_\_
14. On or about \_\_\_\_\_, B informed N that it had terminated the \_\_\_\_\_ Agreement. Complaint ¶ \_\_
15. On or about \_\_\_\_\_, B hired E as the general contractor for completion of the work pending by N. Complaint ¶ \_\_
16. On or about \_\_\_\_\_, N filed a complaint alleging Tortious Interference of Contract by E and Tortious Interference with Business Relationship against E. N falsely alleged that E threatened N's employees they would never work in a B facility again unless they immediately stopped working for N and started working for E. N asserted that such threat was illegal and improper, amounted to extortion and/or blackmail, and further cemented the end of the Business Relationship.
17. Further, N relied on a \_\_\_\_\_ Agreement for asserting that E had actual and constructive knowledge of the \_\_\_\_\_ Agreement still, E acted with the intent of causing B to both terminate N as B's general contractor and breach the \_\_\_\_\_ Agreement. N also alleged that E's actions were intentional, illegal, willful and malicious and improperly procured B's termination and breach of its contract with N.
18. E submits that N made groundless contentions and failed to submit any documentary

evidence professing the \_\_\_\_ Agreement. N relied upon the \_\_\_\_ Agreement for asserting E's liability but failed to submit the said Agreement with the complaint. Therefore, N does not possess any evidentiary material backing its assertions in the complaint.

19. As such, E submits that N's cause of action against E should be dismissed because it fails to state a cause of action and is not supported by any documentary evidence.

20. Accordingly, for the reasons detailed below, each of the causes of action alleged against the E should be dismissed in its entirety with prejudice.

### **LEGAL ARGUMENTS**

#### **I. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION TENABLE AT LAW AND SHOULD BE DISMISSED.**

In *Hersh v Cohen*, 131 A.D.3d 1117 (N.Y. App. Div. 2015), the Appellate Division held that, "On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, initially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail." *Id.*

The Court in *Hersh* case dismissed the cause of action which alleged tortious interference with prospective business relations because Plaintiff's made only conclusory allegations, which are insufficient to state a cause of action for tortious interference with prospective business relations. *Id.*

In *Flushing Expo, Inc. v. New World Mall, LLC*, 116 A.D.3d 826 (N.Y. App. Div. 2014) the , Appellate Division held that, "On a motion to dismiss pursuant to CPLR 3211(a)(1), dismissal is warranted only if the documentary evidence submitted conclusively establishes a defence to the asserted claims as a matter of law." *Id.*

In *Flushing Expo, Inc.* case, the court granted Defendant's motion to dismiss Plaintiff's action to recover damages for tortious interference with contract, to CPLR 3211(a), because the documentary evidence in the record conclusively established as a matter of law that plaintiff did not have a valid contract with a non-party property owner

when defendant sublet the subject premises, and accordingly, defendant did not procure a breach of that contract. *Id.*

In the case at bar, N failed to properly state a cause of action against Defendant E. Further, the Complaint contained fabricated allegations against E for which N did not submit any supporting evidence. Therefore, the documentary evidence on record does not contain the Agreement in question and this establishes, as matter of law, that the said \_\_\_\_\_ Agreement did not exist. As such, N did not have adequate documentary evidence to sustain the allegation in the Complaint and failed to state a cause of action cognizable at law.

Therefore, E has sufficiently met the standards for dismissing the Complaint in its entirety.

## **II. N FAILED, AS A MATTER OF LAW, TO STATE A CAUSE OF TORTIOUS INTERFERENCE WITH CONTRACT AGAINST EUROTECH.**

The Appellate Division in *Hersh v Cohen*, 131 A.D.3d 1117 (N.Y. App. Div. 2015) held that, “The elements of tortious interference with a contract are: (1) the existence of a contract between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3) the defendant's intentional inducement of the third party to breach or otherwise render performance impossible; and (4) damages to the plaintiff.” *Id.* See also *Flushing Expo, Inc. v. New World Mall, LLC*, 116 A.D.3d 826 (N.Y. App. Div. 2014).

In *EDP Hosp. Computer Sys. v. Bronx-Lebanon Hosp. Ctr.*, 212 A.D.2d 570 (N.Y. App. Div. 1995) the Appellate Division held that, “To prevail on a claim for tortious interference with contractual or prospective contractual relations, a party must show that the alleged tort-feasor wrongfully interfered with the contract for the sole purpose of harming the plaintiff, or that he committed independent torts or predatory acts towards the third party.” In this case, the Court dismissed Plaintiff’s complaint for tortious interference with an existing contract and with a prospective contract for failure to state a cause of action. *Id.*

In *M.J. & K. Co. v. Matthew Bender & Co.*, 220 A.D.2d 488 (N.Y. App. Div. 2d Dep’t Oct. 10, 1995) the Appellate Division held that “Tortious interference with business relations applies to those situations where the third party would have entered into or extended a



contractual relationship with plaintiff but for the intentional and wrongful acts of the defendant. In such an action, the motive for the interference must be solely malicious, and the plaintiff has the burden of proving this fact.” *Id.* In this case, the court granted defendant alleged defaming corporation's motion to dismiss the causes of action for tortious interference with business relations and contractual relations. Plaintiffs' causes of action did not contain sufficient factual support. *Id.*

In *Anesthesia Assoc. of Mount Kisco, LLP v. Northern Westchester Hosp. Ctr.*, 59 A.D.3d 473 (N.Y. App. Div. 2d Dep't Feb. 10, 2009) the Appellate Division held that, “The degree of protection available to a plaintiff for a defendant's tortious interference with contract is defined by the nature of the plaintiff's enforceable legal rights. Thus, where there is an existing, enforceable contract and a defendant's deliberate interference results in a breach of that contract, a plaintiff may recover damages for tortious interference with contractual relations even if the defendant was engaged in lawful behaviour. Where there has been no breach of an existing contract, but only interference with prospective contract rights, however, a plaintiff must show more culpable conduct on the part of the defendant.” *Id.* The court also held that, “A plaintiff is required to show that the defendant's interference with its prospective business relations was accomplished by wrongful means or that the defendant acted for the sole purpose of harming the plaintiff. Wrongful means include physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure. If a defendant shows that the interference is intended, at least in part, to advance its own interests, then it was not acting solely to harm the plaintiff.” *Id.*

In *Anesthesia Assoc. of Mount Kisco, LLP*, the court granted the branch of the hospital's motion for summary judgment dismissing the claims alleging tortious interference with plaintiffs' contractual relationship with two anesthesiologists who were interested in joining plaintiffs. *Id.*

In *White v. Ivy*, 63 A.D.3d 1236 (N.Y. App. Div. 3d Dep't June 4, 2009) the Appellate Division held that, “While New York recognizes causes of action for tortious interference with business relations or contractual relations, the party asserting such a claim must

allege a particular business relationship or contract with a third party that was affected by the offending party's actions.” The court observed that in this case plaintiff made only general allegations that his business was shut down, without reference to any particular business relationship or contract that was impaired by defendant's alleged assertions concerning the building. Hence, defendant was entitled to dismissal of that cause of action. *Id.*

In *Moulton Paving, LLC v Town of Poughkeepsie*, 98 A.D.3d 1009 (N.Y. App. Div. 2d Dep't Sept. 19, 2012) the Appellate Division held that, “The existence of a binding contract is an essential element of a cause of action to recover damages for breach of contract, as well as for tortious interference with a contract.” *Id.* The court also held that “To establish a claim of tortious interference with prospective economic advantage, a plaintiff must demonstrate that the defendant's interference with its prospective business relations was accomplished by wrongful means' or that defendant acted for the sole purpose of harming the plaintiff. As a general rule, such wrongful conduct must amount to a crime or an independent tort, and may consist of physical violence, fraud or misrepresentation, civil suits and criminal prosecutions.” *Id.* In this case, the court dismissed the tortious interference claim against the town since no contract existed. *Id.*

In *3320 Leasehold Corp. v Sahim*, 2016 NY Slip Op 30141(U) (N.Y. Sup. Ct. Jan. 26, 2016), the court held that Plaintiff failed to state a cause of action for Tortious Interference with Contract and thus the court granted the Defendant's motion to dismiss cause of action of Tortious Interference with Contract. *Id.*

In *Johnson v Cestone*, 2017 NY Slip Op 30532(U) (N.Y. Sup. Ct. Mar. 17, 2017), the court concluded that for a Tortious Interference claim to proceed, it must be alleged that there was a contract with which the Defendant allegedly interfered. *Id.*

In *BEC Capital, LLC v Bistrovic*, 2017 NY Slip Op 30217(U) (N.Y. Sup. Ct. Jan. 27, 2017), the court granted the motion to dismiss the claim of Tortious Interference with contract. *Id.*

In the case at bar, N's claim for tortious interference with contract against E is deficient as a matter of law. N could not establish the veracity of the documents that it

relied on for asserting the claims. E has sufficiently proven above that the \_\_\_\_ Agreement did not exist and as per the established legal principles, absent an enforceable contract, there can be no claim for tortious interference with contract. It follows that N's claim for tortious interference is unscrupulous. As such, N's claim for tortious interference with contract must be dismissed.

E submits that N made bald assertions in the complaint stating that there was a valid and binding contract between B and N - the \_\_\_\_ Agreement and that E had actual and constructive knowledge of the \_\_\_\_ Agreement. The N also alleged that E's actions were intentional, illegal, willful and malicious and E improperly procured B's termination and breach of its contract with N. N also alleged that B's breach of the \_\_\_\_ Agreement was a direct result of the actions of E and the B Employees. However, N failed to substantiate the baseless allegation by adducing proper evidence in support of its assertions.

It is established above that the \_\_\_\_ Agreement did not exist and therefore, claims against the E are unavailing because they are based on mere conclusory statements devoid of the requisite pleading standard required to hold E personally liable for tortious interference with contract under New York law. Therefore, N failed to state a claim for Tortious Interference with Contract against E.

### **III. N FAILED, AS A MATTER OF LAW, TO STATE A CAUSE OF TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS AGAINST EUROTECH.**

In *M.J. & K. Co. v. Matthew Bender & Co.*, 220 A.D.2d 488 (N.Y. App. Div. 2d Dep't Oct. 10, 1995) the Appellate Division held that "the elements of tortious interference with contractual relations are 1) the existence of a contract between Plaintiff and a third-party, 2) Defendant's knowledge of the contract, 3) Defendant's intentional inducement of the third-party to breach or otherwise render performance impossible; and (4) damages to plaintiff. *Id.* The court also held that, "Tortious interference with business relations applies to those situations where the third party would have entered into or extended a contractual relationship with plaintiff but for the intentional and wrongful acts of the defendant. In such an action, the motive for the interference must be solely malicious, and the plaintiff has the burden of proving this fact." *Id.*

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In *M.J. & K. Co. v. Matthew Bender & Co.*, the court granted defendant alleged defaming corporation's motion to dismiss the causes of action for tortious interference with business relations and contractual relations. The court concluded that the Plaintiffs' causes of action did not contain sufficient factual support. *Id.*

In *Law Offs. of Ira H. Leibowitz v Landmark Ventures, Inc.*, 131 A.D.3d 583 (N.Y. App. Div. 2015) the Appellate Division held that “A necessary element of a tortious interference with contract cause of action is the intentional and improper procurement of a breach and damage.” *Id.* The court also held that “A claim for tortious interference with prospective business relations does not require a breach of an existing contract, but the party asserting the claim must meet a more culpable conduct standard.” *Id.* The court also held that “This standard is met where the interference with prospective business relations was accomplished by wrongful means or where the offending party acted for the sole purpose of harming the other party.” *Id.* The court also held that “Wrongful means include physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure.” *Id.* The court also held that “As a general rule, the offending party’s conduct must amount to a crime or an independent tort, as conduct that is neither criminal nor tortious will generally be lawful and thus insufficiently culpable to create liability for interference with prospective business relations.” *Id.* The court also held that “with respect to claim for tortious interference with prospective business relations, where the offending party’s actions are motivated by economic self-interest, they cannot be characterized as solely malicious.” *Id.*

In *Law Offs. of Ira H. Leibowitz v Landmark Ventures, Inc.* the court dismissed Defendant’s Tortious Interference with contract counterclaim, as it failed to adequately plead facts to establish that Plaintiff’s in communicating with a third-party to secure fees, intentionally procures that party’s breach of a settlement. The court also dismissed cause of action of Tortious Interference with prospective business relations counterclaim, based on Plaintiff’s contacting a settling party to protect their attorney’s fees, failed as Defendant did not allege their acts constituted a crime or independent tort, or that they acted solely to harm Defendant. *Id.*

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In Global Tech. Fin., LLC v Faisal Syed, 2011 NY Slip Op 33901(U) (N.Y. Sup. Ct. Aug. 12, 2011) the court determined that, “The conduct constituting Tortious Interference with business relations is by definition, conduct directed not at the Plaintiff itself, but at the party with which Plaintiff has or seeks to have relationship.” *Id.*

In *Global Technology’s* case the court dismissed the causes of action of Tortious Interference with business relations because Plaintiff failed to state a cause of action. *Id.*

In Wayne Thomas Salon, Inc. v Moser, 2010 NY Slip Op 32872(U) (N.Y. Sup. Ct. Oct. 12, 2010) the Supreme Court observed that to prevail on a claim for Tortious Interference with business relations under New York law, a party must allege that 1) it had a business relationship with third-party, 2) Defendant knew of that relationship and intentionally interfered with it, 3) the Defendant acted solely out of malice, or used dishonest, unfair or wrongful means, and 4) Defendant’s interference caused injury to the relationship. *Id.* The court concluded that the Plaintiff’s first cause of action of Tortious Interference with prospective of Business Relations should be dismissed because Plaintiff had not met the burden and failed to satisfy the third element of the cause of action, which requires conduct amounting to an independent tort or crime, on the part of Defendant and also Plaintiff failed to meet the basic pleading requirements. *Id.*

In the case at bar, N wrongfully stated in the complaint that N and its employees had a longstanding business relationship going back twenty years and that E had actual knowledge of the Business Relationship. N also stated that E acted with the intent of interfering with the Business Relationship by causing N to lose the Business Relationship and, in fact, did cause the termination of the Business Relationship. E's actions in causing the termination of the Business Relationship involved improper or illegal means which amounted to a crime and/or tort. N utterly failed to substantiate its claims with sufficient evidence in support of the contentions as stated in the complaint. Conclusory allegations cannot establish tortious conduct of E.

Accordingly, N failed to state a cause of action for tortious interference with business relations against the Defendant E.

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**CONCLUSION**

For the reasons set forth above, it is respectfully requested that this Court deny N’s Complaint in the entirety because N’s complaint is based on fallacious legal arguments which are untenable in law. E respectfully requests such other and further relief as the Court deems just and proper including an award of reasonable attorney fees and expenses including the costs and disbursements hereof.

Dated: New York, New York

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*Attorney for E*