UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER A. VINAS, CPA, AND VINAS & CO., CPA'S, P.C.,	:	
Plaintiffs,	:	
	:	**06 Civ. 10233 (HB)**
- against -	:	
	:	**OPINION & ORDER**
THE CHUBB CORPORATION, CHUBB GROUP OF INSURANCE COMPANIES, and FEDERAL INSURANCE COMPANY,	:	
Defendants.	:	

Hon. HAROLD BAER, JR., District Judge:[1]

Plaintiffs Christopher A. Vinas and his accounting firm, Vinas & Co. (collectively, "Plaintiffs" or "Vinas") bring claims against Defendants The Chubb Corporation and related entities Chubb Group of Insurance Companies and Federal Insurance Company (collectively, "Defendants" or "Chubb") for tortious interference with contract, tortious interference with prospective business advantage, and defamation, all under New York law. The case is here on diversity grounds. Chubb moves to dismiss Vinas' complaint in its entirety pursuant to F.R.C.P. 12(b)(6).

For the reasons articulated below, Chubb's motion to dismiss is denied in part and granted in part.

I. BACKGROUND

A. Underlying Facts of Complaint

The following facts are alleged in Plaintiff's complaint and are taken as true for the purposes of a motion to dismiss. See, e.g., Bolt Elec., Inc. v. City of New York, 53 F.3d 465, 469 (2d Cir. 1995).

Plaintiff Christopher Vinas is a certified public accountant. Plaintiffs' First Amended Complaint, January 23, 2007 ("Am. Compl.") ¶ 2. Vinas is the sole shareholder

[1] The Court wishes to thank Shaun Pappas of Cardozo Law School for his assistance researching this opinion.

and CEO of Vinas & Co., a small accounting company that has generally employed between one and three people during its existence. Am. Compl. ¶¶ 3, 88.

For the fifteen years prior to the events giving rise to this lawsuit, Vinas & Co. was the only accountant for non-party Angeliades, which has had significant growth over those years and is now a large, successful construction company. Am. Compl. ¶¶ 43, 46. Indeed, Mr. Vinas and Mike Angeliades (Angeliades' CEO) had a "friendship." Am. Compl. ¶ 124. By mid-2005, Angeliades' construction company was the major source of income for Vinas & Co. Am. Compl. ¶ 61.

Angeliades, as a regular course of business, procured surety bonds so as to secure contracts to do its construction work. Am. Compl. ¶ 49. Angeliades would procure surety bonds through its surety bond broker, Peter Duffy ("Duffy"). Am. Compl. ¶ 61, 81. Over the fifteen years prior to the Complaint, Angeliades bought surety bonds from at least five different surety companies. Am. Compl. ¶ 50.

Defendant Chubb is a large insurance corporation that, among other services, provides surety bonds. Am. Compl. ¶¶ 12-13. According to Plaintiffs, Chubb wields great influence in the field, as Chubb provides surety bonds to 78 of America's 400 largest construction companies. Am. Compl. ¶¶ 14-16. According to Plaintiffs, Chubb relies on the integrity and accuracy of a construction company's financial statements when it makes its decision to issue a surety bond. Am. Compl. ¶¶ 52-53.

In mid-2005, Angeliades purchased a surety bond from Chubb for the first time. Am. Compl. ¶ 61. Sometime after mid-2005, Chubb became the sole surety company from which Angeliades purchased his surety bonds. Am. Compl. ¶ 64. On or about September 9, 2005, Chubb's representative Michael Fleming ("Fleming") telephoned Angeliades' surety bond broker, Duffy, and allegedly told him that Vinas was "too small" and "no good" to do accounting work for Angeliades, and should be replaced.[2] Am. Compl. ¶ 83. Duffy conveyed these comments to Angeliades. Am. Compl. ¶84. Nevertheless, in early 2006, Angeliades and Vinas contracted for Vinas to prepare Angeliades' 2006 audited financial statements and tax returns. Am. Compl. ¶ 57. Plaintiff alleges that Chubb was aware of their contract, aware that Angeliades was the

[2] Fleming followed up his phone conversation with Duffy with a fax outlining Chubb's requirements for the issuance of surety bonds to Angeliades. Am. Compl. ¶ 85.

major source of income to Vinas, and generally aware of the consequences that might befall Vinas were Vinas to lose the Angeliades contract. See, e.g., Am. Compl. ¶ 57, 75, 98, 115.

On or about April 4, 2006, Fleming repeated the same statements to Duffy that Vinas was "too small" and "no good" to do accounting work for Angeliades, and should be replaced. Am. Compl. ¶ 83. Duffy again conveyed the statements to Angeliades. Id. at ¶ 84. On or about August 4, 2006, at a meeting between Angeliades employees and Chubb employees, Fleming repeated the same statements, in the presence of Mr. Angeliades and other Angeliades employees. Am. Compl. ¶ 86.

At some point after this meeting, according to Plaintiff, Chubb threatened to stop providing Angeliades with surety bonds if Angeliades did not replace Vinas as his accountant. Am. Compl. ¶ 67. In September 2006, Chubb indeed refused to provide a surety bond to Angeliades, and thus prevented Angeliades from making a $100 million bid on a construction contract. Am. Compl. ¶ 69.

In November 2006, Angeliades fired Vinas as his accountant and thus breached Vinas' contract to prepare Angeliades' 2006 audited financial statements and tax returns. Am. Compl. ¶ 66.[3] Subsequently, Vinas not only lost Angeliades, but two other longtime construction clients as well. Am. Compl. ¶ 116.

B. Plaintiffs' Complaint

Plaintiffs' Amended Complaint, filed on January 24, 2007, asserts three causes of action against Defendants.[4]

First, Vinas alleges that Chubb tortiously interfered with Vinas' contract to perform Angeliades' 2006 financials and tax returns. Vinas seeks $98,000 in consequential damages, and punitive damages. Am. Compl. ¶¶ 74-75.

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[3] It can be inferred, although it is not entirely made clear in the Complaint, that Angeliades did replace Vinas with an accountant more to Chubb's liking. Am. Compl. ¶ 71.

[4] Plaintiffs originally filed this lawsuit in New York state court on September 29, 2006. Defendants removed to federal court on October 23, 2006.

Neither side contests that jurisdiction exists pursuant to the general federal diversity statute, 28 U.S.C. § 1332. According to Plaintiffs, Plaintiff Christopher Vinas is a New York resident and Vinas & Co. is a New York corporation. Am. Compl. ¶¶ 2-3. According to Plaintiffs, Defendant The Chubb Corporation is a New Jersey corporation; the Chubb Group of Insurance Companies is apparently a New Jersey corporation; and Federal Insurance Company is an Indiana corporation with its principal place of business in New Jersey. Am. Compl. ¶ 4-6.

Secondly, Vinas alleges that Chubb tortiously interfered with its prospective economic advantage, i.e. its future contracts with Angeliades and the two other construction companies who discontinued their business with Vinas. Vinas seeks $450,000 in damages for the loss of its 2007 business; millions of dollars for the loss of prospective business, loss of reputation, and mental pain and suffering over the coming ten to twenty years; and punitive damages. Am. Compl. at 35.

Lastly, Vinas alleges that Chubb committed defamation when Chubb stated that Vinas was "too small" and "no good" to do accounting work for Angeliades. Vinas, as above, seeks $98,000 in consequential damages, $450,000 in damages for the loss of its 2007 business; millions of dollars for the loss of prospective business, loss of reputation, and mental pain and suffering over the coming ten to twenty years; and punitive damages. Am. Compl. at 34.

II. STANDARD OF REVIEW

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the movant must establish that the plaintiff has failed to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In ruling on a Rule 12(b)(6) motion, this Court must construe all factual allegations in the complaint in favor of the non-moving party. See Krimstock v. Kelly, 306 F.3d 40, 47-48 (2d Cir. 2002). A motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Shakur v. Selsky, 391 F.3d 106, 112 (2d Cir. 2004), quoting McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004).

III. DISCUSSION

I will address Vinas' three claims – tortious interference with contract, tortious interference with prospective business advantage, and defamation – in turn. The parties do not dispute that New York law applies to all three claims. See, e.g., American Protein Corp. v. AB Volvo, 844 F.2d 56, 62 (2d Cir. 1988) (holding that New York law applies to tortious interference claim where alleged tort occurred in New York and involved New York corporation).

A. Tortious Interference with Contract Claim

Under New York law, the elements of a tortious interference with contract claim are: "(a) that a valid contract exists; (b) that a 'third party' had knowledge of the contract; (c) that the third party intentionally and improperly procured the breach of the contract; and (d) that the breach resulted in damage to the plaintiff." Albert v. Loksen, 239 F.3d 256, 274 (2d Cir. 2001), citing Finley v. Giacobbe, 79 F.3d 1285, 1294 (2d Cir. 1996). Where the third party has an "economic interest" in the contract, however, a plaintiff must make a higher showing – i.e., that the third party's interference was "either malicious or involved conduct rising to the level of criminality or fraud." Masefield AG v. Colonial Oil Indus., 2006 U.S. Dist. LEXIS 5792, at *15-16 (S.D.N.Y. 2006) ("Masefield") (collecting cases).

This "economic interest" defense, as articulated recently by the New York Court of Appeals, applies to a third party that "act[s] to protect its own legal or financial stake in the breaching party's business." White Plains Coat & Apron Co., Inc. v. Cintas Corp., 8 N.Y.3d 422, 2007 N.Y. LEXIS 847, at *5 (N.Y. Apr. 26, 2007) ("White Plains Coat").[5] Accordingly, the "economic interest" defense has been applied in situations "where defendants were significant stockholders in the breaching party's business;[6] where defendant and the breaching party had a parent-subsidiary relationship;[7] where defendant was the breaching party's creditor;[8] and where the defendant had a managerial contract with the breaching party at the time defendant induced the breach of contract with plaintiff."[9] White Plains Coat, 2007 N.Y. LEXIS 847, at *5-6.

Here, Vinas' tortious interference claim turns on whether Chubb may successfully assert the "economic interest" defense. The central question, which appears to be one of

[5] Although the Court of Appeals decided White Plains Coat after the parties briefed Chubb's motion to dismiss, the parties subsequently brought the decision to this Court's attention.

[6] See White Plains Coat, 2007 N.Y. LEXIS 847, at *5-6, citing, e.g., Felsen v. Sol Cafe Mfg. Corp., 249 N.E.2d 459 (N.Y. 1969); Foster v. Churchill, 665 N.E.2d 153, 157 (N.Y. 1996).

[7] See White Plains Coat, at *5-6, citing, e.g., American Protein Corp. v. AB Volvo, 844 F.2d 56, 63 (2d Cir. 1988).

[8] See White Plains Coat, at *5-6, citing Ultramar Energy Ltd. v. Chase Manhattan Bank, N.A., 179 A.D.2d 592, 592-593 (N.Y. App. Div. 1992).

[9] See White Plains Coat, at *5-6, citing Don King Productions, Inc. v. Smith, 47 Fed. Appx. 12, 15-16 (2d Cir. 2002) (unpublished) (Court upheld jury verdict that rejected tortious interference claim by plaintiff boxing promotion company against defendant boxing manager who induced boxer to breach promotion contract with plaintiff promotion company).

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