

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK : PART 54

3 -----X
4 TAXI TOURS INC.,

5 Plaintiff(s),

6 - against -

7 GO NEW YORK TOURS, INC.,

8 Defendant(s).

9 -----X
10 GO NEW YORK TOURS, INC.,

11 Counterclaim Plaintiff(s),

12 - against -

13 BIG BUS TOURS LIMITED, OPEN TOP SIGHTSEEING
14 USA, INC., TAXI TOURS INC., GO CITY LIMITED,
15 GO CITY NORTH AMERICA, LLC, GO CITY, INC., GRAY
16 LINE NEW YORK TOURS, INC., TWIN AMERICA, LLC
17 and SIGHTSEEING PASS LLC,

18 Counterclaim Defendant(s).

19 -----X
20 Index No. 653012/2019

21 December 2, 2021 - Via MS Teams

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1 THE COURT: I have two motions in front of me
2 today. And let me make very clear for the record as we
3 start off that if I refer to the plaintiff as "Go New York
4 Tours," it's because they are the plaintiff on the
5 counterclaim, and it's just how I thought about this in
6 analyzing the motions. I am very well aware of who the
7 plaintiff is and who the defendant is, but at issue today is
8 Go New York Tours' counterclaims, so it is the one doing the
9 pleading. And I guess I will start off with the
10 jurisdictional motion, which, I think, is Motion 6.

11 Mr. Rasey, explain to me here why there is
12 personal jurisdiction over these foreign entities, or even a
13 sufficient start. I don't see it in light of the Wilkins'
14 affidavit or affirmation, and the Horgan affirmation, and
15 the Conway affidavit.

16 She signed the stipulation. Everybody agrees that
17 Taxi Tours is the party to the stipulation. I don't think
18 her signing the stipulation confers jurisdiction. She has
19 no authority. There hasn't even been a question of fact as
20 to whether she has authority for the British entity. How is
21 there jurisdiction here? I don't see it.

22 MR. RASEY: Thank you, your Honor.

23 The British entity, referring to Big Bus Tours
24 Limited; as we pointed out in our papers, we pulled up their
25 financial statements and publicly-filed statements in the

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1 corporate register in the UK. They manage the US entities.
2 specifically, they manage Taxi Tours as well as Open Top
3 Sightseeing USA, Inc.

4 THE COURT: What did they do? When you say "they
5 manage," what do they do? What are the allegations here
6 of -- let me just point blank ask. What's your anchor for
7 jurisdiction? Which statutory provision? I don't buy at
8 all the New York Department. That's going nowhere. There
9 is no way there is general jurisdiction. I don't even see
10 any specific jurisdiction. Which statutory anchor are you
11 relying on? And you can take me through the map.

12 MR. RASEY: The CPLR 302 (a) (1) and (a)3,
13 transacts business within the state or contracts to supply
14 goods and services in the state.

15 Big Bus Tours Limited by its own admissions and
16 its public filings, and even, to some extent, in
17 Mr. Wilkins' affidavit, supplies the web platform for Taxi
18 Tours or for the sale of Big Bus Services in New York. It
19 owns the Big Bus trademark in New York. It has provided
20 interim financial support for both of the US entities as
21 stated in Mr. Wilkins' affidavit. As stated in our
22 financial statements, Big Bus Tours Limited earns its
23 revenue from charging management fees to subsidiaries in the
24 US including Open Top Sightseeing and Taxi Tours. And we
25 believe, at least, we've made a good start to say that they

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1 are so involved in the management of the US entities that
2 they would necessarily be involved in the conspiracy which
3 we have alleged.

4 THE COURT: So tell me what are specifically their
5 activities in terms of the management that you allege are
6 the predicates for jurisdiction.

7 MR. RASEY: Well, we believe -- we don't know
8 because we haven't had discovery. We've alleged, and I
9 think the documents at least show, suggest that they are
10 involved in the management of the company. They provide
11 corporate branding, sales advice and services to the US
12 entities.

13 Let's go back --

14 THE COURT: Give me an example. What type of
15 advice do they give? When you say they are involved, is it
16 day-to-day management? Is it over arching? What is their
17 involvement?

18 MR. RASEY: The answer is we just don't know.

19 THE COURT: That's not a great answer, though.

20 MR. RASEY: I know.

21 THE COURT: The problem with that answer is that
22 under that theory, any affiliate with the most tangential
23 relationship would be hauled into New York, and that's not
24 the case law.

25 MR. RASEY: I have to respectfully disagree on

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1 that because there is a whole hierarchal series of entities
2 in the UK. There's, maybe, a half dozen to a dozen leading
3 up to the ultimate entity. Big Bus Tours Limited is the
4 only one that is providing management services to the
5 entities in the US also. Also, their directors --

6 THE COURT: What does it do for the entities in
7 New York? What does it do?

8 MR. RASEY: I wish I could answer that, but that's
9 something we would need discovery on. I think it would be
10 resolved pretty easily through limited jurisdictional
11 discovery; but based on what we know about the organization
12 and what we've read in their public filings and also in
13 Mr. Wilkins' affidavit, we believe we've made a reasonable
14 argument that they are involved in the over-arching
15 management and business strategy of the New York companies,
16 and that would encompass the conspiracies.

17 After this case progresses awhile, through
18 discovery we may learn that these decisions were made on the
19 ground in New York and not in London. But based on what we
20 know so far about the management structure, we have every
21 reason to believe that these kinds of significant marketing
22 decisions for the New York market would be -- if not made
23 entirely, at least made in consultation with and under the
24 direction of the UK entity.

25 THE COURT: What in Mr. Wilkins' affidavit or

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1 affirmation supports that?

2 MR. RASEY: Well, he states that --

3 THE COURT: And if you want, I will pull it up.

4 Does anyone have the docket number? I have read it. I just
5 don't have the hard copy with me.

6 MR. RASEY: I can find it.

7 THE COURT: Okay. It's Number 144.

8 There is nothing in that affirmation that gave me
9 the grounds to support what you are saying. I hear you
10 saying involvement in management, saying those words; but
11 what is the anchor again? I am going to keep focusing on
12 the anchor today, I guess.

13 MR. RASEY: Fair enough, your Honor. I understand
14 where you are going.

15 Mr. Wilkins' affidavit is very pro forma. He just
16 makes these kind of boilerplate statements. We take him at
17 his word, I suppose, that Big Bus does not control the
18 day-to-day operations of Open Top or Taxi Tours.
19 Nevertheless, according to his affidavit, they provide the
20 web platform and, by implication, manage the sales of Big
21 Bus tickets in New York. And as stated in the -- I am not
22 sure if it's in his affidavit or only in the financial
23 statements filed in the UK, but they provide direct
24 management services to all entities; so, in our view, they
25 would necessarily be involved. I understand you are asking;

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1 for something more specific that we can anchor argument on,
2 and I can't because we are limited to what we know in the
3 public filings. We know very little, other than our direct
4 experience with Julia Conway, about how these companies are
5 managed. But we know from Big Bus Tours Limited's own
6 filings and, to some extent, from Mr. Wilkins that they are
7 directly involved with the management of the companies in
8 the New York and managing the Big Bus brand. That's our
9 hook. I wish I could give you more, but that's it.

10 THE COURT: Okay.

11 What about Leisure Pass in the UK.

12 MR. RASEY: Well, leisure Pass, again, is set up
13 with a parallel structure. They have the same common owner
14 in London. They also state in their public filings that
15 they provide management services to the subsidiaries in the
16 US. They state that 40 percent of their revenues in 2018
17 and 2019 came from the United States. And given that New
18 York is a major tourist market in the United States, we have
19 to assume a substantial portion of that came from Taxi Tours
20 and Open Top Sightseeing in the New York market.

21 THE COURT: But what is the tortious act that it
22 committed in New York?

23 MR. RASEY: Well, we don't know what -- we don't
24 know the day-to-day on the ground involvement of the UK of
25 the lowest level management UK entity in the affairs of the

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1 subsidiaries. We know they have, at least, applied for
2 USPTO trademark registration for the Go New York which was
3 withdrawn, I think, when they realized that's our name.

4 I wish I could say more. Your Honor can assess
5 what I am telling you, what we have alleged under the law.
6 I am not going to try to make more than I have; but I
7 believe that we have enough to show, at least, a
8 nonprivileged argument that they are involved in the
9 management decisions of the New York entities to the extent
10 that we have made a nonfrivolous argument for jurisdiction
11 here --

12 THE COURT: Why didn't you take up the
13 counterclaim defendants' offer to engage in discovery before
14 putting in the opposition to the motion?

15 MR. RASEY: That's a good question. I was a
16 little taken aback when I saw that in -- in Mr. Lacovara's
17 reply brief, he attached that e-mail where his colleague,
18 Jessica Bratten, contacted -- and I got along very well with
19 her on discovery issues. He attached that email where she
20 contacted me to let me know when they were filing their
21 motion to dismiss and just politely letting me know that
22 it's a short timeframe but we have to pick a date, and we
23 will work with you on a briefing schedule. She also
24 mentioned there, Once you read it let us know what you think
25 of a briefing schedule -- I am paraphrasing -- and whether

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1 you will be seeking jurisdictional discovery.

2 Perhaps I should have thought about that a bit
3 more, but I didn't understand that to be --

4 THE COURT: I will tell you why she may have been
5 more generous than I am. In terms of -- I don't know that
6 there is a ground for me to even order that. In any event,
7 let me hear from Mr. Lacovara in response.

8 Mr. Lacovara, what about the arguments about the
9 management.

10 MR. LACOVARA: Thank you, your Honor. I think I
11 can be brief.

12 I think we have to go back a half a step. The
13 case is about, the claims are about interactions with
14 attractions in New York City for purposes of creating these
15 multi-attraction passes. It's not about the generic
16 management of one business by another, it's about a very
17 specific set of acts. And when Mr. Rasey said that he is
18 going under 302(a)(1), remember that has two components:
19 Transact business in the state of New York, and the
20 transaction relates to the cause of action. The cause of
21 action has to arise out of the nature of the business
22 transacted.

23 It is true that the website is operated globally.
24 It is true that both Go City -- which used to be called
25 Leisure Pass -- and Big Bus in London provide, sort of,

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1 global accounting and tax services. But the record here, as
2 your Honor has noted, is that they do not get involved in
3 selling bus tickets, in selling multi-attraction passes in
4 New York, in dealing with the New York attractions; so I
5 don't think there is any jurisdictional anchor, to use the
6 Court's phrase.

7 Now I will say something that will sound almost
8 like an admission against interest, which is that we don't
9 think there is a basis for jurisdictional discovery. I
10 don't think they have made a sufficient start under any of
11 the cases that talk about that. They don't have any prima
12 facie allegations. They haven't stated what facts they
13 would try to find out with jurisdictional discovery. But
14 the case, your Honor, is in a very odd posture; which is,
15 for reasons of efficiency, we are not resisting regular
16 discovery over those foreign entities. We are collecting
17 documents to be produced to Mr. Rasey and Mr. Ross from
18 London and will continue to do so. It is just easier than
19 having them get dismissed and then deal with it as
20 third-party discovery in the UK. As your Honor knows, that
21 will just slow the case down.

22 So I can tell the Court now that if, as I hope is
23 the drift of your thinking, your Honor, the idea is to
24 dismiss the two entities for want of jurisdiction; but if as
25 discovery proceeds, because Mr. Rasey and his colleagues

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1 will be getting documents from these entities, if they
2 believe they have a basis for any kind of fact that they
3 committed a tort in New York or otherwise did something that
4 would provide jurisdictional anchor, you know, I have a duty
5 to your Honor of candor; and if they have a basis to bring
6 them back into the case, we won't object to amending the
7 pleading at that time. But I think as a matter --

8 THE COURT: All right. I don't need to hear
9 anything further, then, because on that basis I am going to
10 grant dismissal on personal jurisdiction grounds. I do not
11 see any transaction of business or allegations of a tort by
12 these foreign entities that is related to these causes of
13 action. I just don't see any predicates. So if you do find
14 anything in the course of discovery, then I will see this
15 again, but I am going to grant the motion. So that takes
16 care of Motion Number 6.

17 We move on now to Motion Number 7. Motion
18 Number 7, I am also going to focus on the amended
19 counterclaim.

20 Here, the big issue is I have the Gray Line
21 defendants -- oh, they are also the counterclaim defendants.
22 They are moving to dismiss the claim under the Donnelly Act
23 for failure to state a cause of action. And while I am
24 convinced that res judicata does not apply, what I am not
25 convinced of is that the allegations here don't suffer from

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1 the same infirmities that Judge Kaplan pointed out, and
2 under Creative Trading Co. would be subject to dismissal
3 regardless of whether it's federal or state in terms of the
4 sufficiency of the allegations. And I'll focus you in on my
5 problem.

6 The problem is there has to be a description of
7 the nature of the conspiracy, and there has to be reasonable
8 inferences that the conduct constitutes a conspiracy. And,
9 I guess, much like Judge Kaplan, I don't understand and have
10 gone through -- and the focus is Paragraphs 24 through 49 in
11 terms of the Donnelly Act allegations -- all of the
12 different attractions that are listed. For example, for Top
13 of the Rock the allegations are that Top of the Rock
14 consistently rejects Go New York and that there is no
15 rational reason other than the counterclaim defendants
16 required it not to do business with Go New York. What I
17 don't have is the who or the how. What did Go New York do?
18 I mean, there are other rational reasons, much like Judge
19 Kaplan said. It doesn't follow that just because Top of the
20 Rock rejects, even if would be a profitable contract for it,
21 that doesn't mean that there is a conspiracy. That was
22 Paragraph 35.

23 Paragraph 36, I think, talks about the Empire
24 State Observatory. Essentially, it alleges that because
25 defendants are trade partners and the operator there told

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1 Go New York that has an exclusive with another pass, there
2 is no rational reason other than conspiracy here for the
3 Empire State Observatory to reject Go New York. One World
4 Observatory reported that it had an exclusive with Gray
5 Line, president, but it does business with others;
6 therefore, there must be a conspiracy. And the Intrepid
7 refused to work with Go New York. It didn't want to make
8 its trade partners unhappy; and, therefore, it must follow
9 that defendants conspired. You know, the 9/11 Memorial and
10 MoMA defendants, again, are trade partners with the
11 counterclaim defendants, so the allegation goes that there
12 must be a conspiracy. And Madame Tussauds has an
13 affiliation with Big Bus, it still works with Gray Line but
14 won't work with Go New York; therefore, there must be a
15 conspiracy. And Broadway Inbound opened and closed an
16 account quickly are the allegations, that it opened an
17 account for Go New York but closed it quickly. But the
18 allegations are in the complaint that it had a
19 long-established relationship with their defendants, and
20 that long-established relationship wasn't terminated. Well,
21 it was a long-established relationship. I don't know again
22 that the necessary conclusion is that there must be a
23 conspiracy. And then it goes through Coach and Short Line,
24 they refused to work with Go New York due to other
25 sightseeing relationships.

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1 So, again, what did any of the counterclaim
2 defendants do that resulted in or that constitutes any
3 conspiracy?

4 Go ahead, Mr. Rasey.

5 MR. RASEY: Thank you.

6 THE COURT: I know it's a lot, but I want you to
7 know I went through section by section by section, and I the
8 thing that jumps out at me is, How is there a conspiracy?
9 Every time I would read the paragraphs, I would have "how"
10 with question mark.

11 MR. RASEY: I appreciate the detail with which you
12 looked at this, your Honor.

13 Our position is that we've alleged enough
14 circumstances from which under the pleading standard in New
15 York under 3013, CPLR 3013, we've alleged enough to infer a
16 conspiracy. And Paragraphs 35 and 37, two of those
17 attractions, actually instructed Go New York to go talk to
18 Mark Marmurstein, the CEO of Gray Line, if we wanted to get
19 in but he'd have to help us, implying very clearly that they
20 would not work with us without his approval. In the Madame
21 Tussauds, again, it would make sense that since they have
22 common ownership with Big Bus and Leisure Pass, it would
23 make sense if they were exclusive to Big Bus, but it doesn't
24 make sense they would also allow in Gray Line and not Go New
25 York. Also, since this past summer -- I mean, we brought it

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1 up in the record in opposition to Gray Line's order to show
2 cause, I think it was Motion Number 8. And ever since the
3 pandemic, Gray Line has, actually, been selling Big Bus
4 tickets as part of its -- I should say Gray Line including
5 sightseeing pass, the multi-traction arm, have actually been
6 selling multi-attraction passes that incorporate Big Bus
7 rides because Gray Line has stopped running their buses and
8 hasn't resumed. If you buy a Gray Line Hop-on Hop-off bus
9 pass on their website as recently as September, because we
10 tried it, you get a Gray Line bus ticket but it's only good
11 on Big Bus. So they are clearly working together. And we
12 don't have, you know, the dates, times, what was said, as
13 Mr. Edelson and his colleagues have pointed out in their
14 brief, that's true; but we have a common motive for them to
15 work against us. Basically, those are the allegations that
16 I am sure you've read also about the underpricing and
17 disrupting their pricing models. And the whole of the New
18 York attractions in New York are regularly rejecting us
19 while they continue to work with both of the other
20 companies.

21 So, your Honor, those are the factual allegations
22 from which --

23 THE COURT: It sounds like only one company is
24 running right now.

25 MR. RASEY: Well, this would be before the

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1 pandemic, obviously.

2 THE COURT: Right.

3 MR. RASEY: And I understand Gray Line still has
4 these relationships as far as the sightseeing pass
5 multi-attraction passes with the other attractions.

6 THE COURT: Okay.

7 You know, I will tell you, the closest it will
8 comes to me is Paragraph 47 which talks about -- because,
9 you know, to the extent that they talk about inferior or
10 low-cost quality services, I am not even convinced that
11 that's potentially anticompetitive conduct. But in
12 Paragraph 47 it goes on to say that: Go New York has been
13 informed consistently and repeatedly by many attractions
14 that executives of counterclaim defendants have told them
15 that if they allow Go New York to include their attractions
16 in Go New York's multi-attraction passes, they will
17 terminate their contractual relationships with such
18 attractions and refuse to include them in their own
19 respective multi-attraction passes.

20 That's the closest that it comes to surviving, but
21 I will tell you what my problem is there.

22 First of all, in contrast to so many of the other
23 paragraphs, right, where there is a discussion of like Coach
24 and Short Line or Broadway Inbound -- although, again, those
25 allegations don't look sufficient to me because there aren't

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1 any allegations of conspiratorial conduct or even conduct
2 that would be inferential. Again, what jumps out at me is
3 because -- the allegations seem to be that because these
4 attractions, and I didn't count how many there are, but, you
5 know, I don't know how many you listed, but it is not the
6 whole universe of the attractions; but because these
7 attractions do business with the counterclaim defendants and
8 not with us, and, you know, we would offer them a good, in
9 our view, economic incentive, there must be a conspiracy.
10 That just -- I think Judge Kaplan had a problem with that,
11 and I think even under New York more generous liberal
12 pleading standard, it won't survive either. That's the
13 Creative Trading case. But paragraph 47 talks about having
14 heard consistently and repeatedly from many attractions.
15 Well, which ones? This is the important part. Heard from
16 executives of counterclaim defendants. Again, who? Which
17 defendants? Is it Gray Line or is it all of them? I have
18 no idea. But I don't even think that could be an anchor to
19 go forward against all of the counterclaim defendants
20 because it is just simply too conclusory and bereft of any
21 factual foundation.

22 Let me hear from Mr. Edelson.

23 MR. RASEY: Your Honor, may I first make just one
24 quick response?

25 THE COURT: Absolutely. Go right ahead.

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1 MR. RASEY: You've cited the Creative Trading
2 case. In that case, there were not two competitors alleged
3 to have conspired. They were alleging that it was brought
4 by an exhibitor at a fashion apparel trade show against the
5 company that put on the trade shows, and the allegation was
6 that the trade show was conspiring with other exhibitors to
7 shut out the class of exhibitors that the plaintiff was in.
8 So that would be more analogous to our case if we had
9 alleged that, for example, Gray Line -- we took Big Bus out
10 of the picture and Gray Line was just conspiring with the
11 attractions. That's not the case here. We have two direct
12 competitors, Big Bus and Gray Line, allegedly conspiring
13 with each other.

14 I just point that out because it is an important
15 distinguishing factual issue that, in my view, makes the
16 Creative Trading case less applicable here.

17 THE COURT: If I had more facts, perhaps that
18 would be true; but, for example, you know, that one
19 paragraph that maybe would have been compelling if it had
20 more to it, I have no idea which executives of the
21 counterclaim defendants told which attractions that if they
22 allow Go New York to include their attractions they are
23 going to terminate their relationship. It's important for
24 me to know that because I don't know who the counterclaim
25 defendants involved in the conspiracy are. Is there

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1 substance to this? I have no idea. Is it all of the
2 executives? I mean, again, I want to know who because I
3 want to know who should be in, who should be out. Is there
4 really a conspiracy? I don't know. I just have
5 counterclaim defendants.

6 MR. RASEY: It is implied in Paragraphs 35 and 37
7 where we allege that two different attractions told Go New
8 York that would have to talk to Mark Marmurstein from Gray
9 Line if they wanted to enter into a trade partner agreement.

10 THE COURT: So it was the Empire State Building,
11 that's what 47 refers to, and One World Observatory?

12 MR. RASEY: I think it was Top of the Rock and One
13 World. Those are just two examples. That's not the
14 universe encompassed by Paragraph 47.

15 THE COURT: Okay. But, again, it would be good
16 for me to know what Paragraph 47 means, because I really
17 don't know. And, again, I don't know if I should be
18 convinced -- and Mr. Edelson will, I am sure, elaborate --
19 but whether or not them saying, Speak to Marmurstein who
20 is -- who is the president of Gray Line?

21 MR. RASEY: I don't know his exact title, but yes.

22 THE COURT: Right, he is certainly affiliated with
23 Gray Line. So, speak to him, and that means that he is
24 engaged in a conspiracy where, again, those paragraphs
25 certainly don't say to me that Empire State or One World

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1 Observatory or Top of the Rock reported to us that
2 Marmurstein has been saying to us, If we don't cut you out
3 we are going to lose their accounts. That's not what I
4 have.

5 Let me hear from you, Mr. Edelson. Why would
6 dismissal be appropriate here?

7 MR. EDELSON: Thank you, your Honor. I appreciate
8 the direction your Honor is going here.

9 Just to address your point regarding Paragraph 47,
10 there are just no facts suggesting a horizontal conspiracy
11 between the counterclaim defendants or vertically between
12 the companies and the attractions. Regarding Paragraph 47,
13 it is at most suggestive, I think, of parallel conduct. It
14 is clear that that doesn't equate with conspiracy. The
15 Supreme Court held that as far back as 1954 in a case called
16 Theater Enterprises. I think that paragraph doesn't contain
17 facts to suggest, you know, the substance of the
18 allegations. I think at most it indicates that maybe the
19 counterclaim plaintiffs had these experiences with regard to
20 both companies, but that is not sufficient to raise an
21 inference of conspiracy.

22 Just as a general matter, the counterclaims don't
23 meet the pleading standard for a Donnelly Act conspiracy
24 claim under New York law whether under 3013 or 3016(b).

25 There are explicit allegations of fraud and

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1 misrepresentation for the Donnelly Act and tort claims in
2 Paragraphs 1, 32, 48, 76. And given that the heightened
3 pleading standard of 3016(b) applies, there is certainly not
4 enough detail to meet that standard.

5 Regarding the issue about the ticket redemption,
6 none of that is alleged in the counterclaims, your Honor.

7 THE COURT: What about the references to
8 Mr. Marmurstein?

9 MR. EDELSON: Your Honor, those are at most
10 suggestive of potentially exclusive contracts with tourist
11 attractions. There is no basis from which to infer a
12 conspiracy from those mentions of Mr. Marmurstein. They are
13 entirely unilateral as far as they are alleged.

14 THE COURT: Right. There is no indication of any
15 conduct by the moving defendants with respect to those
16 allegations. That's what I got when I read the paragraphs
17 all related to Mr. Marmurstein.

18 So, yes, for much the same reasons as articulated
19 by Judge Kaplan, and in the context of New York's very
20 liberal pleading standard of 3013, I am going to grant
21 dismissal of the counterclaims. I am going to do both of
22 them, the tortious interference of business relations and,
23 in addition, the Donnelly Act claim. Again, that some
24 attractions have relationships with the counterclaim
25 defendant movants but choose not to do business with the

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1 plaintiff doesn't suffice for an inference of conspiracy to
2 move forward. And there are no allegations of unlawful
3 concerted actions by any particular counterclaim defendants.
4 They are parroting the words of conspiracy, but there isn't
5 any specified place, how, to who, or who did it. And it's
6 not a function of giving specific detail, but it's really
7 essential to assessing whether there is a cause of action
8 itself. So the failure to identify any specific
9 participants when it comes to allegations that could support
10 a conspiracy, they are just not there. It's just not true
11 that there is no rational basis for third-parties to do
12 business with defendants and not plaintiffs other than a
13 conspiracy. Conspiracy can't be the only reason, and it's
14 just not sufficient to support a Donnelly Act claim.

15 The tortious interference with business relations
16 counterclaim falls as well because there are insufficient
17 allegations of any wrongful means. There being no
18 allegation of any statutory violation that survives or
19 allegation of any tort committed by these movants, the
20 counterclaim -- first and second -- have to be dismissed.

21 I am going to ask that the movants e-file a copy
22 of the transcript of this proceeding within 45 days.

23 That concludes today's proceedings. I wish you
24 all good health and a smooth process through discovery for
25 those who are remaining.

Rachel C. Simone, CSR, RMR, CRR

Reporter Certification

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MR. LACOVARA: Thank you, your Honor.

MR. RASEY: Thank you.

MR. EDELSON: Thank you, your Honor.

THE COURT: Thank you. Have a good day. Happy holidays.

* * *

The foregoing is hereby certified to be a true and accurate transcript of the proceedings.

Rachel C. Simone-Ivanac

Rachel C. Simone-Ivanac

Senior Court Reporter

Rachel C. Simone, CSR, RMR, CRR

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