

Danco Enters., LLC v Livexlive Media, Inc.

188 A.D.3d 453, 2020 N.Y. Slip Op. 06385

Appellate Division, First Department · November 10, 2020

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Danco Enters., LLC v Livexlive Media, Inc. 2020 NY Slip Op 06385 [188 AD3d 453] November 10, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

As corrected through Wednesday, December 30, 2020

[*1] [188 AD3d 453] Danco Enterprises, LLC, et al., Plaintiffs, and Joseph Schnaier, Appellant, v Livexlive Media, Inc., Formerly Known as Loton Corp., et al., Respondents, et al., Defendants.

[188 AD3d 454] Schlam Stone & Dolan LLP, New York (Joshua Wurtzel of counsel), for appellant.

Law Offices of Steven D. Isser, New York (Steven D. Isser of counsel), for respondents.

Order, Supreme Court, New York County (Jennifer G. Schecter, J.), entered February 6, 2019, which, to the extent appealed from as limited by the briefs, granted defendants' motion to dismiss the cause of action for breach of the covenant of good faith and fair dealing, unanimously affirmed, without costs.

Plaintiff Schnaier argues that defendant LiveXLive Tickets, Inc. breached the covenant of good faith and fair dealing implied in the employment agreement between them by dismantling the ticketing company that he had sold to it at the time the agreement was entered into, thereby preventing him from earning a performance bonus to which the agreement entitled him if LiveXLive Tickets reached certain sales thresholds. He contends that LiveXLive Tickets acted in bad faith when it shut down the ticketing business, which frustrated the purpose of the employment agreement, and terminated his employment without cause.

There are no rights in the employment agreement that relate to the ticketing company, and, as plaintiff concedes the agreement provided for termination without cause, the claim of breach of the implied covenant of good faith and fair dealing was correctly dismissed as duplicative of the breach of contract claim (see *Murphy v American Home Prods. Corp.*, 58 NY2d 293, 304 [1983]; *Logan Advisors, LLC v Patriarch Partners, LLC*, 63 AD3d 440, 443 [1st Dept 2009]). Concur—Friedman, J.P., Renwick, Oing, Mendez, JJ.