

Supreme Court, Appellate Division, First Department, New York.
Wendy E. LEVINE, Plaintiff-Appellant,
v.
Lucille YOKELL, etc., Defendant-Respondent,
and
136 East 56th Street Owners, Inc., et al., Defendants.
Feb. 9, 1999.

Plaintiff appealed from order of the Supreme Court, New York County, Herman Cahn, J., which granted defendant's motion to dismiss claims asserted. The Supreme Court, Appellate Division, held that: (1) plaintiff failed to allege that defendant had intentionally procured an actual breach of contract without economic justification, as required to state claim for tortious interference; (2) allegations failed to state claim for fraud; and (3) no contract between plaintiff and defendant existed, as required to allow recovery for breach of implied obligation of good faith.
Affirmed.

West Headnotes

 [\[1\] KeyCite Notes](#)

- ↳ [379](#) Torts
 - ↳ [379III](#) Tortious Interference
 - ↳ [379III\(B\)](#) Business or Contractual Relations
 - ↳ [379III\(B\)1](#) In General
 - ↳ [379k215](#) k. Knowledge and Intent; Malice. [Most Cited Cases](#)
(Formerly 379k12)

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- ↳ [379](#) Torts [KeyCite Notes](#)
 - ↳ [379III](#) Tortious Interference
 - ↳ [379III\(B\)](#) Business or Contractual Relations
 - ↳ [379III\(B\)1](#) In General
 - ↳ [379k217](#) k. Absence of Justification or Privilege. [Most Cited Cases](#)
(Formerly 379k12)

Plaintiff failed to allege that defendant had intentionally procured an actual breach by contracting party without economic justification, as required to state claim for tortious interference with contract.

 [\[2\] KeyCite Notes](#)

- ↳ [184](#) Fraud
 - ↳ [184II](#) Actions
 - ↳ [184II\(C\)](#) Pleading
 - ↳ [184k43](#) k. Statements, Acts, or Conduct Constituting Fraud. [Most Cited Cases](#)
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- ↳ [302](#) Pleading [KeyCite Notes](#)
 - ↳ [302I](#) Form and Allegations in General
 - ↳ [302k18](#) k. Certainty, Definiteness, and Particularity. [Most Cited Cases](#)

Plaintiff failed to plead that defendant had duty to disclose allegedly withheld information based on a contractual or confidential relationship, or plead other elements of alleged fraud with sufficient particularity, as required to state fraud claim. [McKinney's CPLR 3016](#).

[3] [KeyCite Notes](#) 

↳ [95 Contracts](#)

↳ [95II Construction and Operation](#)

↳ [95II\(A\) General Rules of Construction](#)

↳ [95k168 k. Terms Implied as Part of Contract. \[Most Cited Cases\]\(#\)](#)

Implied obligation of good faith may arise and be enforced as an implied term of a contract.

[4] [KeyCite Notes](#) 

↳ [95 Contracts](#)

↳ [95VI Actions for Breach](#)

↳ [95k326 k. Grounds of Action. \[Most Cited Cases\]\(#\)](#)

Plaintiff could not recover for breach of implied obligation of good faith where no contract existed between plaintiff and defendant.

****196** Marco L. Spadacenta, for Plaintiff-Appellant.
Steven S. Anderson, for Defendant-Respondent.

[SULLIVAN](#), J.P., [ROSENBERGER](#), [NARDELLI](#) and [SAXE](#), JJ.

MEMORANDUM DECISION.

***296** Order, Supreme Court, New York County (Herman Cahn, J.), entered January 6, 1998, which, to the extent appealed from as limited by plaintiff's brief, granted the individual defendants' motion pursuant to [CPLR 3211](#) to dismiss the complaint as against defendant-respondent, unanimously affirmed, without costs.

[1]  [2]  [3]  [4]  Plaintiff's claim for tortious interference with contract was properly dismissed since her pleading does not contain the requisite allegations that defendant-respondent intentionally procured an actual breach by the contracting party (see, [Downtown Women's Ctr., Inc. v. Carron](#), 237 A.D.2d 209, 210, 655 N.Y.S.2d 479), and that she did so without economic justification (see, [WMW Mach. Co. v. Koerber AG](#), 240 A.D.2d 400, 401, 658 N.Y.S.2d 385). Plaintiff's fraud claim was also properly found to have been facially deficient, since plaintiff did not plead that defendant-respondent had a duty to disclose the allegedly withheld information based on a contractual or confidential relationship (see, [Mobil Oil Corp. v. Joshi](#), 202 A.D.2d 318, 609 N.Y.S.2d 214), and did not plead other elements of the alleged fraud with sufficient particularity (see, [CPLR 3016](#)). Nor did plaintiff state any cause of action for breach of an implied obligation of good faith. Although such an obligation ***297** may arise and be ****197** enforced as an implied term of a contract (see, [New York Univ. v. Cont. Ins. Co.](#), 87 N.Y.2d 308, 318-19, 639 N.Y.S.2d 283, 662 N.E.2d 763), there was no contract between plaintiff and defendant-respondent.

N.Y.A.D. 1 Dept., 1999.

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258 A.D.2d 296, 685 N.Y.S.2d 196, 1999 N.Y. Slip Op. 01308

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