

**CK Media, LLC v Primedia Special Interest
Publ., Inc.**

2008 NY Slip Op 32630(U)

September 19, 2008

Supreme Court, New York County

Docket Number: 0604207/2007

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: CE Ramos

PART 53

Justice

Index Number : 604207/2007
CK MEDIA, LLC
VS.
PRIMEDIA SPECIAL INTEREST
SEQUENCE NUMBER : # 001
DISMISS COMPLAINT

INDEX NO. 604207-07

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

to be read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

Motion is decided in accordance with accompanying Memorandum Decision.

FILED
SEP 30 2008
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 9/18/08

CE Ramos
HON. CHARLES E. RAMOS J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION
-----X
CK MEDIA, LLC,

Plaintiff,

-against-

Index No. 604207/07

PRIMEDIA SPECIAL INTEREST PUBLICATIONS,
INC., AND PRIMEDIA INC.,

Defendants.

-----X

Charles Edward Ramos, J.S.C.:

Defendants Primedia Special Interest Publication, Inc. and Primedia, Inc. (together, Primedia) move to dismiss the complaint (CPLR 3211 [a] [1], [7]; 3016 [b]).

FILED
SEP 30 2008
COUNTY CLERK'S OFFICE
NEW YORK

Background¹

This is an action for the alleged breach of representations and warranties by Primedia in connection with its sale of Crafts Magazine (the Assets) to CK Media. In early 2006, CK Media and Primedia began negotiations for the sale of the Assets to CK Media and entered into an Asset Purchase Agreement (Purchase Agreement). In connection with the sale, Primedia provided CK Media with information and records that reflected the business's financial standing and operations, and made express representations and warranties in the Purchase Agreement concerning the accuracy of the information. Additionally, the purchase price of the Assets was determined by applying a multiple to a measure of the financial performance of the business, that was based solely on financial statements provided

¹ The facts set forth herein are taken from the pleadings, unless otherwise noted.

to CK Media from Primedia.

CK Media alleges that subsequent to the sale, it uncovered numerous inaccuracies in the financial statements delivered to CK Media, including the failure to report certain expenses and liabilities that the business had incurred. Additionally, CK Media alleges that Primedia overstated the revenue of the business, and the manner and price at which the business acquired paper.

As a result of these false statements, CK Media alleges that Primedia was able to inflate the purchase price of the Assets paid by CK Media by at least \$20 million.

The complaint asserts causes of action for breach of warranty, breach of the covenant of good faith and fair dealing and express indemnity. CK Media has withdrawn its claim for breach of covenant of good faith and fair dealing (July 17, 2008 Transcript, 20:5-11).

Discussion

Primedia moves to dismiss the complaint for failure to state a cause of action, on the basis of documentary evidence, and for failure to plead with requisite particularity.

For the reasons stated below, affording the complaint a liberal construction, accepting the facts alleged as true and according CK Media the benefit of every favorable inference (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]), the facts alleged support causes of action for breach of warranty and indemnification.

Primedia contends that CK Media failed to plead its claims for breach of warranty and indemnification with particularity, as required by CPLR 3016 (b). However, the heightened pleading standard set forth in CPLR 3016 (b) applies to claims or defenses based upon misrepresentation, fraud, and breach of trust. The general pleading standard set forth in CPLR 3013, that requires statements in pleadings to be sufficiently particular to give the court and the parties notice of the claims, applies to claims for breach of warranty and indemnification (see *Hicksville Dry Cleaners, Inc. v Stanley Fastening Sys.*, 37 AD3d 218 [1st Dept 2007]).

The complaint adequately sets forth specific factual references to the terms of a written warranty, including that Primedia made affirmations of fact and promises regarding the financial condition of the business in the Purchase Agreement, that was used to determine the purchase price of the Assets (Complaint ¶¶ 12-27). Further, CK Media adequately alleges that the condition of the Assets do not conform to Primedia's representations (*id.*). Otherwise, CK Media should be afforded an opportunity to conduct discovery in order to flush out the details of its claim.

In addition, CK Media adequately pled a claim for express indemnity, based upon an indemnity clause contained in the Purchase Agreement. The Purchase Agreement states that Primedia shall indemnify CK Media for "any and all damages ... liabilities, costs and expenses (including ... reasonable legal

fees ...) that arise from or relate or are attributable to ...
[any] breach of a representation or warranty by Seller [Primedia]
under this Agreement" (Purchase Agreement, § 8.02 [a]).

Primedia's remaining arguments are without merit.

Accordingly, it is

ORDERED that defendants' motion to dismiss is denied; and it
is further

ORDERED that defendants are directed to serve an answer to
the complaint within 10 days after service of a copy of this
order with notice of entry.

Dated: September 19, 2008



J.S.C.

HON. CHARLES E. RAMOS

FILED
SEP 30 2008
COUNTY CLERK'S OFFICE
NEW YORK