

**Fresh Del Monte Produce N.V. v Eastbrook Caribe
A.V.V.**

2004 NY Slip Op 30127(U)

December 1, 2004

Supreme Court, New York County

Docket Number: 0600860/2003

Judge: Charles E. Ramos

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: CHARLES EDWARD RAMOS
Justice

PART 53

FRESH DEL MONTE PRODUCE N.V., FRESH DEL MONTE PRODUCE INC., and IAT GROUP, INC.,

INDEX NO. 600860/2003

- v -

MOTION DATE _____

MOTION SEQ. NO. 006

MOTION CAL. NO. _____

EASTBROOK CARIBE A.V.V., EASTBROOK INC., and EASTBROOK LIMITED,

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

| |
|--|
| |
| |
| |

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion:


is decided in accordance with accompanying memorandum decision and order.

FILED

DEC 07 2004

NEW YORK COUNTY CLERK'S OFFICE

Dated: 12/1/04



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-----X
FRESH DEL MONTE PRODUCE N.V., FRESH DEL
MONTE PRODUCE INC., and IAT GROUP, INC.,

Plaintiffs,

Index No. 600860/03

-against-

EASTBROOK CARIBE A.V.V., EASTBROOK INC.,
and EASTBROOK LIMITED,

Defendants.

FILED

DEC 07 2004

COURT NEW YORK
COMMERCIAL DIVISION

-----X
Charles Edward Ramos, J.S.C.:

Motion sequence nos. 006 and 007 are combined for disposition. In motion sequence no. 006, defendants Eastbrook Caribe A.V.V., Eastbrook, Inc., and Eastbrook Limited (collectively referred to as Eastbrook), move, pursuant to CPLR 3212(e), for summary judgment dismissing the remaining first and third causes of action in the Complaint, brought by Fresh Del Monte Produce N.V. (FDMP N.V.), Fresh Del Monte Produce, Inc. (FDMP Inc.), and IAT Group, Inc. (IAT) (collectively at times referred to as FDMP).

The first cause of action alleges Eastbrook's breach of the Release entered into between all of the parties to end all litigation arising from the 1996 buyout of FDMP by IAT (the 1996 Action). In 2002, Eastbrook filed an action against FDMP, for purported Released Claims that were set aside by the 1996 Settlement Agreement and Release. *Eastbrook Caribe A.V.V. v Fresh Del Monte Produce, Inc.*, Sup Ct, NY County, January 13, 2004, Ramos, J., Index No. 124402/02, at 7. (the 2002 Action).

The third cause of action alleges that Eastbrook is liable

to plaintiffs, because certain individuals who were former shareholders of FDMP, and allegedly under the control of Eastbrook, had filed an action in Florida state court against FDMP and IAT in violation of the Release. See *Chaul v Abu-Ghazaleh*, 02-31670-CA-01 (Fla Cir Ct, 11th, 2002) (the Florida Action).

These plaintiffs in the Florida Action were indirect shareholders of FDMP and associates of Carlos Cabal Peniche (Cabal), himself a former shareholder of FDMP. Cabal and his associates, who were allegedly responsible for filing the Florida Action, controlled a trust which had invested in FDMP before the 1996 buyout by IAT (the 1992 Trust).

Additionally, defendants move for a stay of the exchange of expert reports requested during discovery pending an appeal on FDMP's motion to dismiss the 2002 Action.

In motion sequence no. 007, plaintiffs move pursuant to CPLR 3212(c) and (e), for partial summary judgment on the first cause of action, and for an immediate trial on damages.

I. Background

The background is set forth in this Court's decision dated September 22, 2004, and shall not be repeated here.

II. Discussion

A. Plaintiffs' Motion for Partial Summary Judgment on the first cause of action, and an Immediate Trial on the Issue of Damages.

Plaintiffs' move for partial summary judgment on the first cause of action, and for an immediate trial on damages as to the

first cause of action involving defendants' breach of the 1996 Release.

Plaintiffs' argue that Eastbrook's filing of the 2002 action constituted a breach of the Release, because it involved "Released Claims."¹ The parties had agreed that if any "Released Claims" were asserted in future litigation, the indemnification clause of the Release would be triggered, thereby awarding the party defending these claims up to \$9.5 million. Release ¶4.

The 2002 action by Eastbrook constitutes a breach of the Release. The first page of Eastbrook's Verified Complaint states a cause of action that arises from the 1996 transaction:

This is an action for damages and equitable relief relating the purchase...of 100% of the stock of Fresh Del Monte Produce N.V., a global company market fresh produce throughout the world.

Contrary to Eastbrook's arguments, these claims do constitute "Released Claims" which are barred by the Release. The Release is specific in barring litigation connected either "directly or indirectly" with the 1996 buyout of FDMP. It is apparent that Eastbrook is once again trying to re-plead claims

¹ Release §2(e) "The Term "Released Claims" shall mean and include all Claims that (i) the Releasor or any of the Associated Parties may have had in the past, now have or hereafter can, shall or may have against any of the Releasees, and (ii) have arisen or arise directly or indirectly out of, or relates directly or indirectly to, any circumstance, agreement, activity, action, or omission, event or matter occurring or existing from the beginning of the world to the date of this Release, including (A) all rights, Claims, and interests asserted in the [1996 Action]; (B) all rights, Claims and interests actually or purportedly assigned to Eastbrook Caribe, A.V.V. or Eastbrook..."

previously dismissed by this Court in the 2002 action, including their continuing statements of mere conclusory allegations of fraud in connection with the 1996 Settlement and Agreement. For the reasons discussed below, the Released Claims and the claims in the 2002 action are identical.

Therefore, summary judgment on the first cause of action is granted in favor of the plaintiffs, and an immediate trial on damages is being held pursuant to CPLR 3212(c).

B. Defendants' Motion for Summary Judgment on the first and third causes of action of the Complaint.

Defendants argue that the first cause of action should be dismissed, because no Released Claims were asserted by defendants in the 2002 action. Additionally, defendants argue that summary judgment is appropriate as to the third cause of action, because no Released Claims were asserted in the Florida Action. Finally, defendants argue that any claim for damages by plaintiffs, because of reductions in FDMP's market price, or any other losses sustained by FDMP in connection with alleged breaches of the 1996 Settlement and Release, should be dismissed, because they are too speculative to be assessed.

The standard for summary judgment regarding breach of written instruments has been well established:

[I]t is the responsibility of the court to interpret written instruments (emphasis added).... Thus, where a question of intention is determinable by written agreements, the question is one of law, appropriately decided by an appellate court, or on a motion for summary judgment. Only where the intent must be determined by disputed evidence or inferences outside the written words of the instrument (emphasis added) is a question of fact presented. (internal citations

omitted).

Mallad Constr. Corp. v County Federal Sav. & Loan Assn., 32 NY2d 285, 291 (1973).

[W]here the intention of the parties is determinable by construction of the parties' written agreement, the question is one of law, and therefore appropriately determined on a motion for summary judgment.

Benjamin Electrical Engineering Works, Inc. v Rampart Constr. Assoc., Inc., 173 AD2d 370 (1st Dept 1991).

The question raised by defendants' motion is whether the 2002 action and the Florida Action violated the 1996 Agreement and Release. In the 2002 action, defendants argued that the Agreement and Release were predicated on fraud. The 2002 action was dismissed by this Court because defendants' fraud claims included only mere conclusory allegations, and did not meet the standards necessary to plead fraud. *Eastbrook Caribe A.V.V. v Fresh Del Monte Produce, Inc.*, January 13, 2004, Index No. 124402/02, at 7.

Eastbrook never replied the fraud claim in the 2002 action. Instead, here it again asserts claims of fraud based on mere conclusory allegations with regard to the 1996 Settlement and Release. Again, the Court must reject Eastbrook's fraud claim now asserted as a defense, because it fails to meet the specificity requirements of CPLR 3016(b).

Next, the court rejects Eastbrook's attempt to circumvent the Settlement and Release. The parties entered into the Settlement and Release freely, and these binding agreements are not to be easily disturbed. *Eastbrook Caribe A.V.V. v Fresh Del Monte Produce, Inc.*, at 7. *supra*. The 1996 Settlement and

Release is clear and unambiguous, and is binding on the parties. *Id.* It provides that Eastbrook is barred from bringing claims relating to the 1996 buyout of FDMP. Eastbrook cannot escape its commitment under the Settlement and Release, for it is barred from bringing claims relating to the 1996 buyout of FDMP. Therefore, defendant's motion for summary judgment on the first cause of action is denied.

The language in the Settlement Agreement addressing the relationship of Cabal and his associates to this matter is clear and unambiguous.² Claims asserted by Cabal, and "individual members of the Technical Committee" of the 1992 Trust were assigned to Eastbrook.³ If any claims relating to the 1996 transaction are litigated, including claims assigned to Eastbrook by Cabal and others, the indemnification clause of the Agreement

² Cabal Release §2(a) "'Associated Parties' shall mean and include [Cabal's] (1) past present and future employees, agents, representatives and attorneys; (2) heirs, executors or successors; (3) past, present and future assigns; (4) Each entity that [Cabal has] the power to bind...or which [Cabal] directly or indirectly exercise[s] control; and (5) each entity of which [Cabal] own[s], directly or indirectly, any outstanding equity, beneficial, proprietary, ownership of voting interests..."

³ Settlement Agreement §6(a) "Eastbrook shall hold harmless and indemnify GEAM [former shareholder of FDMP prior to the 1996 buyout], Del Monte and IAT from and against, and shall compensate and reimburse GEAM, Del Monte, and IAT for, any loss, damage, injury, decline in value, lost opportunity, liability, claim, demand, settlement, judgment, award, fine, penalty, tax, fee., charge, cost, or expense of any nature...which is suffered or incurred by GEAM, Del Monte, or IAT, or to which GEAM, Del Monte or IAT may otherwise become subject...and which arise from or as a result of, or are connected with, the assertion or purported assertion by Cabal or any of the Associated Parties (as defined in the Cabal Release) of any Release Claims...or of any claims by Cabal or such Associated Parties..."

is triggered. *Id.* The indemnification clause provides for up to \$14.1 million in damages to FDMP if it is subject to litigation arising from the 1996 buyout. *Id.*

The parties in the Florida Action acknowledge in their own Complaint that they were associates of Cabal, because they were shareholders in FDMP prior to the 1996 buyout. By filing the Florida Action, the plaintiffs in that matter breached the Settlement and Release on Eastbrook's behalf. The claims raised in the action were related to the 1996 transaction, and therefore violated the "Released Claims" provision in the Release.⁴

Therefore, this Court denies Eastbrook's motion for summary judgment on the third cause of action.

Finally, Eastbrook's claim that the assessment of damages alleged by FDMP as being too speculative is rejected. Defendant cites *Lloyd v Town of Woodfield*, 57 NY2d 809 (1986) in support of this argument. *Lloyd* holds that damages may not be assessed as a matter of law, but damages must be determined as an issue of fact at trial. *Id.* at 810. The holding in *Lloyd* is contrary to defendant's argument. Indeed it support this Court's decision to hold a trial on damages.

C. Defendants' Motion to Stay the Exchange of Expert Reports

Eastbrook argues for a stay in discovery pending the First Department's ruling on this Court's prior decisions entered on January 16, 2004, March 29, 2004, and April 28, 2004, respectively. The First Department affirmed all of these

⁴ *Supra* note 1

decisions, therefore making defendants' motion moot. See Eastbrook Caribe A.V.V. v Fresh Del Monte Produce, Inc. 2004 WL 2303507 (1st Dept, Oct 14, 2004).

Accordingly, it is:

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiffs' motion for partial summary judgment is granted as follows:

1. Defendants are found liable to plaintiffs on the first cause of action and the issue of damages shall be determined at trial; and

2. The action shall continue as to the third cause of action; and it is further


ORDERED that defendants' motion to stay the exchange of expert reports is denied

Dated: December 1, 2004

FILED

DEC 07 2004

NEW YORK COUNTY CLERK'S OFFICE



HON. CHARLES E. RAMOS
SUPREME COURT OF THE STATE OF NY
40 CENTRE STREET
NEW YORK, NY 10007-1474

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.