

**Stanfield Offshore Leveraged Assets, Ltd. v
Metropolitan Life Ins. Co.**

2008 NY Slip Op 31179(U)

April 11, 2008

Supreme Court, New York County

Docket Number: 0601410/2007

Judge: Charles E. Ramos

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

PRESENT: _____

PART _____

Index Number : 601410/2007

STANFIELD OFFSHORE LEVERAGED

vs

METROPOLITAN LIFE INSURANCE CO

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

APR 23 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/11/08

HON. CHARLES E. RAMOS S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

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
STANFIELD OFFSHORE LEVERAGED ASSETS, LTD.,
STANFIELD ULTRA, LTD., CAMULOS MASTER
FUND LP, DK ACQUISITION PARTNERS, L.P. and
QUADRANGLE MASTER FUNDING LTD.

Plaintiffs,

Index No. 601410/07

-against-

METROPOLITAN LIFE INSURANCE COMPANY, THE
NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
CAPITAL D'AMERIQUE CDPQ, INC., CAISSE DE DEPOT
ET PLACEMENT DU QUEBEC, WINDWARD/PARK AB
III, L.L.C., WINDWARD CAPITAL PARTNERS
L.P., WINDWARD CAPITAL ASSOCIATES, L.P.,
CSFB LP HOLDING, CREDIT SUISSE FIRST
BOSTON (USA) INC., and CREDIT SUISSE
FIRST BOSTON.

Defendants.

FILED
APR 23 2008
COUNTY CLERKS OFFICE
NEW YORK

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

Defendants Metropolitan Life Insurance Company, The
Northwestern Mutual Life Insurance Company, Windward/Park AB III,
L.L.C., Windward Capital Partners, L.P., and Windward Capital
Associates, L.P. (Seq 001), and Capital D'Amerique CDPQ, Inc. and
Caisse De Depot Et Placement Du Quebec (Seq 003), move to dismiss
the complaint pursuant to CPLR 3211(a)(1) and 3211(a)(7) or, to
the extent not dismissed, to stay the action pursuant to CPLR
2201 and 3211(a)(4). The motions are consolidated for the
purposes of this decision.

Background

On April 28, 2004, plaintiffs allege that Meridian
Automotive Systems ("Meridian") defrauded them. Meridian,
allegedly with knowledge of its own insolvency, made
representations to the plaintiffs, contained in the "First and

Second Credit Agreements," that it was solvent in order to obtain loans. Based on these representations, plaintiffs loaned Meridian approximately \$450 million. Once the funds were obtained, Meridian, through a "2004 Refinancing," paid the defendants over \$50 million representing outstanding debt. Thereafter, Meridian declared bankruptcy¹. Plaintiffs allege in their first and second causes of action that the defendants aided and abetted Meridian's fraud, and in the third cause of action, that the defendants aided and abetted Meridian's breach of fiduciary duty to its creditors.

Motion to Dismiss

"Dismissal under CPLR 3211(a)(1) is warranted 'only if the documentary evidence submitted conclusively established a defense to the asserted claims as a matter of law.'" *Leon v Martinez*, 84 NY2d 83, 88 (1994).

When assessing the adequacy of a complaint on a motion to dismiss pursuant to CPLR 3211(a)(7), a court must afford the pleadings a liberal construction, accept the allegations of the complaint as true, and provide the plaintiff "the benefit of every possible favorable inference." *Id.* at 87-88. Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss. *Id.* The motion must be denied if from the pleadings' four corners "factual

¹ One week before this claim was filed, a Federal, post-bankruptcy, action was filed by the plaintiffs against the defendants in this action, as well as Meridian's directors and officers.

allegations are discerned which taken together manifest any cause of action cognizable at law." *511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 (2002), quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977).

Discussion

To plead a claim for aiding and abetting fraud in New York, plaintiffs must adequately allege (1) an underlying fraud; (2) actual knowledge of the fraud; and (3) substantial assistance. See *Kaufman v Cohen*, 307 AD2d 113, 125 (1st Dept 2003); *Slavenburg Corp. v Baby Doll Infants Wear Co.*, 181 AD2d 555 (1st Dept 1992).

As to the first and second counts, there is no dispute that the complaint adequately alleges that Meridian committed an underlying fraud on the plaintiffs. See ¶63 Complaint.

Generally, with regard to aiding and abetting liability, the predominant view is that "actual knowledge" of the tort on the part of the aider or abetter is required (see e.g. *Williams v Sidley Austin Brown & Wood, LLP*, 38 AD3d 219 (1st Dept 2007) [aiding and abetting fraud and breach of fiduciary duty claims were sufficiently supported by allegations that the lender had actual knowledge]; *Kaufman*, 307 AD2d at 125 [actual knowledge required for aiding and abetting breach of fiduciary duty]; but see *Liberman v Worden*, 268 AD2d 337, 338 (1st Dept 2000) [dismissed aiding and abetting causes of action for lack of allegations that defendants had actual, or even constructive, knowledge of the misconduct]).

Here, the complaint alleges that the defendants, through named agents² on a "Steering Committee" created by Meridian's board, oversaw McKinsey & Co.'s³ ("McKinsey") financial analysis of Meridian. ¶¶42-43 Complaint. It is further alleged, that on January 8, 2004 and January 16, 2004, McKinsey reported to the Steering Committee that Meridian was insolvent. ¶45 Complaint. On March 16, 2004, it is alleged that the Steering Committee members were provided a copy of a draft "bank book" that was to be distributed by Meridian to prospective lenders in order to facilitate the 2004 Refinancing. ¶54 Complaint. This bank book provided that lenders in the 2004 Refinancing would receive a certificate confirming Meridian's solvency. *Id.*

In April 2004, it is alleged that defendants received a draft copy of the First and/or Second Lien Credit Agreements. ¶¶54, 56-57 Complaint. These agreements represented that Meridian was solvent. *Id.* Defendants argue that Meridian's fraud was post-refinancing. This Court disagrees. Defendants argument misstates the facts as set forth in the complaint.

Plaintiffs' allegation of defendants' actual knowledge is that the defendants knew that Meridian was representing that it was solvent in order to induce the plaintiffs to lend it money and does not relate to its post-financing solvency. ¶60

² Freudenstein for CSFB Holding; Wegener for Northwestern Mutual; Swenson for Windward/Park, WCP, and WCA; Houle for Caisse; Garrat for MetLife.

³ McKinsey is a consulting firm hired by Meridian to formulate a financial analysis on Meridian's capital structure and make recommendations.

Complaint. This knowledge clearly pertains to Meridian's pre-financing status. At the pleading stage, the Court must take the facts alleged in the complaint as true. *Leon v Martinez*, 84 NY2d 83, 87-88 (1994). Based on allegations that through their various agents on the Steering Committee, Meridian represented its solvency in the First and/or Second Lien Credit Agreements with plaintiffs, the complaint properly sets forth that defendants had actual knowledge of the alleged underlying fraud.

The third element that must be sufficiently pled is that defendants substantially assisted Meridian's commission of a fraud on plaintiffs. Substantial assistance occurs when a defendant affirmatively assists, helps conceal, or fails to act when required to do so, thereby enabling the breach to occur. *Kaufman*, 307 AD2d at 126. The Court scoured the complaint in search of allegations of defendants' affirmative acts of assisting Meridian fraudulently misrepresent their solvency to plaintiffs through the First and/or Second Lien Credit Agreements. None are present. Plaintiffs allege that defendants controlled Meridian's board of directors. ¶5 Complaint. Plaintiffs allege that defendants directed Meridian to hire McKinsey. ¶42 Complaint. Additionally, plaintiffs allege that through the Steering Committee, defendants oversaw the McKinsey analysis. ¶¶42,43 Complaint. Plaintiffs allege that defendants sought Meridian's refinancing in order to prematurely recover the full amount of their investment in Meridian before the insolvent Meridian filed for Bankruptcy. ¶50 Complaint. Further,

plaintiffs allege that defendants met with Meridian's senior management and that Meridian apprised defendants of the status of the 2004 Refinancing. ¶65 Complaint. Plaintiffs allege that defendants used their control over Meridian to recovery their investment capital subsequent to the 2004 Refinancing.

¶¶14,71,82,92 Complaint. Plaintiffs allege that Mr. Wacaser, the chairperson of the committee and Meridian's Chief Executive Officer, notified the individual defendants on the Steering Committee to keep secret the material that established Meridian's insolvency. ¶46 Complaint.

Not only do the these allegations not meet the strict particularity requirements of CPLR 3016(b) with regard to pleading fraud, the complaint fails to set forth affirmative acts that would constitute assistance or concealment of the fraud. The only affirmative act that is pled (although on information and belief) is that defendants, through their control of Meridian, approved the 2004 Refinancing. ¶82 Complaint. Here, however, the pleading fails to state with particularity how Meridian's board members were "controlled" or "forced" to act by defendants, in approving the 2004 Refinancing. "Mere allegations, in conclusory form, that the moving defendants participated in, or assisted in the commission of a fraud are insufficient to state a cause of action." *Gramazio v Borda, Wallace & Witty*, 181 AD2d 428, 429 (1st Dept 1992).

Further, defendants cannot be held liable because they failed to thwart Meridian's fraud, or blow the proverbial whistle

when told to keep secret Meridian's insolvency. Inaction or silence constitutes substantial assistance only if the defendant owes a fiduciary duty directly to the plaintiff. *King v George Schonberg & Co.*, 233 AD2d 242 (1st Dept 1996); *See Also, McDaniel v Bear Sterns & Co. Inc.*, 196 F Supp 2d 343, 351 (SDNY 2002). Plaintiffs do not allege that defendants owed them a direct fiduciary duty and fail to even address this issue in opposing this motion.

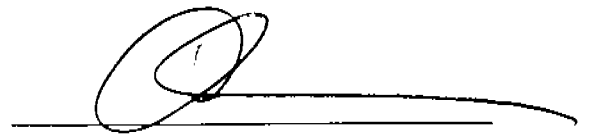
Defendants correctly point out that demanding and pressuring a debtor for repayment of a bona fide debt does not amount to a corrupt inducement, participation, or substantial assistance necessary to give rise to aider and abettor liability. *In re Sharp*, 403 F3d 43, 51 (2d Cir 2005). This demand is consistent with the creditor's contractual and legal rights. *Id.* Therefore, for the reasons stated above, counts one and two must be dismissed.

The Court will not address the last cause of action for aiding and abetting breach of fiduciary duty. Although the legal analysis is analogous to aiding and abetting fraud, plaintiff does not oppose defendants' arguments in support of dismissal. Therefore the cause of action is deemed abandoned and dismissed. It is accordingly,

ORDERED that the plaintiffs' complaint is hereby dismissed in its entirety; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.

Dated: April 11, 2008



J.S.C.

HON. CHARLES E. RAMOS

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APR 23 2008
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