

Wells Fargo Bank N.A. v Webster Bus. Credit Corp.
2010 NY Slip Op 33850(U)
April 13, 2010
Sup Ct, NY County
Docket Number: 601680/2009
Judge: Richard B. Lowe III
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. RICHARD B. LOWE, II

PART 56

Index Number : 601680/2009
WELLS FARGO BANK
vs.
WEBSTER BUSINESS CREDIT CORPORATION
SEQUENCE NUMBER : # 001
DISMISS COMPLAINT

Justice

INDEX NO. 601680-09
MOTION DATE ~~9/9/09~~ 9/12/09
MOTION SEQ. NO. # 001
MOTION CAL. NO.

were 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

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

Dated: 4/13/10

HON. RICHARD B. LOWE, II
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 56

-----X
WELLS FARGO BANK NATIONAL ASSOCIATION, :
BURDALE FINANCIAL LIMITED and :
RZB FINANCE, LLC, :

Plaintiffs, :

-against- : Index No. 601680/2009

WEBSTER BUSINESS CREDIT CORPORATION, :

Defendant. :
-----X

Hon. Richard B. Lowe, III:

In this motion, defendant Webster Business Credit Corporation (“Webster” or “Defendant”) moves for dismissal, pursuant to CPLR 3211 (a) and CPLR 1001 (A), of the complaint filed by plaintiffs Wells Fargo Bank National Association (“Wells Fargo”), Burdale Financial Limited (“Burdale”), and RZB Finance, LLC (“RZB”) (collectively, “Plaintiffs”).

BACKGROUND

Plaintiffs and Defendant entered into an Credit and Security Agreement (“the Credit Agreement”) with Meadowcraft, Inc. (“Meadowcraft”), dated August 28, 2007 (*see* Dehmel Aff, Exh A, hereinafter “Credit Agmt”). Through the Credit Agreement, they provided Meadowcraft with a loan of \$12 million and a revolving credit facility of \$68 million dollars (Compl, ¶ 14). Webster was designated the administrative agent of the loan.

Plaintiffs allege that Meadowcraft engaged in fraudulent conduct, that they were forced to file an involuntary bankruptcy petition against it, and that Webster engaged in conduct throughout that resulted in their being damaged. They aver that Webster was required to represent their interests, in connection with the loan to Meadowcraft, notify them of any known

defaults by Meadowcraft, and provide them with all financial documents and information obtained from Meadowcraft (Compl, ¶ 7). Plaintiffs contend that Webster not only failed to provide documents and information it was obligated to give them, but affirmatively concealed certain information (Compl, ¶¶ 142, 148). They argue that they justifiably relied on Webster, because of its unique access to Meadowcraft's financial records. Plaintiffs further contend that it was in the absence of knowledge about Meadowcraft's conduct that they continued to lend funds, to their detriment, to Meadowcraft (Compl, ¶ 78).

Plaintiffs filed claims against Webster, via the complaint dated May 28, 2009 ("the Complaint"). They allege breach of contract (the first cause of action), arguing that Defendant breached the Credit Agreement by, *inter alia*, failing to disclose material information to Plaintiffs and by advancing funds to Meadowcraft. Plaintiffs allege fraudulent concealment (the second cause of action), claiming that Webster intentionally concealed and failed to disclose material information to them. They also allege that Webster, as agent to the lenders, had and breached its fiduciary duty (the third cause of action) to them, by intentionally withholding and/or failing to disclose material information to them. Plaintiffs further allege that Webster was aware of and intentionally concealed and failed to disclose Meadowcraft's fraud, thereby assisting in the commission of that fraud, and seek relief under an aiding and abetting fraud claim (the fourth cause of action). For each of their causes of action, Plaintiffs contend that they have sustained damages in an amount to be determined at trial, but now estimated in excess of \$20 million, plus interest.

Webster contends that the title of administrative agent is strictly defined, by the duties and obligations that are strictly defined in the Credit Agreement. It alleges that this action is a

strike suit, attempting to hold Webster responsible for Meadowcraft's action. Webster argues that each count of the complaint should be dismissed for failure to state a claim. If further asserts that, even if Plaintiffs' claims were true, the Credit Agreement precludes the claims against it. Webster also argues that the complaint should be dismissed due to the failure of plaintiff to include Meadowcraft as a necessary party.

DISCUSSION

Webster now moves to dismiss pursuant to CPLR 3211.

On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Under CPLR 3211 (a) (1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law. In assessing a motion under CPLR 3211 (a) (7) . . . the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one

(*Leon v Martinez*, 84 NY2d 83, 87-88, 638 NE2d 511, 513, 614 NYS2d 972, 974 [1994]

[internal citations omitted]).

Webster argues that with regard to each claim, Plaintiffs neither have nor can adequately allege a cause of action, because of the clear terms of the Credit Agreement. With regard to the breach of contract claim, Webster contends that its obligations were sufficiently limited by the Credit Agreement and, as a result, it was not obligated to provide Plaintiffs with the information they contend Webster failed to provide. Webster argues that it did not conceal any information it was required to provide and Plaintiffs were prohibited by the Credit Agreement from relying upon it and, as such, a claim for fraudulent concealment cannot be sustained. The breach of

fiduciary duty claim fails, according to Webster, because under the Credit Agreement Webster had no fiduciary duty. Finally, Webster contends that the aiding and abetting fraud claim cannot be sustained because Plaintiffs' allegations are assertions of inaction and, under the Credit Agreement, Webster had no duty to act.

In the instant case, the operative agreement provides notable language that dramatically limits any liability by Webster. For example, the Credit Agreement provides that the

duties of Agent as respects the Advances to Borrowers shall be mechanical and administrative in nature; Agent shall not have by reason of this agreement a fiduciary relationship in respect of any Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect of the Agreement except as expressly set forth herein

(Credit Agmt, § 15.2). The Credit Agreement also specifically requires Plaintiffs to make their own investigation and determination of the borrower's financial condition, providing for a

Lack of Reliance on Agent and Resignation.

Independently and without reliance upon Agent, any Issuer, or any other Lender, each Lender had made and shall continue to make (i) its own independent investigation of the financial condition and affairs of each Borrower . . . and (ii) its own appraisal of the creditworthiness of each Borrower

(Credit Agmt, § 15.3 [underlining in original]). This same provision in the agreement also specifically limits Webster's obligations, delineating that it

shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any creditor other information with respect thereto, whether coming into its possession before making of the Advances or at any time or times thereafter except as shall be provided by any Borrower pursuant to the terms hereof. Agent shall not be responsible to any Lender for any recitals, statements,

information, representations or warranties herein . . . or for the financial condition of any Borrower, or be required to make any inquiry concerning either the performance or observance of any of the terms . . . or the financial condition of any Borrower, or the existence of any Event of Default or any Default

(Credit Agmt, § 15.3). Indeed, the Credit Agreement greatly limits Webster's duties to those set forth in the agreement itself, as well as precluding liability in large part, by providing that

Nature of Duties.

Agent shall have no duties or responsibilities except those expressly set forth in this Agreement . . . None of Agent, any Lender . . . nor any of their respective officers, directors, employees or agents shall be (i) liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross (not mere) negligence or wilful misconduct, or (ii) responsible in any manner for any recitals, statements, representations or warranties made by any Borrower

(Credit Agmt, § 15.2 [underlining in original]). Moreover, the Credit Agreement contemplates a potential rotation of which lender will serve as Agent, and provides for the methods of designating "a successor Agent" (Credit Agmt, § 15.3).

However, it is the language in the section of the Credit Agreement pertaining to the nature of the parties' duties that is most critical to the motion currently before the Court. As noted above, it provides that the Agent and Lenders will not be liable for any action or omission, "*unless caused by their gross (not mere) negligence or wilful misconduct*" (Credit Agmt, § 15.2 [emphasis added]). There is no question that the Complaint, as currently drafted, explicitly alleges that Webster acted with gross negligence and/or willful misconduct (*see e.g.* Compl, ¶¶ 8, 9, 76). Indeed, each cause of action, in addition to repleading and realleging each of the allegations set forth above it as if fully set forth, directly claims that Webster acted with gross

negligence or engaged in willful misconduct (*see Comp, ¶¶ 142, 151, 159, 164*). Defendant itself notes, “the Credit Agreement . . . specifically disclaims any fiduciary duties owed by [Webster] to Plaintiffs, governs the types of information [Webster] was required to provide to Plaintiffs, and otherwise absolves [Webster] of any liability *in the absence of its own gross negligence or willful misconduct*” (Mot Br at 2 [emphasis added]).

The Court will not at this time make determinations as to whether the actions of Defendant as alleged in the Complaint, if true, constitute gross negligence or willful misconduct. The Credit Agreement, though establishing significant limitations to Defendant’s obligations, does not disprove, under CPLR 3211 (a) (1), most of the causes of actions filed by Plaintiffs. The exception is the breach of fiduciary duty claim, which is explicitly precluded by the language of the Credit Agreement that provides that the “Agent shall not have by reason of this agreement a fiduciary relationship in respect to any Lender” (Credit Agmt, § 15.2). Whether Plaintiffs will be able to prove the other claims, or survive a motion for summary judgement, given the language of the Credit Agreement is not currently before the Court. Additionally, the remaining causes of action in the Complaint, as drafted, are sufficiently stated to survive a motion to dismiss under CPLR 3211 (a) (7).

Webster also argues that the Complaint should be dismissed because the Court should not proceed in the absence of Meadowcraft, pursuant to CPLR 3211 (a) (10), and argues that Meadowcraft is a necessary party that must be joined, pursuant to CPLR 1001 (A). Webster contends that the Complaint is deficient because it fails to include the entity that borrowed the money and whose conduct gave rise to the pecuniary losses at issue. It argues that Meadowcraft is a necessary party and that Plaintiffs are trying to recover what they can from Meadowcraft

through the involuntary bankruptcy petition they filed against it, and to recover separately in this Court.

Plaintiffs counter that Meadowcraft, although it may be a potential witness in this case, is not a “necessary party” (Opp Br at 19). They argue that Meadowcraft is, at most, a joint tortfeasor with Defendant and that joint tortfeasors are not “necessary parties” (Opp Br at 20, citing *Amsellem v Host Marriott Corp.*, 280 AD2d 357, 360, 721 NYS2d 318, 321 [1st Dept 2007]). In this, Plaintiffs are correct. Moreover, “whenever possible, the joinder provision is to be employed to avoid dismissal, and a court, then, must use every effort to join a necessary party, [notwithstanding that] there are situations when such a party may be beyond the reach of the court” (*Eclair Advisor Ltd. v Jindo Am., Inc.*, 39 AD3d 240, 245, 833 NYS2d 440, 444 [2007] [internal quotations omitted]).

Indeed, Plaintiffs also argue that the fact that Meadowcraft is currently beyond the reach of the Court and that there is the possibility of multiple litigations at a later time, as a result of the stay of claims during the pendency of bankruptcy proceedings, is a direct result of bankruptcy law and is, therefore, Congressionally created and sanctioned (Opp Br at 21, citing *Lottes v Slater*, 114 AD2d 580, 582, 494 NYS2d 438, 439 [3d Dept 1985]). Again, in this Plaintiffs are correct. As such, the absence of Meadowcraft as a defendant in this action is not a ground for dismissal.

The Court has considered the parties’ other contentions, and find them unavailing.

Conclusion

Accordingly, it is

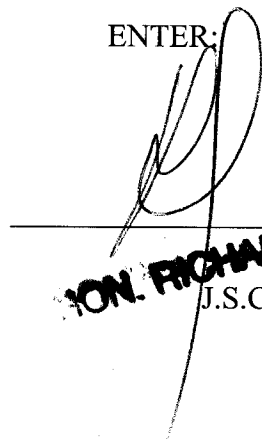
ORDERED that Defendant's motion to dismiss the complaint is granted as to the third cause of action, for breach of fiduciary duty, only; and it is further

ORDERED that remainder of the action shall continue; and it is further

ORDERED that Defendant is directed to serve an answer to the Complaint within 20 days of service of a copy of this order with notice of entry.

Dated: April 13 , 2010

ENTER:



HON. RICHARD B. LOWE, III
J.S.C.