

**Credit Suisse Loan Funding LLC v Highland
Crusader Offshore Partners, L.P.**

2014 NY Slip Op 31811(U)

July 7, 2014

Supreme Court, New York County

Docket Number: 65249/2013

Judge: Melvin L. Schweitzer

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obligated the parties to settle as soon as practicable. Plaintiffs allege breach of contract with respect to three Westgate trades and two Goldfield trades.

In addition to seeking discovery regarding waiver/estoppel and mitigation of damages, defendants seek documents concerning the underlying loans in the hope they can prove plaintiffs breached the underlying credit agreements.

Discussion

CPLR 3101 entitles a party to disclosure of matter that is “material and necessary” to prosecuting or defending an action. *See* CPLR 3101. The trial court has discretion to determine what is “material and necessary” to the litigation. *See Andon v 302-304 Mott St. Assocs.*, 94 NY2d 740, 746 (2000). In making this determination, the “test is one of usefulness and reason.” *Id.* The court has the discretion to deny discovery where the party seeking discovery fails to demonstrate that the discovery is relevant. *Williams Real Estate Co. v Viking Penguin*, 216 AD2d 27 (1st Dept 1995). Defendants have failed to show that the documents they seek are relevant to the claims brought against them.

I. Documents Relating to the Underlying Loans, the Appraisals, and Other Related Documents

Defendants’ motion to compel discovery of documents concerning the underlying loans, the appraisals, and other related documents is denied on the grounds that the Westgate and Goldfield Credit Agreements are not the relevant contracts to the trades at issue. Rather, the trades are governed by the Confirmations, under which the defendants agreed to settle the trades. Although the Confirmations list the names of the credit agreements, the Confirmations do not incorporate the terms of the credit agreements, and nothing in the Confirmations states that defendants’ obligations to settle the trades are contingent on plaintiffs’ performance under the

credit agreements. Therefore, even if documents concerning the underlying credit agreements could be used by defendants to prove plaintiffs breached their contractual duties under the credit agreements, this would not absolve defendants of their obligations to settle the trades at issue.

II. Documents Related to Defendants' Affirmative Defenses of Waiver and Estoppel

Defendants' motion to compel discovery of documents relevant to waiver and estoppel is denied on the grounds that the specific documents requested by defendants are not actually related to waiver and estoppel. Requests seeking (i) communications between plaintiffs and Highland, the Lenders, and any prospective lender concerning the loans, including communications concerning appraisals (request 21), and (ii) documents showing the current value of the underlying loans (request 29) are not relevant to whether plaintiffs waived or are estopped from enforcing their rights under the trade Confirmations. Plaintiffs do not have responsive documents to requests 41 and 42 seeking indemnification, settlement, or release agreements concerning the loans, as they never entered into any such agreements.

III. Documents Related to LIBOR and Mitigation of Damages

Defendants' motion to compel discovery of documents concerning the alleged manipulation of LIBOR rates is denied because these documents are irrelevant to plaintiff's damages. Plaintiffs are not seeking prejudgment interest based on a LIBOR calculation. The rate does not apply because under the terms of the trade confirmations, a LIBOR-based interest rate would apply only if the trades were settled on a Delayed Settlement Date, as such term is used in the Terms and Conditions. Here, the defendants did not settle the trades.

Although plaintiffs must produce documents related to mitigation of damages, including information regarding principal and interest they have received, request 31 seeks documents concerning amounts other than principal and interest the plaintiffs or lenders received on the

loan. Request 31 is denied to the extent it seeks documents beyond those that show amounts to be repaid on the loan. Plaintiffs do not have responsive documents to request 28, which seeks documents related to sales of collateral, as there were no collateral sales used to repay the loan. As stated above, plaintiffs do not have responsive documents to requests 41-42.

IV. Search Terms and Time Frame of Discovery

Plaintiffs need not expand the number of search terms they use to identify discovery documents because the five terms currently used (Westgate, Goldfield, 549084, 605389, and 536815) fully encompass the trades at issue. Requiring plaintiffs to employ more search terms would expand the scope of discovery to encompass more than the settlement of the trades and cause unnecessary delay and cost to plaintiffs.

Defendants' argument that the time period for discovery should extend until July 15, 2013, when the Complaint in this action was filed, is also rejected by this court. There is no reason to think that any relevant communications between plaintiffs and defendants concerning the trades occurred after the July 1, 2009 discovery cutoff date proposed by plaintiffs. Although defendants assert that confirmation and assignment agreements were being circulated after July 1, 2009, defendants confuse multiple separate trades going on between plaintiffs and defendants, including several trades not at issue in this case.

V. Interrogatory Responses Based on Commercial Division Rule 11-a

Defendant's motion to direct plaintiffs to answer the interrogatories is moot because plaintiffs responded to the interrogatories on June 13, 2014.

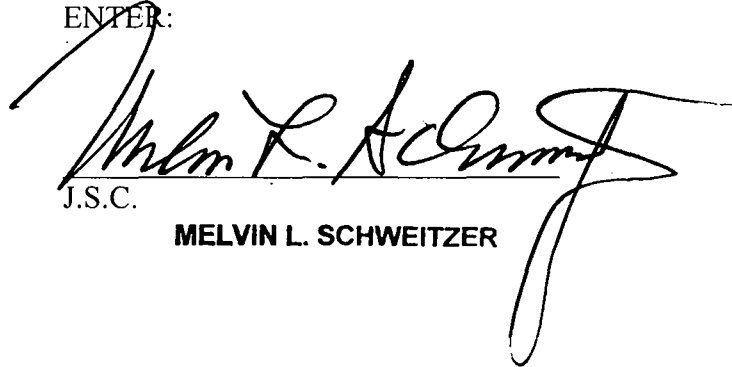
Conclusion

Accordingly, it is hereby

ORDERED that defendants' motion to compel discovery is denied and the motion to direct plaintiffs to answer interrogatories under Rule 11-a is moot.

Dated: July 7, 2014

ENTER:

A handwritten signature in black ink, appearing to read "Melvin L. Schweitzer". The signature is written in a cursive style with a large, sweeping initial "M".

J.S.C.

MELVIN L. SCHWEITZER