

SFR Holdings Ltd. v Rice

2014 NY Slip Op 33049(U)

November 24, 2014

Supreme Court, New York County

Docket Number: 652367/12

Judge: Melvin L. Schweitzer

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

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SFR HOLDINGS LTD., EDEN ROCK FINANCE	:
MASTER LIMITED, EDEN ROCK ASSET BASED	:
LENDING MASTER LTD., EDEN ROCK	:
UNLEVERAGED FINANCE MASTER LIMITED,	:
SHK ASSET BACKED FINANCE LIMITED,	:
CANNONBALL PLUS FUND LIMITED and	:
CANNONBALL STABILITY FUND LP,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
JOHN RICE, JOSEPH INGRASSIA, JOHN BEASTY,	:
CAPSTONE CAYMAN SPECIAL PURPOSE FUND, LP,	:
CAPSTONE SPECIAL PURPOSE FUND LP,	:
CAPSTONE CAPITAL MANAGEMENT, INC.,	:
CAPSTONE CAPITAL GROUP I, LLC, CAPSTONE	:
TRADE PARTNERS, LTD., CAPSTONE BUSINESS	:
CREDIT, LLC, AMINCOR OTHER ASSETS INC.,	:
AMINCOR, INC. and ROBERT L. OLSON,	:
	:
Defendants.	:
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Index No. 652367/12
DECISION AND ORDER
Motion Sequence No. 006

MELVIN L. SCHWEITZER, J.:

This is a motion by defendants to dismiss claims against them pursuant to CPLR 3211 (a) (11) and 3211 (a) (7). The case involves investments in limited partnerships which were allegedly fraudulently induced and, over time, involved a continuing fraud and other actionable conduct by defendants.

Facts

The allegations of the complaint are as follows.

Plaintiffs, a group of investment funds, invested over \$50,000,000 in limited partnerships organized in the Cayman Islands and Delaware. Their investments were based on assurances of

officers of the general partner that the partnerships and affiliated entities had a present strategy of being involved principally in the business of making fully collateralized loans to manufacturing companies. Specifically, defendants assured them they would not make real estate investments. Despite the assurances, defendants made over \$150,000,000 of subordinated loans to real estate ventures, which proved to be unsuccessful. Defendants concealed these investments from plaintiffs in order to induce them to remain invested and not withdraw from the limited partnerships. When plaintiffs discovered the true state of affairs, defendants delayed complying with their withdrawal requests past the time plaintiffs could have been paid in cash. After the partnerships became insolvent, defendants fraudulently conveyed their assets to another entity with which they had a lucrative management arrangement.

Plaintiffs initiated this case alleging causes of action against the partnerships, related entities, and the individuals who controlled them for (i) fraudulent inducement, (ii) fraud, (iii) breach of fiduciary duty, (iv) unjust enrichment, (v) actual and constructive fraudulent conveyance, (vi) breach of contract, (vii) a declaratory judgment, and (viii) legal fees.

Discussion

On a motion to dismiss for failure to state a cause of action, the court accepts all factual allegations pleaded in plaintiff's complaint as true, and gives plaintiff the benefit of every favorable inference. CPLR 3211 (a) (7); *Sheila C. v Povich*, 11 AD3d 120 (1st Dept 2004). The court must determine whether "from the [complaint's] four corners[,] 'factual allegations are discerned which taken together manifest any cause of action cognizable at law.'" *Gorelik v Mount Sinai Hosp. Ctr.*, 19 AD3d 319 (1st Dept 2005) (quoting *Guggenheimer v Ginzburg*, 43

NY2d 268, 275 (1977)). Vague and conclusory allegations are not sufficient to sustain a cause of action. *Fowler v American Lawyer Media, Inc.*, 306 AD2d 113 (1st Dept 2003).

On a motion to dismiss on the ground that defenses are founded upon documentary evidence, the evidence must be unambiguous, authentic and undeniable. CPLR 3211 (a) (1); *Fontanetta v Doe*, 73 AD3d 78 (2d Dept 2010). “To succeed on a [CPLR 3211 (a) (1)] motion . . . a defendant must show that the documentary evidence upon which the motion is predicated resolves all factual issues as a matter of law and definitively disposes of the plaintiff’s claim.” *Ozdemir v Caithness Corp.*, 285 AD2d 961, 963 (3d Dept 2001), *leave to appeal denied* 97 NY2d 605. In other words, “documentary evidence [must] utterly refute plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” *Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314, 326 (2002).

Fraudulent Inducement

The court holds that plaintiffs have specifically plead the four elements of a fraudulent inducement claim under New York law – a misrepresentation, justifiable reliance, scienter and damages. *Lama Holding Co. v Smith Barney, Inc.*, 8 NY2d 413, 421 (1996). It is clear that this claim must be brought as a direct, not a derivative, action and that New York is the governing law. This claim is that the investors committed capital on the basis of a misrepresentation of a present strategy to lend money to manufacturing entities on a secured basis. It is plead that defendants’ actual intent was to invest in real estate. Thus, the claim is not simply one of a promise of future performance. It is a claim properly brought as a direct action.

Ongoing fraud, breach of fiduciary duty, breach of contract, unjust enrichment

As to the Cayman Island partnership, New York law applies as defendants have not submitted satisfactory evidence of Cayman Island law. As to the Delaware limited partnership, under the internal affairs doctrine and the terms of the Delaware partnership agreement, Delaware law applies.

Under both New York and Delaware law, these claims must be brought as derivative actions. The relevant analysis is “[w]ho suffered the alleged harm . . . and who would receive the benefit of the recovery or other benefit. *Tooley v Donaldson, Lufkin & Jenrette, Inc.*, 845 A2d 1031 (2012); *Yudell v Gilbert*, 99 AD3d 108 (2012). The claim is one of gross mismanagement of partnership assets. No matter how plaintiffs couch their claim, the complained of behavior is, at its core, a breach of fiduciary duty by the general partner and officers of the general partner. In particular, it is not a breach of contract claim, as real estate loans fit into a basket holding a menu of permitted investments. The partnerships suffered the harm and would receive the benefit of the recovery.

Fraudulent conveyance and constructive fraudulent conveyance and legal fees

The court holds that in order to determine whether this is a claim under New York law, a New York court must apply an interest analysis. None of the plaintiffs reside in New York, so the damage for these claims did not occur here. Additionally, the transactions took place between non-New York entities. New York has little interest in these transactions. Moreover, the transactions are incidental to the breach of contract claims. The partnership agreements require the application of the law of Delaware and the Cayman Islands. No cause of action has been plead under laws of those domiciles.

Additional breach of contract claims

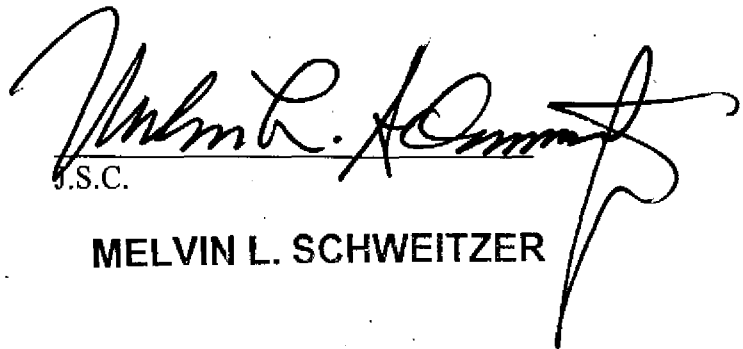
Plaintiffs assert a breach of contract claim in connection with in-kind distributions and seek a declaratory judgment with respect to this claim. In-kind distributions are specifically permitted by the partnership agreements, and this contractual arrangement governs this point.

ORDERED that the motion to dismiss the first cause of action as to all defendants except John Rice, Joseph Ingrassia, Capstone Capital Management, Capstone Cayman Special Purpose Fund LP and Capstone Special Purpose Fund LP is granted; and it is further

ORDERED that the motion to dismiss the second, third, fourth, fifth, sixth, seventh, eighth and ninth causes of action is granted.

Dated: November 24, 2014

ENTER:


S.S.C.
MELVIN L. SCHWEITZER