

IDT Corp. v Tyco Group, S.A.R.L.

2016 NY Slip Op 31981(U)

October 17, 2016

Supreme Court, New York County

Docket Number: 652236/15

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

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IDT CORP. and IDT EUROPE, B.V.B.A.,

Plaintiffs,

-against-

Index No. 652236/15

TYCO GROUP, S.A.R.L., TYCO ELECTRONICS
SUBSEA COMMUNICATIONS LLC, as successor
to Tycom (US) Inc., TYCO INTERNATIONAL PLC,
as successor to Tyco International Ltd., TYCO
INTERNATIONAL (US) INC.; and TYCO
TELECOMMUNICATIONS, LTD., as successor to
Tycom, Ltd.,

DECISION AND ORDER

Defendants.

-----X
SALIANN SCARPULLA, J.:

In this action, plaintiffs IDT Corp. and IDT Europe, B.V.B.A. (collectively referred to as "IDT") seek, for the third time, to enforce a 2000 settlement agreement. In two earlier actions seeking the same relief, the New York Court of Appeals ruled against IDT. Defendants Tyco Group S.A.R.L., Tyco Electronics Subsea Communications LLC ("SubCom"), as successor to TyCom (US) Inc., Tyco International, Plc., Tyco International (US) Inc., and TYCO Telecommunications, Ltd., as successor to Tycom Ltd. (collectively referred to as "Tyco"), move pursuant to CPLR 3211(a) (1) and (a) (7) to dismiss IDT's complaint.

In October 2000, IDT and certain Tyco entities executed a settlement agreement ("Settlement Agreement") which resolved several pending lawsuits. The Settlement

Agreement stated that Tyco would provide to IDT, subject to various conditions, an “indefeasible right of use” (“IRU”) of certain fiber optic telecommunications capacities on the planned Tycom Global Network, an undersea cable system connecting North America, Asia and Europe, free of charge for a 15-year term commencing when the Network was ready for service.

The Settlement Agreement provided that “the IRU shall be documented pursuant to definitive agreements to be mutually agreed upon and, in any event, containing terms and conditions consistent with those described here.” Those further definitive agreements were to be in writing, and consistent with Tyco’s standard agreements with similarly situated customers. Those standard agreements were not in existence at the time the Settlement Agreement was executed. Further, the Tycom Global Network was not yet developed at the time the Settlement Agreement was signed.

Following the execution of the Settlement Agreement, Tyco and IDT negotiated the terms of the “definitive agreements” over the course of several months during 2001, so that IDT could begin to use the first of four wavelengths on the January 7, 2002 hand-over date. However, following a drop in the telecom market, the value of the capacity Tyco had agreed to supply was reduced, and negotiations stalled.

Over the next year, negotiations started and stalled. Months later, IDT sought the right to sell excess capacity to third parties. In 2003, the parties again attempted to come to terms of a definitive IRU Agreement. Because Tyco planned to sell the Tycom Global Network, it offered to pay IDT a cash amount equal to a percentage of the sale value of the

Network, based on the percentage that IDT's wavelengths represented of the total capacity of the network. IDT rejected that offer, and negotiations ended in 2004.

The First Action

In May 2004, IDT sued Tyco. In the complaint, IDT asserted that the Tyco defendants had breached the Settlement Agreement, because they had "failed to meet their obligations under the Settlement Agreement to provide IDT the use of the Wavelengths by the applicable Handover Dates."

In 2007, the parties cross-moved for summary judgment. IDT claimed that Tyco breached the Settlement Agreement by suggesting IRU Agreement terms that were inconsistent with the Settlement Agreement. Tyco argued that, in accordance with the terms of the Settlement Agreement, Tyco negotiated in good faith, and in fact, IDT insisted on many terms inconsistent with the Settlement Agreement, and therefore, Tyco was relieved of any further obligation under the Settlement Agreement. The trial court granted IDT's motion for summary judgment and dismissed Tyco's counterclaims and cross motion.

In August 2008, the Appellate Division, First Department reversed the trial court. The First Department held that the Settlement Agreement was not fully enforceable when entered into because Tyco's standard agreements were not in existence at the time of the Settlement Agreement; that IDT could have insisted that Tyco perform in accordance with the terms of the standard agreements, but did not; and that Tyco's conduct did not breach the Settlement Agreement as a matter of law.

On October 22, 2009, the Court of Appeals affirmed the First Department's ruling. *IDT Corp. v. Tyco Group S.A.R.L.*, 13 N.Y.3d 209 (2009). The Court held that "[r]egarding the IRU, the clear intent of the parties was that it had to be executed before any handover of capacity" and that "Tyco's obligation to furnish capacity never became enforceable because agreed-upon conditions were not met." The Court of Appeals also held that it could not be said that Tyco "breached the settlement agreement by merely proposing an IRU which allegedly contained terms inconsistent with settlement," and concluded that "the record does not support a finding that Tyco breached any of its obligations" under the Settlement Agreement. *Id.* at 215.

In November 2009, IDT reinstated discussions with Tyco regarding the IRU Agreement. Tyco responded that it had no further obligations under the Settlement Agreement. However, Tyco agreed to meet with IDT and discuss completing the IRU Agreement and providing the wavelengths. The parties did not reach any agreement.

The Second Action

In the second action, commenced in 2010, IDT again asserted that Tyco "failed to meet [its] obligations under the Settlement Agreement to provide to IDT the use of the Wavelengths by the applicable Handover Dates." IDT also again alleged that Tyco breached the Settlement Agreement by proposing "significant provisions" that "were inconsistent with the terms of the Settlement Agreement." IDT alleged that "Tyco continued to insist on terms that conflicted with the Settlement Agreement and made a definite and final communication to IDT of Tyco's intent to forgo its obligations under the

Settlement Agreement, including its obligation to provide to IDT the use of the Wavelengths described in the Settlement Agreement for fifteen years and in a manner fully consistent with that described in the Settlement Agreement.” The 2010 complaint alleged breach of contract, and breach of the duty to negotiate in good faith.

Tyco moved to dismiss, arguing that (1) pursuant to the Court of Appeals’ decision, Tyco’s duty to negotiate the additional agreements had been discharged; and (2) res judicata/collateral estoppel barred IDT’s claim.

On June 20, 2011, the trial court (Schweitzer, J.) granted Tyco’s motion to dismiss the complaint. Justice Schweitzer pointed out that “the Court of Appeals found that the Settlement Agreement ‘contemplated the occurrence of numerous conditions, i.e., the negotiation and execution of four additional agreements, most importantly, the IRU,’” which the Court of Appeals found “had to be executed before any handover of capacity” *IDT Corp. v Tyco Group*, 2011 WL 11076614, 2011 N.Y. Slip. Op. 33843[U], *9 (Sup. Ct., N.Y. Co. June 20, 2011). Justice Schweitzer referenced the Court of Appeals’ holding that “[a]lthough there was a valid settlement agreement in this case, Tyco’s obligation to furnish capacity never became enforceable because agreed-upon conditions were not met’.” (citation omitted).

Justice Schweitzer concluded that Tyco had no further obligations under the Settlement Agreement and dismissed the complaint. He specifically held that

“Nowhere did the court say that Tyco’s obligations *had not yet* become enforceable or that the IRU *had not yet* been executed. If the court intended to reserve a future right of action in IDT,

it would have indicated as much. Instead, the language of court's decision makes clear that Tyco does not have any further obligations under the Settlement Agreement. This includes no further duty to negotiate the terms of the IRU Agreement in good faith. As a result of both the First Department and the Court of Appeals decisions, all rights of IDT under the Settlement Agreement were extinguished." *IDT Corp. v Tyco Group*, 2011 WL 11076614, 2011 N.Y. Slip. Op. 33843[U], *13 -*14 (Sup. Ct., N.Y. Co. June 20, 2011).

IDT appealed that decision to the Appellate Division, First Department. On December 27, 2012, the First Department reversed the trial court, holding that the Court of Appeals "did not previously determine the issue of whether the defendants' proposals were a breach of the duty to negotiate in good faith; it did not consider the substance or merit of the proposals; it simply held that the making of proposals was not a breach of the settlement agreement." The First Department concluded that IDT's allegations supported a cause of action for breach of the duty to negotiate in good faith and breach of contract, and that Tyco's reservation of rights – i.e., its statement that it had no continuing obligations to IDT after the Court of Appeals decision – was an anticipatory breach of the Settlement Agreement.

Tyco appealed. Tyco argued that it had no remaining obligations under the Settlement Agreement, and the Court of Appeals' prior decision had terminated any remaining obligations of either party under the Settlement Agreement as a matter of law.

IDT opposed, claiming that what the Court of Appeals had meant, when dismissing the complaint in the first action, was that "Tyco^{7 of 12} was not required *at that time* to hand over the

telecommunications capacity to IDT,” and that, although Tyco had negotiated for years, it was bound to continue to negotiate.

On June 5, 2014, the Court of Appeals reversed the First Department and reinstated Justice Schweitzer’s order dismissing the complaint. The Court held:

“We again reject IDT’s claim. Parties who agree to negotiate are not bound to negotiate forever. It is clear on this record that the parties have reached an impasse and that IDT has no valid cause of action.

As our 2009 decision makes clear, parties may enter into a binding contract under which the obligations of the parties are conditioned on the negotiation of future agreements. In such a case, the parties are obligated to negotiate in good faith. But that obligation can come to an end without a breach by either party. There is such a thing as a good faith impasse; not every good faith negotiation bears fruit.” *IDT Corp. v Tyco Group, S.A.R.L.*, 23 N.Y.3d 497, 500-503 (2014).

The Court concluded that;

“Tyco says that in this case its obligations to negotiate came to an end in 2004. It relies on our 2009 decision, and the facts underlying it, as establishing that the negotiations reached impasse, or were abandoned by both parties, in 2004, without bad faith on Tyco’s part at least.

We did indeed hold in 2009 that IDT had failed to show bad faith by Tyco. We also said that, after adverse developments in the marketplace, negotiations ‘flagged’ and ‘finally came to an end in March 2004’ (13 N.Y.3d at 212). IDT is technically correct that last statement does not bind it as a matter of res judicata or collateral estoppel; whether the negotiations had ‘finally’ ended in 2004 was not directly in issue in the earlier case. Our statement that they did end then, however, was supported by the record before us, and no fact alleged by IDT in the present case is inconsistent with it.

But even on the assumption that Tyco's obligation under the 2000 Settlement Agreement to negotiate additional agreements in good faith still existed in 2009-2010, IDT's complaint does not sufficiently allege any breach of the obligation." *IDT Corp. v Tyco Group, S.A.R.L.*, 23 N.Y.3d 497, 503 (2014).

IDT moved for reargument, which the Court of Appeals denied on September 11, 2014.

In October 2014, IDT contacted Tyco, demanding that Tyco prepare and transmit "an execution copy" of the IRU agreement that is "the same as the language in Tyco's July 23, 2010[] revised draft, as further revised by the changes to which Tyco agreed, as set forth in the parties' correspondence up to and including Tyco's October 14, 2010[] email."

Tyco's counsel responded by letter dated January 12, 2015:

"IDT now purports to ask that Tyco send an 'execution' version of the IRU. But there were many issues that divided the parties during our last discussions, hence there was nothing even close to a 'final' IRU (or other required documents, such as a collocation agreement). It could not be clearer that SubCom has no obligation to engage in any further negotiations with IDT, and we decline to do so."

The Third Action

On June 23, 2015, IDT filed its third complaint "to enforce a settlement agreement that IDT and Tyco executed in October 2000," and asserted two claims for breach of contract. First, IDT alleged that Tyco breached the Settlement Agreement by sending the January 2015 letter in which it refused to enter into a definitive agreement, and repudiated any further obligation under the Settlement Agreement. Second, IDT alleged that Tyco

breached the Settlement Agreement by failing to provide an “execution” version of the IRU Agreement, as requested in October 2014.

Discussion

The doctrine of res judicata, or claim preclusion, is designed to prevent a party from re-litigating a claim that has already been decided. “Under the doctrine of res judicata, a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter” *Matter of Hunter*, 4 N.Y.3d 260, 269 (2005). *see also Barbieri v. Bridge Funding*, 5 A.D.3d 414, 415 (2nd Dept. 2004).

Res judicata plainly bars IDT’s claims here. The claim at issue – that Tyco has breached the Settlement Agreement – is the same claim that the Court of Appeals previously rejected.

Most importantly, the key claim – whether Tyco has any obligations under the Settlement Agreement – is exactly the same claim that was litigated and decided against IDT in the previous action. Implicit in this breach of contract claim is the presumption that Tyco has an obligation to IDT. However, the Court of Appeals explicitly rejected this presumption. In overturning the First Department decision, the Court of Appeals specifically held that “[w]e . . . reinstate Supreme Court’s dismissal of the complaint” (23 N.Y.2d at 502), and that “IDT has no valid cause of action” (*id.* at 500).

Indeed, Justice Schweitzer also plainly stated that “Tyco has no further obligations under the Settlement Agreement,” and that, therefore, “there is no cause of action on which

IDT may commence a suit against Tyco.” *IDT Corp. v. Tyco Group*, 2011 WL 11076614, 2011 N.Y. Slip. Op. 33843[U], *13 -*14 (Sup. Ct., N.Y. Co. June 20, 2011).

This action is also barred by collateral estoppel, because IDT seeks to relitigate the same issues previously decided against it.

“Collateral estoppel ‘precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party . . . whether or not the tribunals or causes of action are the same’.” *BDO Seidman LLP v. Strategic Resources Corp.*, 70 A.D.3d 556, 560 (1st Dept 2010)(citation omitted); *see also Pinnacle Consultants, Ltd. v. Leucadia Natl. Corp.*, 94 N.Y.2d 426, 431-432 (2000). “The issue must have been material to the first action or proceeding and essential to the decision rendered therein (internal quotation marks and citation omitted)” *BDO Seidman LLP*, 70 A.D.3d at 560.

There are two requirements governing the application of collateral estoppel: (1) the party seeking the benefit of collateral estoppel must prove that the identical issue was necessarily decided in the prior action and is decisive in the present action; and (2) the party to be precluded from re-litigating an issue must have had a full and fair opportunity to contest the prior determination. *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449, 456 (1985).

Here, IDT had a “full and fair opportunity” to litigate the issue, which was decided in the prior actions. In fact, IDT has been litigating this issue since 2004. Even though it contends that its claims now are based on issues that arose after the most recent Court of Appeals decision, the core issue is the same, *i.e.* Tyco’s obligations under the settlement

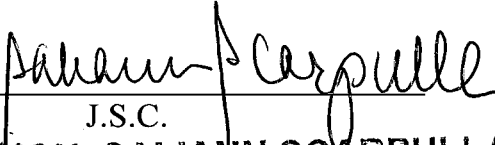
agreement. The Court of Appeals clearly held that Tyco has no further obligations under the settlement agreement.

The court has considered the remaining arguments, and finds them to be without merit. Accordingly, it is

ORDERED that defendants' motion to dismiss the complaint is granted, the complaint is dismissed; and the Clerk is directed to enter judgment accordingly

This constitutes the decision and order of the court.

Dated: October 17, 2016
New York, NY


J.S.C.
HON. SALIANN SCARPULLA