SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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MPEG LA, L.L.C.,

Plaintiff,

-against-

SAMSUNG ELECTRONICS CO., LTD.,

Defendant.

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Index No.: 654454/2015

DECISION & ORDER

SHIRLEY WERNER KORNREICH, J.:

The court assumes familiarity with its November 23, 2016 decision denying Samsung's motion to dismiss and granting summary judgment on liability to MPEG (the 2016 Decision) (Dkt. 24), and its May 2, 2017 decision denying Samsung's motion to reargue and renew the November 2016 Decision (the 2017 Decision) (Dkt. 115).[1] In short, this case concerns the validity of Samsung's purported termination of four agreements governing a standard essential patent pool. On the prior motions, the court ruled in MPEG's favor because:

> Section 7.2 of the AAL is quite clear that the third prong required for termination of the AAL is termination of the LAA, section 11.2.1 of which provides that the LAA may not be voluntarily terminated prior to January 1, 2017. Ergo, Samsung could not voluntarily terminate the AAL on October 5, 2015 because it had no right, at that time, to terminate the LAA.

2017 Decision at 2.

By virtue of the court's prior decisions, all that remains to be determined are the damages owed to MPEG for the period November 5, 2015 through December 31, 2016. *See* Dkt. 72. Currently before the court is MPEG's motion to dismiss the seven affirmative defenses and three

[1] References to "Dkt." followed by a number refer to documents filed in this action on the New York State Courts Electronic Filing system (NYSCEF). Capitalized terms not defined herein have the same meaning as in the court's prior decisions.

counterclaims in Samsung's amended answer. *See* Dkt. 132.[2] The court reserved on the motion after oral argument. *See* Dkt. 124 (7/20/17 Tr.). For the reasons that follow, MPEG's motion is granted.

Samsung's seven affirmative defenses are disposed of as follows. Since the court already held that MPEG has stated a breach of contract claim against Samsung, the first defense alleging a failure to state a cause of action has no validity. Similarly, as to defense of payment, since Samsung's purported October 5, 2015 terminations were found to be invalid, there is no question that Samsung has not fully paid all that it owes to MPEG; the amount owed is yet to be determined and is the subject of ongoing discovery. Likewise, as noted, the court decided that Samsung did not properly terminate the applicable agreements as of October 5, 2015, and that the agreements' termination provisions are unambiguous. Therefore, the third defense cannot stand. The fourth defense of standing under the AAL has been rejected by the court, as has the fifth defense of no damages suffered. The court already decided that parol evidence of the parties' contract negotiations is not admissible, thereby refuting the sixth defense, and the seventh defense listing a number of boiler-plate equitable defenses, proffered without any factual support, are not valid defenses to MPEG's legal claim for breach of contract. Nor is the allegation that MPEG defrauded Samsung, alleged in the seventh affirmative defense and in the counterclaims, applicable here. That claim is utterly without merit for the reasons set forth below. Finally, Samsung's third counterclaim for a declaratory judgment regarding the validity of its October 5, 2015 termination notices is dismissed because the court has ruled that such notices were invalid.

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[2] A redacted version of Samsung's amended answer was filed on March 3, 2017. *See* Dkt. 95. After the court denied Samsung's sealing motions [*see* Dkt. 121-123], on July 28, 2017, Samsung filed an unredacted version. *See* Dkt. 132.

Turning now to Samsung's fraud claim, its first two counterclaims allege that MPEG either fraudulently or negligently induced Samsung to execute the AAL by falsely representing that Samsung could unilaterally terminate the AAL after 6 years. This claim is based on a July 7, 2007 email sent by:

> Larry Horn on behalf of [MPEG to] Samsung and the other proposed ATSC Licensors ... entitled "FINAL DRAFT ATSC AGREEMENTS" that provided in pertinent part:
>
> > ... we are pleased to provide you with final drafts of the [PPL, AAL, LAA], along with redlines comparing them with the versions that were distributed to you just prior to our meeting in Stresa, Italy. ... **Principal changes from the drafts discussed in Stresa include ... an early right of termination with penalty on the part of Licensors starting in year 6 (AAL Section 7.2)**.

Dkt. 105 at 8, quoting Dkt. 98 at 2 (emphasis added). Hence, Samsung's fraudulent inducement claim is based on MPEG's allegedly false representation that section 7.2 of the AAL permits termination in year 6. As noted earlier and in the court's prior decisions, that representation is demonstrably false. More than two months elapsed between July 7, 2007, when this representation was made, and September 20, 2007, when Samsung executed the AAL and the LAA. It is beyond cavil that this was more than enough time for Samsung and its sophisticated lawyers to review the contracts to ensure they were drafted to Samsung's satisfaction.

It borders on the frivolous for Samsung to aver that it justifiably relied on MPEG's July 7 email. *See Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 (2009) ("The elements of a cause of action for fraud [are] a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, **justifiable reliance** by the plaintiff and damages.") (emphasis added). It is well established that justifiable reliance is an essential element of fraudulent inducement and negligent misrepresentation claims, and must be pleaded with

particularity pursuant to CPLR 3016(b). *See Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 178-80 (2011). To be sure, the question of whether a plaintiff's reliance was reasonable often implicates inherently fact intensive disputes not amenable to resolution on a motion to dismiss. *See ACA Fin. Guar. Corp. v. Goldman, Sachs & Co.*, 25 NY3d 1043, 1045 (2015). However, if, as here, the proffered basis for relying on the alleged misrepresentation or omission is, as a matter of law, clearly unreasonable, the fraud claim is subject to dismissal at the pleading stage. *See MP Cool Investments Ltd. v Forkosh*, 142 AD3d 286, 291 (1st Dept 2016) ("Plaintiff is an experienced and sophisticated investor. It did not plead facts to support the justifiable reliance element of fraud."). This is a sensible rule, as no amount of discovery can possibly transform a legally impermissible species of reliance into one a finder of fact may deem reasonable.

Here, the inquiry starts and ends with the well settled proposition under New York law that "a party claiming fraudulent inducement cannot be said to have justifiably relied on a representation **when that very representation is negated by the terms of a contract**." *Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 (1st Dept 2011) (emphasis added); *see also Pacnet Network Ltd. v KDDI Corp.*, 78 AD3d 478, 479 (1st Dept 2010) ("since the language of the contract variation contradicts plaintiff's allegations ... those allegations are not presumed to be true."). As discussed, Samsung alleges that it relied on MPEG's principal's interpretation of section 7.2 of the AAL to mean that Samsung could terminate that contract after 5 years, despite that interpretation conflicting with: (1) the third prong of section 7.2 of the AAL requiring simultaneous termination of the LAA; and (2) section 11.2.1 of the LAA clearly prohibiting termination prior to January 1, 2017 (i.e., year 10). Nonetheless, Samsung contends that it, an ultra sophisticated party, may, during contract negotiations carried on by the counseled

parties, rely on its counterparty to interpret the contract for it. Samsung, unsurprisingly, cites no controlling authority in support of that absurd proposition.[3] It had its own sophisticated transactional counsel, and should have ensured that its understanding of the contracts came from its counsel, not its counterparty. A careful review of the relevant contracts' termination provisions (i.e., section 7.2 of the AAL and section 11.2.1 of the LAA) would have clearly put Samsung on notice that MPEG's contention that the AAL could be terminated in year 6 was demonstrably false, and that termination could not occur until year 10. A party, especially one as sophisticated as Samsung, is almost always presumed to have read a contract before signing it.[4] *Martin v Citibank, N.A.*, 64 AD3d 477 (1st Dept 2009), citing *Florence v Merchants Cent. Alarm Co.*, 51 NY2d 793, 795 (1980) & *Pimpinello v Swift & Co.*, 253 NY 159, 162-63 (1930); *see Cash v Titan Fin. Servs., Inc.*, 58 AD3d 785, 788 (2d Dept 2009) ("[a] party is under an obligation to read a document before he or she signs it, and a party cannot generally avoid the effect of a [document] on the ground that he or she did not read it or know its contents."), quoting *Martino v Kaschak,* 208 AD2d 698 (2d Dept 1994).

Faced with similar facts – i.e., where the ordinary diligence of reading the contract would reveal the falsity of the subject representation – this court dismissed a fraudulent inducement claim, and that dismissal was affirmed by the Appellate Division. *See VFS Financing, Inc. v*

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[3] The cases cited by Samsung are inapposite. For instance, in *LibertyPointe Bank v 75 E. 125th St., LLC*, 95 AD3d 706 (1st Dept 2012), the court held that an alleged collateral, oral agreement not to foreclose on a mortgage was not precluded by the contact's merger clause. That holding is not controlling. Here, it is not the subject contacts' merger clause that is dispositive, but rather that Samsung's reliance is not deemed justified because a review of the contracts would reveal the falsity of the alleged misrepresentations.

[4] Exceptions to this rule are generally limited to situations where the law permits one to rely on a fiduciary to interpret the contract. *See Am. Bldg. Supply Corp. v Petrocelli Group, Inc.*, 19 NY3d 730, 736 (2012). That is not the case here, where the parties were involved in arms' length negotiations and were represented by separate counsel.

Insurance Servs. Corp., 2012 WL 4812585, at *6-7 (Sup Ct, NY County 2012), *aff'd*, 111 AD3d 505, 506 (1st Dept 2013) ("In this arms'-length transaction between sophisticated, counseled business entities and a principal—which had had a prior course of dealing—the parties are deemed to have read and understood the terms of the loan documents, which are unambiguous on their face."), citing *HSH Nordbank AG v UBS AG*, 95 AD3d 185 (1st Dept 2012).

The same outcome is warranted here. Samsung had the means to discover the falsity of MPEG's misrepresentation (i.e., by carefully reading the contracts), but did not employ those means, and, instead, alleges that it blindly relied on MPEG's misrepresentation. That fact would defeat an unsophisticated party's fraud claim [*see Stuart Silver Assoc. v Baco Dev. Corp.*, 245 AD2d 96, 98-99 (1st Dept 1997)]; it is without question an absolute bar to Samsung's claim. *Global Minerals & Metals Corp. v Holme*, 35 AD3d 93, 100 (1st Dept 2006); *see MBIA Ins. Corp. v Merrill Lynch*, 81 AD3d 419 (1st Dept 2011) ("Given their level of sophistication and the undisputed fact that the information was not exclusively in defendants' possession, plaintiffs' contention that it would have been impractical to conduct the investigation necessary to discern the truth of defendants' allegedly fraudulent representations does not satisfy the requirements of the peculiar knowledge exception."), accord *Danann Realty Corp. v Harris*, 5 NY2d 317, 322 (1959) ("The general rule was enunciated by this court over a half a century ago in [*Schumaker v Mather*, 133 NY 590, 596 (1892)], that 'if the facts represented are not matters peculiarly within the party's knowledge, and the other party has the means available to him of knowing, by the exercise of ordinary intelligence, the truth, or the real quality of the subject of the representation, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations."). Since Samsung would have become aware of the falsity of MPEG's alleged misrepresentation by reviewing the contracts, which it had in its

possession for more than two months before deciding to execute them, Samsung's fraud claim fails. Its reliance was not justified.[5] Accordingly, it is

ORDERED that MPEG's motion to dismiss the affirmative defenses and counterclaims in Samsung's amended answer is granted, and such defenses and counterclaims are hereby dismissed with prejudice; and it is further

ORDERED that the parties shall jointly call the court within two weeks of the entry of this order on NYSCEF to discuss the status of damages discovery.

Dated: August 25, 2017

ENTER:

J.S.C.

SHIRLEY WERNER KORNREICH
J.S.C

[5] It should be noted that even if Samsung had pleaded justifiable reliance, it still could not maintain a claim for negligent misrepresentation because sophisticated parties do not have a special relationship at the time they negotiate a contract. *See Greentech Research LLC v Wissman*, 104 AD3d 540 (1st Dept 2013) ("An arm's length business relationship, as existed here, is not generally considered to be the sort of confidential or fiduciary relationship that would support a cause of action for negligent misrepresentation."). It also should be noted that even if the court were to believe that MPEG had a greater level of sophistication than Samsung in the standard essential patent space, that fact would not affect the nonexistence of a special relationship because the disputed contractual provision does not govern any technical patent or licensing administrative matter; it is merely a generic provision governing termination that Samsung (and especially its lawyers) is equally equipped to interpret. *See J.P. Morgan Secs. Inc. v Ader*, 127 AD3d 506, 507 (1st Dept 2015).