Transit Funding Assoc. LLC v Capital One Equip. Fin. Corp.
2017 NY Slip Op 32631(U)
December 14, 2017
Supreme Court, New York County
Docket Number: 652346/2015
Judge: Saliann Scarpulla

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

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TRANSIT FUNDING ASSOCIATES LLC, TAXI AFFILIATION SERVICES LLC, TAXI MEDALLION MANAGEMENT LLC, YELLOW MEDALLION HOLDINGS LLC, CL MEDALLION HOLDINGS, LLC, YELLOW GROUP LLC, YC1 LLC, YC2 LLC, YC17 LLC, YC18 LLC, YC19 LLC, YC20 LLC, YC21 LLC, YC22 LLC, PATTON CORRIGAN, MICHAEL LEVINE,

Plaintiffs,

Index No.: 652346/2015

-against-

CAPITAL ONE EQUIPMENT FINANCE CORP., F/K/A ALL POINTS CAPITAL CORP. D/B/A CAPITAL ONE TAXI MEDALLION FINANCE, AND CAPITAL ONE, N.A.,

DECISION AND ORDER

Defendants.

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SALIANN SCARPULLA, J.:

In this action, *inter alia*, to recover damages for fraud, defendants Capital One Equipment Finance Corp., F/K/A All Points Capital Corp. D/B/A Capital One Taxi Medallion Finance, and Capital One, N.A. (collectively referred to as "Capital One") moves to dismiss the amended claim for fraud.

Plaintiff Transit Funding Associates, LLC ("TFA") is a Chicago taxi medallion financing business that lends money to Chicago taxi owners and drivers who need funding to purchase taxi medallions. Patton Corrigan ("Corrigan") and Michael Levine ("Levine") were principals of TFA. To finance its business, TFA entered into agreements with financial institutions. On March 25, 2009, Capital One and TFA entered

into a loan agreement in which Capital One provided TFA with $35 million in a revolving credit facility, guaranteed by Corrigan and Levine. On April 6, 2012, the line of credit increased to $80 million. Pursuant to the agreement, which was renewed in August 2013 for a one year term, TFA could request advances from Capital One and Capital One could use its discretion in approving or denying a request for an advance.

At the beginning of 2014, Capital One began to deny TFA's funding requests, even though the loan was in good standing. When asked why, Capital One explained that it would no longer lend in the Chicago medallion market. According to TFA, "Capital One made a strategic decision to repudiate its commitments to TFA and abandon the parties' longstanding taxi medallion financing joint venture in favor of what Capital One perceived to be a more desirable business deal — a partnership with the ride-sharing service Uber." Further, "Capital One made that decision to abandon the Chicago medallion lending market long before it informed TFA of its intentions. But Capital One fraudulently misrepresented and concealed those plans from TFA until the last possible moment."

According to TFA, because of Capital One's abrupt abandonment of its agreement, TFA has been unable to extend new medallion loans or to get new funding, and its business was destroyed. As a result, it entered into a letter agreement dated September 16, 2014 with Capital One setting forth the terms of the wind-down of their loan agreement. That agreement extended TFA's loan facility, subject to various conditions, such as a requirement that TFA use the proceeds it collects to pay down the loan facility rather than making new loans. It was extended one year, reducing the

lending limit to $57.2 million, and setting a closing date of no later than September 30, 2014.

In its original complaint, TFA alleged causes of action for (1) breach of the loan agreement; (2) breach of the implied covenant of good faith and fair dealing; (3) breach of fiduciary duty; (4) fraud; (5) unfair competition; (6) negligent impairment of collateral; (7) breach of the letter agreement; (8) declaratory judgment that the loan agreement was invalid and unenforceable; and (9) declaratory judgment that Corrigan and Levine were not liable under their guarantees.

The complaint set forth two theories of fraud based on Capital One's alleged concealed plans to exit the Chicago medallion market. First, TFA alleged that Capital One made affirmative misrepresentations to TFA by repeatedly assuring TFA between May and August 2013 that it had no plans to exit the Chicago market. Second, TFA alleged that Capital One had a duty to disclose its plans to exit the Chicago market to TFA, and that Capital One breached that duty by not disclosing its plans at any point until February 25, 2014.

Capital One moved to dismiss the complaint. In an order dated July 15, 2016, I granted the motion in part and denied it in part. I dismissed the causes of action for breach of fiduciary duty, fraud, unfair competition and breach of the letter agreement. TFA amended its complaint in October 2016 to replead the fraud cause of action, alleging new evidence to support the cause of action.

In an order dated February 28, 2017, the Appellate Division modified the decision, and additionally dismissed the causes of action for breach of contract, breach of

the implied covenant of good faith and fair dealing, and the declaratory judgment causes of action. The Appellate Division later denied TFA's motion for leave to appeal its decision.

Capital One now moves to dismiss the amended fraud claim, arguing, *inter alia*, that (1) TFA has failed to plead an "actionable misstatement;" (2) the fraud claim is foreclosed by the specific disclaimers contained in the agreement; (3) TFA has failed to sufficiently plead fraudulent intent; and (4) TFA's allegations of fraudulent concealment are insufficient because Capital One owed no duty of disclosure to TFA in connection with an arm's length transaction between sophisticated parties, and, in any event, Capital One did not fraudulently conceal any material information.

In opposition, TFA first argues that it properly pled fraudulent misrepresentation in that it alleged that Capital One misrepresented to it on May 1, 2013 and through August 2013 that it had no plans to wind down its Chicago medallion lending business or to exit the Chicago market and TFA justifiably relied on this misrepresentation when it renewed the credit facility in August 2013 and again when it turned down offers from other companies to acquire its business in August 2013 and February 2014. TFA refers to several recently discovered documents, designated as confidential, which it argues demonstrates that Capital One had formulated its plans to withdraw before August 2013.

It next argues that it sufficiently pled fraudulent concealment in that Capital One formulated its plans as part of a confidential business strategy which it did not divulge, and that could not have been discovered by TFA through exercise of ordinary intelligence. Corrigan had made efforts to ascertain whether Capital One had been

making plans to wind down its Chicago Medallion business by inquiring about such at his May 1, 2013 lunch in New York with Capital One and during subsequent phone conversations. Based on the newly submitted evidence, TFA maintains that the "special facts" requirement is satisfied and Capital One had a duty to disclose. It argues that Capital One had a duty to disclose up until the date it revealed its plans to TFA on February 25, 2014. TFA had relied on Capital One's omission as late as February 19, 2014 when it had received an offer to purchase its business from another company and turned it down.

Finally, it contends that the disclaimer is irrelevant because the basis for the claim here falls outside the scope of the disclaimer. TFA does not allege that it relied on any "commitment to extend or continue any credit" beyond the one year term set forth in the loan agreement, rather, it relied on Capital One's allegedly false representations about its business plans. Further, TFA claims that because a specific disclaimer bars a fraud claim only where the facts represented are not matters peculiarly with the representing party's knowledge and the other party has the means to obtain that information, and here, the special facts doctrine can be applied, the disclaimer would not bar TFA's fraud claim.

Discussion

TFA's fraud allegations in its amended complaint are based on the same two theories as alleged in the original complaint, *i.e.,* that Capital One made false representations to TFA by repeatedly assuring TFA between May and August 2013 that it had no plans to exit the Chicago market, and that Capital One fraudulently concealed that it planned to exit the Chicago market by not disclosing its plans to TFA until February

25, 2014. In its amended claim, it refers to newly discovered evidence, designated as confidential, to support its theories of fraud.

To state a cause of action for fraud, a plaintiff must allege "misrepresentation or concealment of a material fact, falsity, scienter on the part of the wrongdoer, justifiable reliance and resulting injury." *ACA Fin. Guar. Corp. v. Goldman, Sachs & Co.,* 131 A.D.3d 427, 428 (1st Dep't 2015). To allege an actionable misrepresentation, a plaintiff must specify "statements of present material facts known to be false at the time they were made." *Mateo v. Senterfitt*, 82 A.D.3d 515 (1st Dept. 2011). To sufficiently allege scienter, the pleading should contain some rational basis for inferring that the alleged misrepresentation was knowingly made. *Houbigant, Inc. v. Deloitte & Touche LLP*, 303 A.D.2d 92 (1st Dept. 2003).

It is well established that, absent a fiduciary relationship between the parties, a duty to disclose arises only under the special facts doctrine where one party's superior knowledge of essential facts renders a transaction without disclosure inherently unfair. *Jana L. v West 129th Street Realty Corp.,* 22 A.D.3d 274, 277 (1st Dept 2005) (citations and internal quotation marks omitted). "[T]he doctrine requires satisfaction of a two-prong test: that the material fact was information peculiarly within the knowledge of [a party], and that the information was not such that could have been discovered by [another party] through the exercise of ordinary intelligence." *Id.* at 278 (citations and internal quotation marks omitted).

As stated in the July 15, 2016 order, and particularly because of the Appellate Division's subsequent modification of the July 15, 2016 order, I find that Capital One has

not adequately pled a cause of action for fraud in its amended complaint. The viability of a fraud claim based on Capital One's alleged failure to disclose its business plans depends on the application of the special facts doctrine. None of the newly discovered evidence supports the allegation that Capital One's knowledge of essential facts rendered the "transaction without disclosure inherently unfair."

Even if Capital One entered into the August 2013 contract renewal with TFA with the knowledge that it may not continue in the Chicago medallion business in the future, such does not render the August 2013 renewal inherently unfair, nor does it render Capital One's decision to deny funding requests from TFA beginning in 2014 inherently unfair. Rather, pursuant to the contract, Capital One had the discretion to approve or deny requests for advances. TFA's dissatisfaction with Capital One's exercise of its discretion, and the eventual end of their contractual relationship, does not sufficiently provide a basis for a fraudulent concealment claim. [1]

Further, the new evidence referred to by TFA does not sufficiently support a particularized claim for fraudulent misrepresentation. TFA alleges that between May and August 2013, Capital One informed TFA that it was not planning to exit the medallion market. TFA further alleges that according to the new evidence, Capital One had been making plans to do the opposite. Contrary to TFA's contention, the new evidence

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[1] In its order amending my July 15, 2016 order, the First Department specifically held that "[i]n view of the provisions of the loan agreement expressly allowing Capital One to deny any requests for advances in its "sole and absolute discretion," and specifically authorizing Capital One to deny any such requests for any reason, it cannot be said that Capital One violated the contract by failing to advance funds as requested, even if that decision put TEA out of business."

submitted does not provide a rational basis to support an inference that Capital One made a false representation to TFA with scienter.

In accordance with the foregoing, it is hereby

ORDERED that defendants Capital One Equipment Finance Corp., F/K/A All Points Capital Corp. D/B/A Capital One Taxi Medallion Finance, and Capital One, N.A.'s motion to dismiss the amended cause of action for fraud is granted and the amended fraud caused of action is dismissed.

This constitutes the decision and order of the court.

Dated: New York, New York
December 14, 2017

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HON. SALIANN SCARPULLA J.S.C.