

Pala Assets Holdings Ltd. v Rolta, LLC
2019 NY Slip Op 31195(U)
April 23, 2019
Supreme Court, New York County
Docket Number: 652798/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

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PALA ASSETS HOLDINGS LTD., PINPOINT MULTI-STRATEGY
FUND, VALUE PARTNERS FIXED INCOME SPC - VALUE
PARTNERS CREDIT OPPORTUNITIES FUND, VALUE
PARTNERS GREATER CHINA HIGH YIELD INCOME FUND,

Plaintiffs,

- v -

ROLTA, LLC, ROLTA INDIA LTD, ROLTA INTERNATIONAL
INC., ROLTA UK LTD, ROLTA MIDDLE EAST FZ-LLC, ROLTA
AMERICAS LLC, ROLTA GOLBAL B.V.,

Defendants.

-----XINDEX NO. 652798/2018

MOTION DATE _____

MOTION SEQ. NO. 002

DECISION AND ORDER

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 72, 76, 79, 89, 90, 106, 107, 108, 109, 110, 111, 112, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 175, 177, 178, 188, 193, 194, 195, 196, 197, 198, 199, 203, 204, 205, 208, 209, 223 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT

Plaintiff Pala Assets Holdings Ltd. (Pala) first moved, pursuant to CPLR 3212, for summary judgment in lieu of complaint against defendants on the basis that defendants defaulted on notes issued under four certain indentures (NYSCEF Doc. No. [Doc] 36 [original notice of motion]; *see* Docs 25-34 [supporting submissions]). By Notice of Amended Motion for Summary Judgment In Lieu of Complaint (Doc 117 [amended notice]), Pala and additional party entities Value Partners Fixed Income SPC - Value Partners Credit Opportunities Fund (VP Credit), Value Partners Greater China High Yield Income Fund (VP China), and Pinpoint MultiStrategy Fund (Pinpoint) now move, pursuant to CPLR 3213, against the defendants to recover unpaid principal and

interest allegedly arising from defendants' default on notes issued for the same indentures (*see* Doc 117 *et seq.*).¹

Background

1. The Notes and Indentures

On May 16, 2013, defendant Rolta, LLC (Rolta) executed an indenture through which it issued certain registered Senior Notes (2018 Notes) bearing interest at the rate of 10.75% due in May 2018 (2018 Indenture) (Docs 120-122). Rolta was permitted to issue the 2018 Notes in the aggregate principal value of \$200 million (Doc 120). In July 2014, defendant Rolta Americas LLC (Rolta Americas) executed an indenture through which it issued certain registered Senior Notes (2019 Notes) bearing interest at the rate of 8.75% due in July 2019 (2019 Indenture) (Docs 127-129). Rolta America was authorized to issue the 2019 Notes in the aggregate principal amount of \$300 million (Doc 127).

The Holder of Record for the 2018 and 2019 Notes is non-party Cede & Co. (Cede), the nominee of the Depository Trust Company (DTC). Pala, Pinpoint, and VP China allege that they are each Authorized Beneficial Owners of the 2018 Notes pursuant to authorization letters issued by 2018 Indenture Participants Citibank DTC 0908 (Citibank), Morgan Stanley & Co., LLC - #050 (M&S 050), Morgan Stanley & Co. International plc (M&S Intl), and JPMorgan Chase - #01970 (*see* Doc 122-123 [Pala], 134-136 [Pinpoint], 139-140 [VP China]). They allege that they own the 2018 Notes with

¹ Apart from adding plaintiffs, the amended motion seeks to recover unpaid principal and interest under the same set of notes and indentures; however, additional sums are sought on the basis that certain sums owed were accelerated pursuant to a notice of default sent during the intervening period between the filing of the original and amended notice of motion for summary judgment in lieu of complaint.

principal values as follows: Pala \$1,450,000; Pinpoint, \$12,444,000; and VP China, \$19,350,000.

All plaintiffs assert that they are beneficial owners of the 2019 Notes. Specifically, they assert that the 2019 Notes have the following principal values: Pala, \$24,313,000 (Doc 128); Pinpoint, \$54,200,000 (Docs 135-136); VP Credit, \$6,850,000 (Docs 142-144); and VP China, \$29,085,000 (Docs 141-144).

In both the 2018 and 2019 Indentures (together, Indentures), Defendant Rolta India Ltd. (Rolta India) is a Parent Guarantor and defendants Rolta International, Inc. (Rolta Intl.) and Rolta Middle East FZ-LLC (Rolta ME) are Subsidiary Guarantors. Defendant Rolta Global B.V. (Rolta Global) is a Subsidiary Guarantor only under the 2019 Indenture.

2. Default

Plaintiffs assert that defendants defaulted under the 2018 Notes and 2018 Indenture by failing to make a scheduled interest payment on May 16, 2016 and failing to cure that event of default within 30 days; additionally, four subsequent interest payments through May 2018 maturity date were untimely. Defendants do not dispute that the May 2016 interest payment was untimely, nor do they dispute that their failure to pay on time was cured. Plaintiffs allege, and defendants also do not dispute, that the principal and interest owed under the 2018 Indenture was not paid in full as required upon maturation of the 2018 Notes on May 16, 2018.

Plaintiffs submit a Notice of Acceleration, dated April 24, 2018, sent to Rolta by Pinpoint, Pala, nonparty BFAM Asian Opportunities Master Fund LP, and Value Partners Hong Kong Limited as Investment Manager of VP China (together, 2018 Beneficial Holders) under the 2018 Notes (2018 Notice) (Doc 125). The 2018 Notice

acknowledges that Cede is the Holder of Record of the 2018 Notes but further states that Cede authorized the 2018 Beneficial Holders to "take any action with respect to the [2018] Notes which Cede & Co., as the Holder of record of the [2018] Notes, is entitled to take under the controlling documents, including the Indenture and the Notes" (*id.*). In the 2018 Notice, the 2018 Beneficial Holders claim that they hold, in the aggregate, at least 25% of the total outstanding principal amount as of the date of the 2018 Notice (*id.*).

In addition to sending the 2018 Notice to Rolta, plaintiffs assert that a demand for payment under the 2018 Notes was also sent to Rolta India as Parent Guarantor on May 24, 2018.

Under § 6.02 the 2018 Indenture, a valid Notice of Acceleration renders the entire principal, applicable premium, and accrued, unpaid interest immediately due and payable; all outstanding principal and interest also became due on the maturity date under the 2018 Indenture (Doc 120).

Plaintiffs also assert that Rolta Americas defaulted under the 2019 Notes and 2019 Indenture by failing to timely make a scheduled interest payment on July 24, 2016 and that default was not cured within 30 days. Plaintiffs further assert that subsequent interest payments were missed without cure and a Notice of Acceleration under the 2019 Indenture was sent on October 26, 2018 (2019 Notice) by Pala, VP Credit, VP China, and Pinpoint (together, 2019 Beneficial Holders) (Doc 131). According to the 2019 Notice, the 2019 Beneficial Holders collectively owned 25% of the 2019 Notes, qualifying them to declare the event of default (*id.*). Attached to the 2019 Notice are four separate authorization letters in which Cede authorized the 2019 Beneficial holders to take any action with respect to the 2019 Notes (*id.*). Three of these letters were signed

by John D. Faith, "Partner" of Cede and the fourth by Kurt Holineger² on behalf of Cede (*id.*). Plaintiffs assert that a demand letter was also sent to Rolta India, as Parent Guarantor, on October 29, 2018.

Plaintiffs now move, pursuant to CPLR 3213, for summary judgment in lieu of complaint to recover unpaid principal and interest under the 2018 and 2019 Notes and Indentures.

Discussion

CPLR 3213 provides for accelerated judgment where an instrument sued upon is for the payment of money alone; the court must be able to ascertain the right to payment from the face of the document without consideration of extrinsic evidence "other than simple proof of nonpayment or a similar de minimis deviation from the face of the document" (*Financials Restructuring Partners III v Crescent Banking Co.*, 2015 NY Slip Op 30500[U], *5 [Sup Ct, NY County 2015], quoting *Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). The standards applicable to conventional summary judgment motions made pursuant to CPLR 3212 apply to those in lieu of complaint under CPLR 3213. Generally, an instrument, such as a promissory note, together with evidence of failure to make payments in accordance with its terms, constitutes a prima facie case for summary judgment, then shifting the burden to the defendant to raise a material issue of triable fact (*see* CPLR 3213; *see Matas v Alpargatas S.A.I.C.*, 274 AD2d 327, 328 [1st Dept 2000]). "A document does not qualify for CPLR 3213 treatment if the court must consult other materials besides the bare document and proof of nonpayment, or if it

² The spelling of this last name is not clear from the document.

must make a more than de minimis deviation from the face of the document" (*PDL Biopharma, Inc. v Wohlstadter*, 147 AD3d 494, 495 [1st Dept 2017] [citation omitted]).

While the instruments here—the 2018 and 2019 Notes and the Indentures—are within the scope of CPLR 3213, plaintiffs' moving papers do not establish prima facie entitlement to summary judgment under CPLR 3213 as their submissions do not eliminate all factual issues and uncertainties as to each plaintiff's individual beneficial ownership interest in the Notes, the circumstances surrounding the acceleration of amounts due and payable under the Indentures, and the amounts due and payable under each Note.

Apart from their own affidavits/affirmations, plaintiffs' support their claimed beneficial ownership interest in the Notes through various unsworn letters from their brokers; however, none of the brokers are parties to this action, and there is no affidavit from a person with knowledge, such as a representative of the brokers, to corroborate the broker letters. Further, there are no documents demonstrating the transaction(s) by which each plaintiff obtained its interest in each Note.

While plaintiffs submit authorization letters issued by Cede as the nominee of DTC in support of their moving papers, those letters were not sworn and do not eliminate the above issues. Cede states in those letters that it was "informed" by the Participant broker that plaintiffs are beneficial interest holders, but the gap in plaintiffs' acquisition of such interest is not eliminated. On the eve of oral argument, plaintiffs further submitted, attached to their reply affirmation, an affidavit of a Cede custodian/managing director, John Faith, who states that the Cede authorization letters annexed to Faith's affidavit are true and correct copies of Cede letters from October 2018 which were made or maintained by Cede in its ordinary course of business (Doc

209). Thus, while the Cede authorization letters support each plaintiffs' authorization to act under the Indentures to obtain payment—to commence this action, for instance—the letters do not provide an ample basis upon which the court can conclude with certainty that each plaintiff is the beneficial holder of the interest in the Notes that they claim.

Further, there is no submission that establishes what outstanding principal balance remained on each Note at the time the acceleration letters were sent to the respective defendants, or what percentage of that outstanding balance each party to the notice letter held. In fact, one of those entities, BFAM Asian Opportunities Master Fund LP, is not a party to this action (Doc 125 [concerning the 2018 Notes and Indenture]). Absent a more complete record with respect to the acceleration of both Notes—particularly the 2019 Note, which does not mature until July 2019—the dates on which amounts became due and payable, the total sums owed under each Note, and the calculation of interest for any such amounts cannot be ascertained with certainty on this record.

Accordingly, the court finds that plaintiffs have not established *prima facie* entitlement to payment on the face of the 2018 and 2019 Notes and Indentures, and the abundant documents extrinsic to those instruments that have been submitted do not close the gaps as to each plaintiff's beneficial ownership interest in each of the respective Notes, and certain narrow issues as to the authorization to commence suit and acceleration of sums due and payable under the Indentures remain. Thus, the court denies Motion 002, converts this accelerated action under CPLR 3213 to a conventional plenary action, deems the moving and opposition papers traditional pleadings, and directs expedited limited discovery to resolve these issues.

The court has considered plaintiffs' remaining arguments and they do not compel an alternative result. In light of the above determination, the court need not address defendants' additional contentions in opposition to this motion.

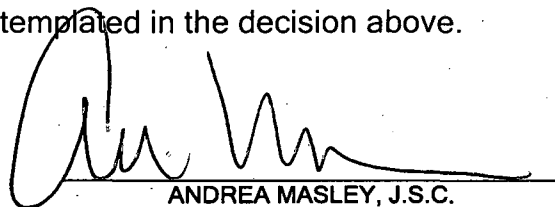
Accordingly, it is

ORDERED that Plaintiffs' amended motion for summary judgment in lieu of complaint, Motion Sequence Number 002, is denied without prejudice to file a new motion following limited discovery as will be directed by the court at the next status conference; and it is further

ORDERED that the Plaintiffs' moving papers in support of their amended motion for summary judgment in lieu of complaint, consisting of those documents filed to NYSCEF under Motion Sequence Number 002 in support of that amended motion, are deemed the complaint in this action and the defendant's answering papers, consisting of those submitted in opposition to the amended motion for summary judgment in lieu of complaint under Motion Sequence Number 002 are deemed the answer; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Part 48, Room 242 at 60 Centre Street, on May 29, 2019 at 2:30 ~~am~~ p.m., to set an expedited schedule for the limited discovery contemplated in the decision above.

4/23 2019
DATE


ANDREA MASLEY, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☒

DENIED

☒
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☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE