

Medallion Bank v Lanmir Hacking Corp.
2020 NY Slip Op 31437(U)
April 21, 2020
Supreme Court, New York County
Docket Number: 654294/2019
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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MEDALLION BANK, MEDALLION FINANCIAL CORP.,
 MEDALLION FUNDING, LLC, TAXI MEDALLION LOAN
 TRUST III,

Plaintiffs,

- v -

LANMIR HACKING CORP., NATLON HACKING CORP.,
 SUCCESS HACKING CORP., JACAL HACKING CORP.,
 OCEAN HACKING CORP., LONNY SORKIN, NATALIA
 SORKIN, 8 CASE COURT LLC, 133 WEST 95 STREET
 LLC, 125 WEST 95TH STREET REALTY LLC, 1408
 OCEAN AVENUE, LLC, 6917 COLLINS AVENUE, UNIT
 1512 LLC, L&M 353 FRANKLYN AVENUE LLC, S&M 28-29
 OCEAN PARKWAY LLC, 16485 COLLINS AVENUE UNIT
 2736 LLC, MIKHAIL SORKIN, INDIVIDUALLY, NATALIA
 SORKIN & MIKHAIL SORKIN, AS CO-TRUSTEES OF
 THE SORKIN CHILDRENS TRUST DATED NOVEMBER
 6, 2015, UNKNOWN TRANSFEREES

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 83, 84, 85, 86, 87,
 88, 89, 90, 91, 92, 93

were read on this motion to

DISMISS COUNTERCLAIMS

This case involves payment defaults on loans to finance the purchase of thousands of taxi medallions in New York City and Chicago. Plaintiffs (collectively, "Medallion") seek payment of the outstanding balance of the loans (\$18,533,288.55) from the borrowers and various guarantors (collectively, "Lanmir"). In response, Defendants Leonid and Mikhail Sorkin (collectively, "Sorkin") have asserted counterclaims for: (i) breach of the implied duty of good faith and fair dealing; and (ii) breach of fiduciary duties.

By this motion, Medallion seeks dismissal of both counterclaims. For the reasons set forth below, the motion is granted.

Background¹

In or about 1990, Medallion provided financing for Lanmir to purchase 128 Chicago taxi medallions. The medallions were pledged as collateral for the loan. The loan documents included personal guaranties executed by counterclaim plaintiffs Leonid Sorkin (“Lonny”) and Mikhail Sorkin (“Mike”).

In or about September 2015, Lonny decided to sell the 128 Chicago medallions, together with an additional 298 Chicago medallions that Lonny’s closely held companies had purchased with funding from other lenders. Medallion (through its executive officers Alvin Murstein and Michael Kowalski) “convinced Mike and Natalia Sorkin that the sale was ill-advised and offered, as an alternative, to refinance the existing loans on the 128 Chicago medallions for \$32 million, or \$250,000 per medallion.” (Counterclaims, ¶ 276.)

Sorkin claims that by “persuading Mike and Natalia to forego the sale of the 426 Chicago taxi medallions ... Mr. Murstein, on behalf of [Medallion], engaged in a blatant act of self-dealing.” In support of that claim, Sorkin alleges that Mr. Murstein was “fearful” that the sale of 426 Chicago taxi medallions (approximately 15% of the total number of active Chicago taxi medallions) would depress the market (of which Medallion controlled 50%) which would, in turn, negatively impact Medallion’s share price. “Rather than act in the interest of Lonny and Mike, as guarantors of the Illinois Loans, Mr. Murstein subverted the interest of Lonny and Mike to the financial interest of [Medallion] in maintaining its stock price.” *Id.* at 281.

According to Sorkin, the proposed sale of the 128 medallions in September would have generated roughly \$30-32 million, which would have been more than sufficient to pay off the

¹ Unless otherwise indicated, the statement of facts is taken from Sorkin’s factual allegations in support of the counterclaims, which are assumed to be true for purposes of this motion. (NYSCEF 65 at ¶¶ 263-291) (“Counterclaims”).

loan and satisfy the personal guaranties. (The sale of all 426 medallions would have generated roughly \$102-106 million.)

In support of the counterclaims, Sorkin alleges that Medallion's "self-dealing and abuse of trust . . . built up over the course of a forty (40) year close business relationship with the Sorkin family" constituted a breach of Medallion's "implied duty of good faith and fair dealing under the Illinois Loan Documents" and personal guaranties. *Id.* at ¶ 284-85. In addition, Sorkin alleges that the same conduct violated Medallion's fiduciary duty. The fiduciary duty arose, according to Sorkin, from the parties' "long-standing and close business relationship" during which "Lonny and Mike reposed trust and confidence in the honesty and fidelity of [Medallion], and believed that [Medallion] would use their superior expertise and knowledge of the taxi and medallion industry for the benefit of Lonny and Mike." *Id.* at 288-89.

Discussion

"When assessing a CPLR 3211(a)(7) motion to dismiss, the pleading is to be afforded a liberal construction, the facts as alleged in the complaint are accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court determines only whether the facts as alleged fit within any cognizable legal theory." *Grassi & Co. v. Honka*, 180 AD3d 564 [1st Dept 2020] [citation omitted]. "However, factual allegations . . . that consist of bare legal conclusions, or that are inherently incredible . . ., are not entitled to such consideration." *Mamoon v. Dot Net, Inc.*, 135 AD3d 656, 658 [1st Dept 2016] [citations omitted].

Sorkin Fails to State a Viable Counterclaim for Breach of the Implied Covenant

Under New York law, all contracts imply a covenant of good faith and fair dealing. *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 NY2d 144, 153 [2002]. The covenant

provides that “neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *Dalton v. Educational Testing Serv.*, 87 NY2d 382, 389 [1995].

Sorkin’s allegation that Medallion gave self-serving advice that “persuaded” Sorkin not to sell 426 Chicago tax medallions does not, even if true, give rise to a viable claim. The “fruits” of the contract were the receipt of a loan to facilitate the purchase of taxi medallions. There is no allegation that Medallion interfered with that purpose or even that it coerced Sorkin into holding onto the Chicago medallions. Sorkin cites no authority that would support a claim for breach of the implied covenant based on a borrower’s own decision to follow what it now asserts to have been self-serving advice from a lender.

Sorkin’s only argument is that “a reasonable person in the position of Mike and Lonny ... would be justified in believing that the lender would not do anything to prevent the borrower from repaying the loans.” (Br. in Opp., NYSCEF 87, at 6.) Putting aside the fact that Sorkin cites no authority for that proposition, and that it is conclusory, the argument is not supported by the factual allegations of the counterclaim. Sorkin alleges Medallion “convinced” and “persuad[ed]” Sorkin that a sale was “ill-advised,” and offered to refinance the existing loans. (Counterclaim at ¶ 276-77.) There is no allegation that Medallion *prevented* Lanmir or Sorkin from repaying the loan. Indeed, they did not default on the loan until December 2016, more than a year later.

Sorkin Fails to State a Viable Counterclaim for Breach of Fiduciary Duty

Sorkin's opposition brief does not address Medallion's motion to dismiss the counterclaim for breach of fiduciary duty. Accordingly, the motion to dismiss that claim is unopposed.

In any event, the counterclaim is untimely. The statute of limitations for claims seeking monetary damages for a breach of fiduciary duty is three years. *See IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 139 [2009]. Sorkin's claim is premised on conduct that occurred in September 2015. The counterclaim for fiduciary duty was asserted on September 24, 2019. Accordingly, the claim is time-barred.

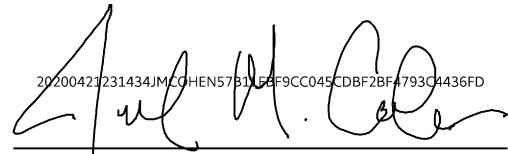
Timeliness aside, Sorkin's factual allegations, even if true, do not establish that Medallion owed a fiduciary duty in advising Sorkin as to the wisdom of selling taxi medallions. As a lender, Medallion did not owe a fiduciary duty with respect to providing business advice to its borrower. *See, e.g., Bank Leumi Trust Co. of NY v. Block 3102 Corp.*, 180 AD2d 588, 589 [1st Dept 1992] ["The legal relationship between a borrower and a bank is a contractual one of debtor and creditor and does not create a fiduciary relationship between the bank and its borrower or its guarantors."]. Sorkin's "conclusory allegations that his relationship with [Medallion] was more than that of lender and borrower and that he relied on [Medallion]'s advice are insufficient to raise an inference that this bank-borrower relationship was special." *See Citibank, N.A. v. Silverman*, 85 AD3d 463, 466 [1st Dept 2011].

Accordingly, it is

ORDERED that Medallion's motion to dismiss Sorkin's First and Second Counterclaims is **granted**; and it is further

ORDERED that Sorkin's First and Second Counterclaims are dismissed with prejudice.

This constitutes the decision and order of the Court.


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JOEL M. COHEN, J.S.C.

4/21/2020
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED
 SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: