

GBIG Holdings, Inc. v Resolution Life L.P.
2021 NY Slip Op 30800(U)
March 9, 2021
Supreme Court, New York County
Docket Number: 650575/2019
Judge: Barry Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

GBIG HOLDINGS, INC. f/k/a SOUTHLAND NATIONAL HOLDINGS, INC. and SNH ACQUISITION, LLC, Plaintiffs,

- v -

RESOLUTION LIFE L.P. and RESOLUTION LIFE (PARALLEL) PARTNERSHIP, Defendants.

Table with 2 columns: INDEX NO. (650575/2019), MOTION DATE, MOTION SEQ. NO. (008)

DECISION + ORDER ON MOTION

RESOLUTION LIFE L.P. and RESOLUTION LIFE (PARALLEL) PARTNERSHIP,

Counterclaim-Plaintiffs,

- v -

GBIG HOLDINGS, INC. f/k/a SOUTHLAND NATIONAL HOLDINGS, INC., SNY ACQUISITION LLC, and GREGORY E. LINDBERG,

Counterclaim-Defendants.

HON. BARRY R. OSTRAGER

Before the Court is a motion by plaintiffs/counterclaim-defendants GBIG Holdings, Inc. f/k/a Southland National Holdings, Inc., SNH Acquisition, LLC, and Greg Lindberg (together, "GBIG") to exclude the testimony of Daniel Fischel, Gregory Serio, and Nicholas Potter, experts designated by defendants/counterclaim-plaintiffs Resolution Life, LP and Resolution Life (Parallel) Partnership (together, "Resolution Life"). Resolution Life designated Fischel and Serio as experts in support of their affirmative claims, which are scheduled to be tried before this Court beginning April 12, 2021. In addition, Resolution Life designated Nicholas Potter – a law partner at Debevoise & Plimpton LLP, who participated in the transaction at issue in these proceedings – as a rebuttal expert to rebut the opinions of GBIG’s witness Charles Lundelius.

GBIG argues that the opinions offered by Resolution Life's experts in their reports are replete with conjecture, speculation, and improper assumptions, are unreliable, and should be excluded. Resolution Life counters that all three experts are highly qualified and that the testimony they intend to offer is relevant and admissible and will assist this Court in determining the issues to be raised at the upcoming bench trial. For the reasons stated below, the motions are denied without prejudice to renewal in whole or in part, if appropriate, during the trial, except to the extent the Court limits the issues when determining the summary judgment motions.

According to his report (NYSCEF Doc. No. 345), Fischel is the President of Compass Lexecon, a consulting firm that specializes in the application of economics to a variety of legal and regulatory issues. He explains that he was asked by counsel for Resolution Life, Debevoise & Plimpton LLP, to "evaluate the economic evidence as it relates to Resolution Life's claim that it has been damaged by GBIG's alleged breaches and fraudulent misrepresentations. In addition, Counsel asked [Fischel] to discuss the economics of piercing the corporate veil to obtain a judgment and recovery against those controlling a corporation (in this case, Mr. Lindberg) and to assess whether there is evidence in this matter consistent with these economic rationales for veil piercing." In addition to listing his experience and credentials, Fischel details his opinion and the bases for his conclusions.

Serio indicates in his report (NYSCEF Doc. No. 346) that he is a Partner in the New York City-based firm Park Strategies, LLC. Park Strategies is a global diversified management advisory and government relations consulting firm that provides strategic and organizational advice to a wide variety of commercial enterprises, non-profit associations, and governmental entities. The firm also provides expert testimony and counsel in insurance-related litigation and disputes. Serio states that he was asked by counsel for Resolution Life to "provide an opinion

based on his experience as an insurance regulator about (i) the significance of regulatory scrutiny that GBIG and its affiliates were facing during 2016 and 2017 leading up to GBIG's contract with Resolution Life for the purchase of Resolution Life's insurance company LBL; and (ii) whether the senior executives of GBIG used their reasonable best efforts in their submission of the Form 'A' application for the acquisition of LBL." In addition to listing his experience and credentials, Serio details his opinion and the bases for his conclusions.

Potter indicates in his report (NYSCEF Doc. No. 347) that he is a corporate partner, co-chair of the Financial Institutions Group and a member of the Mergers & Acquisitions and Capital Markets Groups at Debevoise & Plimpton LLP, a law firm with market-leading practices across the globe. He explains that he has been asked by counsel for Resolution Life "to evaluate the Expert Report of Charles R. Lundelius, Jr., CPA/ABV/CFF, submitted September 25, 2020 ... [and to provide his opinions] and respond to certain assertions made by Mr. Lundelius" Like the other experts, Potter sets forth the bases for his opinions in his detailed report.

It is undisputed that all three experts are highly credentialed. Most of the objections proffered go more to the weight of the testimony, rather than admissibility, an objection that can be addressed by allowing thorough cross-examination via Microsoft Teams, which this Court has already indicated it will do. To the extent any of the testimony to be offered by the experts is not relevant or is admissible in whole or in part, this Court can make appropriate rulings during trial. The Court declines on this motion, without the benefit of trial testimony, to examine the three lengthy reports line by line and parse what is and is not relevant, reliable and admissible. Since this matter is scheduled for a bench trial, rather than a jury trial, the parties run no risk that any inadmissible testimony will improperly be heard and will unduly influence the trier of fact.

Accordingly, plaintiffs' motion to exclude the reports and testimony of defendants' three experts is denied without prejudice in accordance with the terms of this decision.

Dated: March 9, 2021

Barry R. Ostrager
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE