

SL Globetrotter, L.P. v Suvretta Capital Mgt., LLC
2021 NY Slip Op 32788(U)
December 13, 2021
Supreme Court, New York County
Docket Number: Index No. 652769/2020
Judge: Margaret A. Chan
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET CHAN **PART** **49M**

Justice

-----X
SL GLOBETROTTER, L.P., GLOBAL BLUE GROUP
HOLDING AG,

Plaintiffs,

INDEX NO. 652769/2020

MOTION DATE 06/11/2021

MOTION SEQ. NO. 004

- v -

SUVRETTA CAPITAL MANAGEMENT, LLC, TOMS
CAPITAL INVESTMENT MANAGEMENT LP,

Defendants.

**DECISION + ORDER ON
MOTION**

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 004) 64, 65, 66, 67, 69, 70, 71

were read on this motion to/for

DISMISS

Plaintiffs-counterclaim defendants (plaintiffs) move pursuant to CPLR 3211(a)(2), (6), and (7) to dismiss the counterclaim of defendants-counterclaim plaintiff (defendants) for declaratory relief. Defendants oppose the motion.

Background¹

This action arises out of a merger transaction between non-party Global Blue Group AG (Global Group), a provider of tax-free shopping and currency processing services which was controlled by plaintiff SL Globetrotter, L.P. (Globetrotter) and non-party Far Point Acquisition Company (FPAC), a special purpose acquisition company (NYSCEF # 1-Complaint, ¶ 1; NYSCEF 61-Answer and Counterclaims, at 16, ¶ 1). The transaction, which was consummated through a Merger Agreement dated January 20, 2020, resulted in the formation of a new public company, co-plaintiff Global Blue Group Holding AG (New Global Blue) (NYSCEF # 1-Complaint, ¶ 1; NYSCEF 61-Answer and Counterclaim, at 16, ¶ 1).

Defendants are hedge funds, which, along with other private investors, were solicited by Global Blue and FPAC to participate in the public entity transaction in connection with the proposed merger (NYSCEF # 61-Counterclaim, ¶ 14). The

¹ Except where otherwise noted, the following facts are based on the allegations in the Answer and Counterclaims, which for the purposes of the motion to dismiss for failure to state a claim must be accepted as true, and the documentary evidence submitted on this motion.

solicitations included an investor presentation containing both historical financial information and two years of bullish financial projections, according to which Global Blue was expected to continue experiencing “[s]trong macro driven historical growth.” (*id.* ¶¶ 2-3, 15,16).

Based on the strength of the financial projections described at the investor presentation, defendants Suvretta Capital Management, LLC (Suvretta) and Toms Capital Investment Management LP (TCIM) entered into Subscription Agreements dated January 16, 2020, with Global Blue and FPAC, under which, subject to certain conditions precedent, Suvretta agreed to purchase three million New Global Blue shares for \$10 per share, while TCIM agreed to purchase two million New Global Blue shares for the same share price (*id.* ¶¶ 2, 20; NYSCEF #s 15, 16 – Subscription Agreements). The merger was to close by August 31, 2020, subject to certain extensions (NYSCEF # 15, ¶ 8; # 16, ¶ 8) .

In the months after the Subscription Agreements were signed and before the closing, the COVID-19 pandemic and corresponding travel restrictions had devastating effects on the revenues of Global Blue (NYSCEF # 61 – Counterclaim, ¶ 27). On June 19, 2020, FPAC filed a revised preliminary proxy statement with the SEC (June 2020 preliminary proxy statement) that removed entirely the financial projections from the investor presentation (*id.*). By letter dated June 22, 2020, defendants informed plaintiffs that they would not be funding the transaction citing, *inter alia*, the June 2020 preliminary proxy statement, which defendants asserted was “materially inconsistent with the information included in the Investment Presentation” (NYSCEF # 19, at 3). Defendants thus asserted that a closing condition in the Subscription Agreements that “all representations and warranties of the Company ... contained in the Agreement shall be true and correct in all material respects at and as of the Closing Date” could not be met (*id.*, at 4).

On June 26, 2020, plaintiffs filed this action asserting claims against each of the defendants for declaratory judgment and breach of contract (NYSCEF #1, ¶¶ 35-62). Defendants moved to dismiss the complaint on various grounds, including that a condition to their performance was not satisfied because of material differences between the financial information and projections in the investor presentation and the June 2020 preliminary proxy statement (NYSCEF # 7 – Def. MOL [Motion Seq. 002] at 16-23). As for the declaratory judgment claims, defendants argued that they should be dismissed as duplicative of plaintiffs’ breach of contract claims (*id.*, at 24). Plaintiffs agreed to withdraw their claims for declaratory relief (NYSCEF # 46, at 24).

By Decision and Order dated February 26, 2021, Justice O. Peter Sherwood² denied the motion to dismiss finding, *inter alia*, that the documentary evidence was

² Justice Sherwood is retired.

insufficient to show that multiple condition precedents were not met, and that in view of the totality of disclaimers and warranties in the Subscription Agreements, “it would be improper to now allow defendants to disclaim their contractual obligations” (NYSCEF # 58, at 13-15).

Defendants interposed their answer and asserted a single counterclaim for a declaratory judgment on March 19, 2021 (NYSCEF # 61). Defendants’ third affirmative defense and counterclaim both allege that defendants “were not obligated to perform under the Subscription Agreements because the conditions precedent were not satisfied, and therefore [defendants] did not breach the Subscription Agreements” (*id.*, at 30).

On November 9, 2021, the Appellate Division, First Department affirmed Justice Sherwood’s denial of the defendants’ motion to dismiss plaintiffs’ breach of contract claims (NYSCEF # 122).

Plaintiffs’ Motion to Dismiss the Counterclaim

Plaintiffs move to dismiss the counterclaim for a declaratory judgment, arguing that it serves “no practical and useful purpose” and therefore is nonjusticiable and fails to state a claim (NYSCEF # 65 – Pl. MOL at 5-7). In particular, plaintiffs assert that the counterclaim raises no issues that will not be resolved by the resolution of the breach of contract claim, or addressed by the third affirmative defense (*id.*, at 6). Thus, plaintiffs argue that counterclaim’s sole purpose is to achieve a strategic litigation advantage in an effort to ignore the court’s denial of the motion to dismiss their breach of contract claims (*id.*).

Defendants counter that under the liberal pleading standards, they should be permitted to pursue their counterclaim, which would not result in any prejudice or surprise to plaintiffs (NYSCEF # 70 – Def. MOL at 10-12). Moreover, they argue that the counterclaim is not duplicative of the breach of contract claim, and, even if it were, the counterclaim presents a real and ripe controversy and is thus justiciable (*id.*, at 12-18).

Under CPLR 3211 (a)(2), a claim must be dismissed if the court lacks subject matter jurisdiction, which “refers to the objections that are fundamental to the power of adjudication of the court,” including the justiciability of a claim (*Garcia v Govt. Empls. Ins. Co.*, 130 AD3d 870, 871 [2d Dept 2015][internal citations omitted]; *Police Benev. Assn. of N.Y. State Troopers, Inc. v N.Y. State Div. of State Police*, 40 AD3d 1350, 1353-1354 [3d Dept 2007], *appeal dismissed* 9 NY3d 942 [2007]). And CPLR 3211(a)(6) provides for dismissal of a counterclaim that “may not properly be interposed in an action.” A motion to dismiss on this ground requires the court to “accord [counterclaim-plaintiffs] the benefit of every possible favorable inference,” and “determine only whether the facts as alleged fit into any cognizable legal

theory” (*Siegmund Strauss, Inc. v E. 149th Realty Corp.*, 104 AD3d 401, 403 [1st Dept 2013]; CPLR 3211 (a)(7)).

Under these standards, the court finds that plaintiffs are entitled to dismissal of the counterclaim. “The general purpose of a declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations,” and thus “requires justiciable controversy” (*Touro College v Novus Univ. Corp.*, 146 AD3d 679, 679-680 [1st Dept 2017][internal citations and quotations omitted]). In this connection, it has been held that “[a] cause of action for a declaratory judgment is unnecessary and inappropriate when [a party] has an adequate, alternative remedy...” (*Apple Records, Inc. v Capital Records, Inc.*, 137 AD2d 50, 54 [1st Dept 1988]; *see also Wilson v Dantas*, 128 AD3d 176 [1st Dept 2015], *aff’d* 29 NY3d 1051 [2017][same]); *see also Worldwide Home Prods., Inc. v Bed Bath & Beyond, Inc.*, 2013 WL 247839, at *2 [SD NY Jan. 22, 2013] [striking defendants’ counterclaim for declaratory of non-infringement because it was “nothing more than its First Affirmative Defense repackaged and is a mirror image of [p]laintiff’s claim [and] ... dismissal of plaintiff’s infringement action would necessarily resolve it”).

Here, the declaratory judgment counterclaim serves no purpose as it is the mirror image of plaintiffs’ breach of contract claims and duplicates defendants’ third affirmative defense. Specifically, while plaintiffs allege that defendants breached the Subscription Agreements, the counterclaim alleges that defendants did not breach the agreements. Moreover, defendants allege in their third affirmative defense that the agreements were not breached. And although New York case law on the subject generally involves the dismissal of a plaintiff’s claim for a declaratory judgment as duplicative and/or unnecessary, counterclaims for a declaratory judgment are also subject to dismissal on these grounds (*see e.g., JMF Consulting Group II, Inc. v Beverage Mktg. USA, Inc.*, 97 AD3d 540, 542 [1st Dept], *lv denied* 19 NY3d 816 [2012] [dismissing counterclaim for declaratory judgment as “inappropriate” based on the availability of “adequate and alternate remedies”] [internal citations omitted]).

Finally, unlike the counterclaims for declaratory relief which are found to be actionable in the cases relied upon by defendants, the counterclaim here does not involve an issue or seek additional relief not raised in connection with the main action (*compare Am. Home Assur. Co. v Port Authority of NY and New Jersey*, 123 AD3d 633 [1st Dept 2014] [permitting insured to recover on counterclaim for declaratory judgment, which sought attorneys’ fees from its insured, where the counterclaim was mirror image of plaintiff insurer’s counterclaim]).

Accordingly, the counterclaim for declaratory judgment must be dismissed.

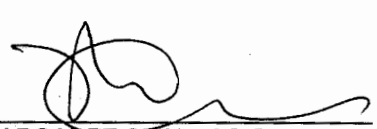
Conclusion

In view of the above, it is

ORDERED that motion by plaintiffs-counterclaim defendants, SL Globetrotter, L.P. and Global Blue Group Holding AG to dismiss the counterclaim for a declaratory judgment asserted by defendants-counterclaim plaintiffs Suvretta Capital Management, LLC and Toms Capital Investment Management LP is granted; and it is further

ORDERED that counsel for plaintiffs-counterclaim defendants, SL Globetrotter, L.P. and Global Blue Group Holding AG shall serve a copy of this order with notice of entry on the Clerk of the Court, who is directed to dismiss the counterclaim; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on the Courthouse and County Clerks Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

<u>12/13/2021</u>					
DATE				MARGARET CHAN, J.S.C.	
CHECK ONE:	☐	CASE DISPOSED	☒	NON-FINAL DISPOSITION	
	☒	GRANTED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER	☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐	FIDUCIARY APPOINTMENT	☐ REFERENCE