

Otoka Energy, LLC v State St. Bank & Trust Co.

2022 NY Slip Op 31656(U)

May 18, 2022

Supreme Court, New York County

Docket Number: Index No. 653291/2018

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

-----X OTOKA ENERGY, LLC and AMADOR BIOMASS, LLC, Plaintiffs/Counterclaim Defendants, - v - STATE STREET BANK AND TRUST COMPANY and ANTRIM CORPORATION, Defendants/Counterclaim Plaintiffs. -----X	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">INDEX NO.</td> <td>653291/2018</td> </tr> <tr> <td>MOTION DATE</td> <td>_____</td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td>011</td> </tr> </table>	INDEX NO.	653291/2018	MOTION DATE	_____	MOTION SEQ. NO.	011
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DECISION & ORDER ON MOTION							

HON. BARRY R. OSTRAGER

By Interim Decision and Order dated May 6, 2022 (NYSCEF Doc. No. 291), the Court determined five of the eight issues raised in the omnibus motion *in limine* by Otoka Energy, LLC *et al* (“the Otoka Parties” or “Otoka”) in advance of the two-week jury trial scheduled to commence on December 5, 2021 in this action and the related action. The Court reserved for oral argument the three issues designated in Otoka’s moving memorandum by Roman numerals I, III, and VIII relating, respectively, to damages, veil piercing, and the entire fairness doctrine. Extended oral argument was conducted with respect to those issues on May 18, 2022 via Microsoft Teams with all counsel participating. In accordance with the May 18, 2022 transcript of proceedings, those issues are determined as follows.

With respect to issue I, Otoka’s motion to exclude evidence and arguments related to damages sought by the State Street Defendants that are allegedly barred by the parties’ Agreements, the Court agrees that the contractual provisions govern. Also relevant is the decision by the Court of Appeals in *Biotronik v. Conor Medsystems*, 22 N.Y.3d 799 (2014), which defines “general damages” as including “the natural and probable consequence of the

breach of a contract” and “money that the breaching party agreed to pay under the contract,” as opposed to consequential, or special, damages, which do not "directly flow from the breach.” It appears that, for present purposes, State Street’s claims for contract damages based on the 9% internal rate of return in the parties’ agreements may be permissible, and the Court will make appropriate rulings during the course of the trial and before the jury is charged. The Court will be required to review many agreements among the parties to make a final decision.

With respect to issue III, Otoka’s motion to exclude evidence and arguments regarding State Street’s veil piercing claim is granted in part. The Court on October 22, 2019, granted the motion by defendant Robert Broin to dismiss all claims against him individually and as Trustee for the Robert Broin Living Trust based on a lack of personal jurisdiction (see Index No. 652967/19, NYSCEF Doc. No. 33). It appears that neither an appeal from that decision nor a motion to reargue was filed challenging that decision. What is more, Antrim Corporation and State Street Bank did not oppose the motion *in limine* by the Otoka Parties to remove Broin and the Broin Trust from the caption, and the Court granted that aspect of the motion in the above-referenced Interim Decision. Thus, there is no basis for the Court to reconsider its dismissal ruling on jurisdictional grounds at this stage of the litigation.

Inasmuch as Broin is no longer a party to this action, State Street is precluded from seeking a money judgment against Broin at trial, and the jury may not be asked to determine liability or damages as against Broin individually based on an alter ego theory of liability or any other theory. However, evidence of conduct by Broin that binds Otoka or that reflects on the credibility of Broin as a witness may be adduced at trial, so long as that evidence does not cross the line that bars State Street from requesting or suggesting individual liability on the part of Broin. The Court will listen carefully to the questions posed by counsel at trial and will rule on

objections to testimony and evidence on a case-by-case basis. The Court recognizes that Broin's testimony may have collateral consequences in other potential proceedings.

With respect to Otoka's motion to exclude evidence related to the entire fairness doctrine (Issue VIII), the motion is granted to the extent that State Street will be precluded from offering any evidence that contradicts the terms of the parties' contracts. In its July 10, 2019 Decision and Order determining Otoka's motion to dismiss counterclaims (NYSCEF Doc. No. 64), the Court dismissed the counterclaim sounding in breach of fiduciary duty, finding that the claim "was subsumed by Antrim's counterclaims alleging breach of the Amador Operating Agreement and the Pledge Agreement." A similar ruling was made with respect to the counterclaim for breach of the implied covenant of good faith and fair dealing. So evidence related to claims for both breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing can be adduced at trial, but in the context of the operative contracts and in a manner consistent with the contracts' terms, as the Supreme Court of Delaware did in *Gotham Partners, L.P v Hallwood Realty Partners, L.P.*, 817 A2d 160 (2002).

For example, in this case, Section 6.2 of the June 28, 2012 Amended and Restated Limited Liability Company Agreement of Amador Biomass, LLC, by and between Antrim Corporation, Otoka Management LLC, and Otoka Energy Corporation (NYSCEF Doc. No. 10), extensively describes the "Standard of Care" as requiring, in addition to compliance with the contracts: (A) the "exercise [of] such care, skill and diligence as a reasonably prudent business company of established reputation engaged in the biomass power generation business would exercise in the conduct of its business and for the advancement or protection of its own interests and (B) perform[ance] of such duties in accordance with the Prudent Operator Standard [as defined in the Agreement] and all Laws." The Standard of Care provision further states that the

Manager “shall act in good faith and in a manner reasonably believed to be in the best interests of the Company.” This contractual standard is unambiguous, and it is the standard that governs in this case.

The next appearance scheduled in this case is the settlement conference scheduled for May 26, 2022 at 10:00 a.m. As counsel were previously advised, any settlement statements and information needed for the conference shall be provided by May 23, 2022.

Dated: May 18, 2022


BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: