

Beltran Tech., Inc. v Citibank, N.A.

2023 NY Slip Op 32613(U)

July 20, 2023

Supreme Court, Kings County

Docket Number: Index No. 521893/2022

Judge: Carolyn E. Wade

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS HON. CAROLYN E. WADE, J.S.C**

BELTRAN TECHNOLOGIES, INC.,

Plaintiff,

v.

CITIBANK, N.A., ING BANK, N.V., and
JOHN DOE SCAMMER,

Defendant.

Index No.: 521893/2022

DECISION AND ORDER

Motion Seq. No. 2

Defendant Citibank, N.A.’s (“Citibank”) Motion to Dismiss the Amended Complaint, pursuant to CPLR § 3211(a)(7), is decided as follows:

Plaintiff Beltran Technologies, Inc. (“Plaintiff”), by its Amended Complaint, states that it requested that Citibank wire \$148,065.00 to its Turkish fabricator. Citibank allegedly informed Plaintiff that the wire was being held as suspicious pending an investigation. Notwithstanding, Citibank subsequently processed the wire transfer, and deposited the funds into a fraudulent account at co-defendant ING Bank, N.V. (“ING”), which was opened by an individual that impersonated the fabricator. Plaintiff pleads four causes of action against Citibank: 1) commercial bad faith, 2) violation of UCC Article 4-A, 3) deceptive trade practices, and 4) breach of contract.

In support of its motion, Citibank argues, *inter alia*, that Plaintiff’s UCC § 4-A-207 cause of action fails because the User Agreement exempted it from liability. To wit, Plaintiff was notified via the User Agreement that the bank would rely on the account number that it provided to complete the wire transfer. Citibank also contends that Plaintiff’s claim of deceptive trade practices is unavailing because the bank complied with the UCC; and that the commercial bad

faith claim fails because it is preempted by § 4-A. It adds that the breach of contract claim lacks merit because Plaintiff does not produce a contract or allege that a specific provision of a contract with Citibank was breached.

Plaintiff, in opposition, contends that since Citibank knowingly processed a suspicious wire transfer, neither the UCC provisions nor the bank's User Agreement, can free it from liability. Plaintiff maintains that Citibank does not identify a case, where a bank is allowed to process a wire with knowledge of a discrepancy, without being held liable. Plaintiff asserts that since Citibank knowingly processed the suspicious transaction, it has stated a claim for commercial bad faith. Plaintiff further argues that it has a viable deceptive trade practices claim under General Business Law § 349 because the transaction at issue constitutes consumer-oriented conduct, which falls within the ambit of the statute.

With respect to its breach of contract claim, Plaintiff maintains that Citibank had a duty to use ordinary care in handling the wire transfer, as both banks suspected that the transaction was fraudulent. Thus, Plaintiff asserts that its damages are proximately caused by the bank's transmittal of the funds to ING. Plaintiff pleads in its Amended Complaint that it will provide additional information about Citibank's contractual obligations when the bank provides a copy of the account agreement.

When deciding a motion to dismiss, "the court must determine whether the pleader has a cause of action, not whether it has been properly plead [sic]. A court must accord the plaintiff 'the benefit of every possible favorable inference and determine only whether the Facts alleged fit within any cognizable legal theory.' If from the Facts alleged in the complaint and the inferences which can be drawn from the Facts the court determines that the pleader has a cognizable cause of

action, the motion be denied" (*Herndon-Brown v. Riverdale Country Sch. Inc.*, 2007 NY Misc LEXIS 3042, 9 [Sup Ct, Bronx Cty 2007] [citations omitted]).

Section (3) of UCC § 4-A-207 (Misdescription of Beneficiary) provides as follows:

(3) If (i) a payment order described in subsection (2) is accepted, (ii) the originator's [Plaintiff] payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank [ING] pays the person identified by number as permitted by paragraph (a) of subsection (2), the following rules apply:

(a) If the originator is a bank, the originator is obliged to pay its order.

(b) If the originator [Plaintiff] is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator [Plaintiff] is not obliged to pay its order unless the originator's bank [Citibank] proves that the originator [Plaintiff], before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank [ING] on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence [emphasis added]. The originator's bank [Citibank] satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates [emphasis added].

In the instant case, according to the Plaintiff the benefit of every possible favorable inference, the Court finds that it has stated a cause of action, which alleges Citibank's violation of UCC Article 4-A. Moreover, no evidence has been submitted which reflects that Plaintiff "signed a

writing to which the notice relates,” as set forth in the above UCC provision. Future discovery can potentially expound on this issue.

To successfully assert a claim under General Business Law § 349 (deceptive business practices), “a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct that it is (2) materially misleading and that (3) plaintiff suffered injury as a result of the allegedly deceptive act or practice” (*Koch v. Acker, Merrall & Condit Co.*, 18 NY3d 940, 941 [2012]). “A cause of action to recover damage for a violation of General Business Law § 349 must ‘identify consumer-oriented misconduct which is deceptive and materially misleading to a reasonable consumer, and which causes actual damages’” (*Sutherland v Fitzpatrick*, 2020 NY Slip Op 30029[U], 12 [Sup Ct, Kings Cty 2020] [citations omitted]).

In the instant case, an examination of the Amended Complaint discloses that Plaintiff has not pled the above requisite elements necessary to state a claim under General Business Law § 349 (deceptive business/trade practices); thus, this cause of action is hereby dismissed against Citibank.

“A cause of action for commercial bad faith against a bank requires allegations of scheme or acts of wrongdoing, together with allegations of the bank’s actual knowledge of the scheme or wrongdoing that amounts to bad faith or allegations of complicity by bank principals in alleged confederation with the wrongdoers” (*Peck v. Chase Manhattan Bank, N.A.*, 190 AD2d 547, 510-511 [1st Dept 1993]).

Here, assuming the truth of the facts asserted in the Amended Complaint, this Court finds that Plaintiff stated a cause of action for commercial bad faith sufficient to withstand a motion to dismiss pursuant to CPLR § 3211(a)(7).

Lastly, a cause of action sounding in breach of contract consists of the following elements: “(1) the existence of a contract, (2) the plaintiff’s performance pursuant to the contract, (3) the

defendant’s breach of its contractual obligations, and (4) damages resulting from the breach” (*Junger v. John V. Dinan Assoc., Inc.*, 164 AD3d 1428 [2d Dept 2018]).

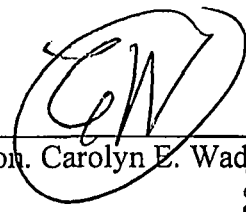
In the instant case, this Court finds that Plaintiff has pled the requisite elements to maintain a breach of contract claim. In paragraph 259 of the Amended Complaint, Plaintiff noted that it “will provide additional information about Citibank’s contractual obligation when Citibank provides a copy of the agreement.” Plaintiff also seeks to obtain other pertinent agreements during discovery.

Accordingly, based upon the above, Defendant’s Motion to Dismiss the Amended Complaint is **granted to the extent** that the General Business Law § 349 (deceptive business/trade practices) claim is dismissed against Citibank.

The commercial bad faith, violation of UCC Article 4-A, and breach of contract claims remain viable causes of action and survive dismissal.

This constitutes the Decision and Order of the Court.

Dated: July 20, 2023
Brooklyn, New York


Hon. Carolyn E. Wade JSC
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