Kataman Metals, LLC v Macquarie Futures USA, LLC

2023 NY Slip Op 33203(U)

September 14, 2023

Supreme Court, New York County

Docket Number: Index No. 651882/2023

Judge: Barry R. Ostrager

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

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

Justice

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KATAMAN METALS, LLC,

Plaintiff,

- v -

MACQUARIE FUTURES USA, LLC,

Defendant.

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INDEX NO.	651882/2023
MOTION DATE	
MOTION SEQ. NO.	004

DECISION & ORDER ON MOTION

HON. BARRY R. OSTRAGER

The pre-answer motion by Macquarie Futures USA, LLC ("Macquarie") to dismiss the complaint filed by Kataman Metals, LLC ("Kataman") is granted in all respects. Macquarie is a Futures Commission Merchant ("FCM") which cleared trades for Kataman on regulated commodities exchanges. Kataman is a company engaged in the business of buying, selling, and trading commodities. Kataman buys and sells Put and Call options in the futures market. During the relevant period referenced in the complaint, Kataman was a customer of Macquarie whose relationship with Macquarie was governed by a Customer Agreement, dated February 14, 2012 which provides in relevant part:

> If at any time (a) the Account does not contain the margin required by [Macquarie]…(d) Customer defaults in its obligations to [Macquarie] under any agreement or instrument, or (e) [Macquarie] in its reasonable discretion considers it necessary for its protection, [Macquarie] may in its sole discretion…terminate, liquidate and/or accelerate any and all Contracts, close out the Account, or any open positions in whole or in part, cancel any or all pending orders, terminate Customer's right to trade in the Account, or take any other action it deems necessary to protect itself, and Customer will be liable for any deficiency in the Account that may result from such actions.

NYSCEF Doc. No. 045 at 21. The Customer Agreement also provides that it "may only be amended with the prior written consent of both parties." *Id*. at 20.

Customers who engage in exchange traded commodity futures and options trading, such as Kataman, do not interact directly with the commodity exchange or with counterparties. Instead, the FCM, here Macquarie, acts on behalf of the customer, purchasing, selling and/or clearing positions in accordance with the trading instructions provided by the customer. Thus, the FCM is the counterparty to the options or futures traded on the exchange on behalf of its customer, such that the FCM is directly at risk for its customer's trades and liable to the exchange in the event the customer is unable to meet its obligations. In other words, in its capacity as an FCM, Macquarie guarantees its customer's trades. Consequently, the Customer Agreement provides Macquarie with certain rights to manage this risk and imposes certain obligations on Macquarie's customers to protect Macquarie from risks in the volatile futures market.

One obligation imposed upon customers in the standard Customer Agreement that Kataman signed was a margin requirement which required Kataman to maintain a certain level of funds in its account to insure available capital. The "margin requirements in futures markets are not designed to protect investors… from adverse prices movements." *ADM Inv. Serv., Inc. v. Collins*, 515 F3d 753, 756 (7th Cir. 2008). Rather, "[t]he purpose of the margin call rules is to protect brokers from the risks associated with insufficiently secured accounts and to prevent customers from carrying vast exposures in their accounts without adequate capital to cover their positions." *Morgan Stanley & Co. Inc. v. Peak Ridge Master SPC Ltd.*, 930 F. Supp 2d 532, 539 (S.D.N.Y. 2013), citing *Sherman v Sokolof*, 570 F. Supp. 1266, 1270 n.14 (S.D.N.Y. 1983).

The Customer Agreement expressly provides in Section 4 entitled "Margins" that Kataman "agrees at all times to deposit and maintain such margins and premium payments with

[Macquarie] as [Macquarie] may from time to time request (orally or in writing)." NYSCEF Doc. No. 045 at 20.

It is undisputed that in late April 2021 Kataman began trading California Carbon Allowance ("CCA") options through Macquarie on the Intercontinental Commodities Exchange. Complaint at 10 (NYSCEF Doc. No. 002). According to Kataman, it sought to implement a leveraged trading strategy that bought and sold Call and Put options in CCA. Complaint at 10. From June 15 to June 16 Kataman's positions declined from $1,808,500 to $444,000, and Kataman's Net Option Value swung from a credit of $447,000 to a debit of $852,500. At Kataman's request, Macquarie did not exercise its rights under the Customer Agreement and instead accommodated Kataman *via* an email that stated:

> Follow up discussion
> David Coates David.Coates@macquarie.com
> Thu 6/17/2021 8:44 AM
>
> To: Trevor Hansen thansen@katamanmetals.com; Bradley Clark <bclark@katamanmetals.com
> Cc: Richard Meade Richard.Meade@macquarie.com
>
> Trevor/Brad,
>
> Following our discussions yesterday, I have received approval from Global Management as follow:
>
> - Kataman buys back the position in Puts;
> - Once the Puts have been closed out Macquarie can reduce the margin multiplier;
> - The remaining Call positions can be held until expiry in December
>
> Today's margin call is driven by a combination of a reduction in the valuation (Profit and Loss) in the overall positions, from $1,808,500 on 6/15 to $444,000 on 6/16 and the Net Option Value moving from CR $447,000 to DR $852,500. *When the Puts have been closed, and assuming the market remains relatively static, the reduction in the margin multiplier will result in an excess in Kataman's account which will be available to call back.*
>
> Regards,
> David Coates

Senior Vice President | Futures | Commodities & Global Markets | Macquarie Futures USA LLC
1 North Wacker Drive, Suite 2900, Chicago IL 60606, USA
Tel: 1 312-730-9771 | Cell: 1 312-307-8475 | ICE Chat: dcoates | Email: david.coates@macquarie.com

NYSCEF Doc. No. 005 (emphasis added).

By September 1, 2021, Macquarie determined that its exposure resulting from Kataman's trading positions was too great (*i.e.*, the market had not remained static), and Macquarie notified Kataman that Kataman had to transfer all of its options positions to another FCM or close them out by the end of the month. Complaint at 6-7. Kataman was unable to do so and Macquarie therefore required Kataman to close out all of its positions. Complaint at 9.

This action ultimately followed after a complaint filed in federal court dismissed a federal claim and the federal court declined to exercise ancillary jurisdiction over the claims asserted in the complaint filed in this Court. *See Kataman Metals, LLC v. Macquarie Futures USA, LLC.*, 22-cv-05272-DLC, 2023 WL 2775768 (S.D.N.Y. Apr. 4, 2023). The relatively narrow issue presented by this pre-answer motion to dismiss is whether the June 17, 2021 email modifies the terms of the Customer Agreement or, in the alternative, the June 17, 2021 email is an entirely new stand-alone contract which was breached because Macquarie refused to permit "Kataman to hold its Call positions through expiry, Complaint at 11, and refused to "reduce the three times (3) multiplier," Complaint at 13.

This Court finds as a matter of law that the June 17, 2021 email neither superseded the Customer Agreement nor constituted a stand-alone contract because the June 17, 2021 email was simply an accommodation. There is no statement in the June 17, 2021 email that it is intended to be a contract and it cannot be a contract because it lacks consideration -- the fundamental essential term of a contract. It is a basic principle that "to be valid, a contract must be supported

by consideration." *Genger v. Genger*, 76 F.Supp. 3d 488, 498 (S.D.N.Y. 2015). Similarly, where an enforceable contract such as the Customer Agreement already existed, any "superseding agreement would necessarily have to be supported by sufficient consideration." *Fed. Deposit Ins. Corp. v. Hyer*, 66 A.D.2d 521, 528, (2d Dep't 1979); *see also Tierney v. Capricorn Invs., L.P.*, 189 A.D.2d 629, 631 (1st Dep't 1993).

Essentially, Kataman contends that by sending the June 17, 2021 email Macquarie entered into a "separate and binding" contract, relinquished its existing rights and protections under the Customer Agreement to its substantial detriment, and received in return the right to retain a volatile account, albeit with the disclaimer that the accommodation would remain in place assuming the market remained static. The Complaint alleges, at most, that the consideration for Macquarie was Kataman's "agreement" to close and/or its "closing or liquidating its Put positions." Complaint at 7. However, Kataman already had agreed in the Customer Agreement that its positions, and its entire account, could be closed at Macquarie's direction and in Macquarie's sole discretion. *See* Complaint., Ex. A at 17 (NYSCEF Doc. No. 003) (allowing Macquarie to "at any time" and "in its sole discretion … terminate, liquidate and/or accelerate any and all Contracts, close out the Account or any open positions of Customer in whole or in part … or take any other action it deems necessary to protect itself."); *see also Kataman Metals, LLC v. Macquarie Futures USA, LLC, supra* ("Macquarie was already empowered under the Customer Agreement to . . .'close out the Account or any open positions of [Kataman] in whole or in part' in Macquarie's 'sole discretion.'").

Kataman fails to identify any valid consideration provided to Macquarie that would support its claim, and none is set forth in the June 17, 2021 email. "[N]either a promise to do that which the promisor is already bound to do, nor the performance of an existing legal

obligation constitutes valid consideration." *Tierney v. Capricorn Investor, L.P.*, 189 A.D.2d 629, 631; *see also Zheng v. City of New York*, 19 N.Y.3d 556, 570 (2012); *Leavitt Enter. Inc. v. Two Fulton Sq.*, LLC, 181 A.D.3d 662, 663 (2d Dep't 2020); *James A. Haggerty Lumber & Mill Work, Inc. v. Thompson Starrett Const. Co.*, 22 A.D.2d 509, 510 (1st Dep't 1965).

Thus, Kataman did not provide any valid consideration for a new contract that would supersede or modify the Customer Agreement. Where, as here, the only alleged consideration is "a promise to do that which the promisor is already bound to do" under an existing contract, the claim should be dismissed. *See Tierney v. Capricorn Invs., L.P.*, 189 A.D.2d at 631. All of Kataman's quasi-contract claims are subsumed in the contract claim, and there is no basis for any estoppel or unjust enrichment claim.

Accordingly, the Clerk is directed to enter judgment in favor of defendant Macquarie Futures USA, LLC dismissing this action with prejudice. The October 2, 2023 appearance is canceled.

Dated: September 14, 2023

BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE