

Manhattan Telecom. Corp. v Riccelli Enters., Inc.

2024 NY Slip Op 33734(U)

October 17, 2024

Supreme Court, New York County

Docket Number: Index No. 650943/2024

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

MANHATTAN TELECOMMUNICATIONS CORPORATION,

Plaintiff,

- v -

RICCELLI ENTERPRISES, INC, RICHARD J. RICCELLI

Defendant.

-----X

INDEX NO. 650943/2024

MOTION DATE 06/17/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 35, 39

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, plaintiff’s motion to dismiss defendants’ counterclaims is denied.

Background

This case arises out of a dispute over telecommunications services provided to a trucking company. Defendant Riccelli Enterprises, Inc. (“Riccelli Enterprises”, together with defendant Richard Riccelli “Defendants”) is a New York corporation in the trucking and hauling business. In late 2021, Defendants received a document promising certain savings (the “Savings Plan”), provided to them by plaintiff Manhattan Telecommunications Corporation a/k/a MetTel (the “Plaintiff”). Defendants allege that this Savings Plan was intentionally misleading with the purpose of inducing Defendants to leave their current contract with Verizon Wireless and enter into a new contract with Plaintiff. Defendant did sign a contract with Plaintiff in December 2021 (the “Contract”). Over the following months, Defendants contend that they were charged at rates higher than those in the Savings Plan and they allege that Plaintiff breached the terms of the

Contract. For their part, Plaintiff alleges that Defendants refused to pay certain agreed-upon charges and that the current unpaid balance owed Plaintiff is \$42,822.74.

Plaintiff filed their complaint requesting said unpaid balance plus interest, costs and other expenses on February 22, 2024. Defendants' timely answer contained three counterclaims. Plaintiff brought the present motion to dismiss those counterclaims on the grounds that both the terms of the Contract and the Primary Jurisdiction Doctrine bars said counterclaims. Defendants oppose on the grounds that the terms of the Contract bar certain counterclaims but not the ones brought in their answer, and that the Primary Jurisdiction Doctrine is inapplicable to the current case.

Standard of Review

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 (1977).

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994).

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, “the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference.” *Avgush v. Town of Yorktown*,

303 A.D.2d 340 (2d Dept. 2003). Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 (2017).

Discussion

Defendants have brought three counterclaims on the basis that Plaintiffs knowingly and intentionally misrepresented its “ability to provide telecommunications services with ‘the best coverage’ at significant cost savings.” The first counterclaim alleges a violation of the General Business Law § 349 (deceptive business practices), the second alleges a violation of General Business Law § 350 (false advertising), and the final alleges a breach of contract. Here, Plaintiff bears the burden of showing, with all facts alleged by Defendants to be true and all favorable inferences drawn in their favor, that these counterclaims should be dismissed. Plaintiff fails to cite to a CPLR provision supporting this motion, but presumably Plaintiff moves pursuant to CPLR § 3211(a)(1) and (7). For the reasons that follow, Plaintiff fails to meet their burden on this motion.

I: The Terms of the Contract Do Not Conclusively Bar the Counterclaims When Considered Under the Motion to Dismiss Standard

As stated above, under CPLR § 3211(a)(1), if Plaintiff can establish that documentary evidence conclusively bars Defendants’ counterclaims then the dismissal burden is met. Plaintiff argues that the terms of the Contract, and particularly Paragraph 6, operate to bar Defendants’ counterclaims. This Liability Limitation provision states, in the relevant portions, that “[u]nless directly caused by the willful misconduct of MetTel, none of MetTel or its affiliates, agents or suppliers shall be liable [. . .] for injury to persons or property, losses (including any loss of

business), damages, claims or expenses of any kind cause [sic] directly or indirectly by the wireless services [. . .] or by any interruption of service.” The provision goes on to state “[i]n no event shall MetTel or its vendors be liable for any consequential, indirect, incidental, reliance exemplary, special or punitive damages including without limitation loss of use, profits, revenue or goodwill not otherwise described above with respect to any claims arising under this agreement.” Finally, the provision states that “[e]ven if other limitations of liability set forth herein fail of their essential purpose”, Plaintiff’s damages liability is limited to certain fees already paid.

Plaintiff interprets this language as a “no-counterclaims provision” that, taken together with Paragraph 4 of the Contract that limits a remedy for service failure to a credit allowance, bars “all counterclaims” other than the return of prepaid fees. Defendants oppose this argument on two grounds. First, they argue that Plaintiff’s reading of the contract is overly narrow. The Contract contemplates liability for “willful misconduct”, they assert, and it allows for some damages if the limitations clause fails of its essential purpose. Secondly, Defendants argue that New York case law allows for the nullification of exculpatory clauses in certain circumstances.

Defendants are correct that on its face, the Contract does not bar “all counterclaims”, but rather limits certain damages in claims arising out of the Contract. Here Defendants allege willful misconduct by Plaintiff, and according to the explicit terms of the Contract, damages caused by willful misconduct are not included in the full scope of the limitation of liability. Defendants allege as part of their counterclaims that Plaintiff impermissibly charged higher rates than allowed and wrongly charged a termination fee. These claims would not, therefore, fall under the limitation of consequential damages or the limitation of losses caused by use of the wireless services that the Contract’s exculpatory clause addresses.

Furthermore, the terms contemplate the limitation provisions failing of their essential purpose. Whether such a provision fails of its essential purpose is “a question of fact for the jury.” *Scott v. Palermo*, 233 A.D.2d 869, 869 (4th Dept. 1996). Additionally, an allegation of “intentional wrongdoing and bad faith” can render an exculpatory provision ineffective when considered on a motion to dismiss. *TIC Holdings, LLC v. HR Software Acquisitions Group, Inc.*, 301 A.D.2d 414, 415 (1st Dept. 2003); *see also Banc. Of Am. Sec. LLC v. Solow Bldg. Co. II, L.L.C.*, 47 A.D.3d 239, 244 (1st Dept. 2007). Here, taking the facts alleged by the Defendants as true and giving them the benefit of all favorable inferences, the Contract cannot be said to conclusively bar the counterclaims.

II: The Primary Jurisdiction Doctrine

As stated above, under CPLR § 3211(a)(7), if Plaintiff can establish that Defendants’ counterclaims do not state a cause of action at law as pled, then the Plaintiff will have met their burden on a motion to dismiss. Plaintiff argues in support of this motion that the Primary Jurisdiction Doctrine bars the counterclaims as a matter of law. The Primary Jurisdiction Doctrine does not preempt a court from hearing a matter but rather is “intended to coordinate the relationship between courts and administrative agencies.” *Missionary Sisters of the Sacred Heart v. Meer*, 131 A.D.2d 393, 395 (1st Dept. 1987). When a court and an administrative agency “have concurrent jurisdiction over a dispute involving issues beyond the conventional experience of judges, the court will stay its hand until the agency has applied its expertise to the salient questions.” *Flacke v. Onondaga Landfill Systems, Inc.*, 69 N.Y.2d 355, 362 (1987).

Plaintiff argues that because Defendants’ counterclaims “are entirely about rates”, under this Doctrine they must “first be referred to the Public Service Committee for its assessment” on the reasonableness of the rates. Defendants counter this argument by contending that they are not

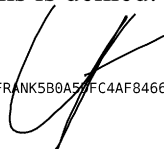
per se disputing the reasonableness of the Plaintiff's rates in a manner that would be best suited for the Public Service Committee, but rather they are alleging "deceptive business practices, intentional misrepresentations, and unabashed breaches of the Agreement."

It is for this Court to "determine whether the [Primary Jurisdiction] doctrine is triggered by issues presented in a lawsuit and, if so, to refer such issues for the agency's resolution." *Staatsburg Water Co. v. Staatsburg Fire Dist.*, 72 N.Y.2d 147, 156 (1988). A court should not reflexively apply the Primary Jurisdiction Doctrine simply because an administrative agency is involved, but rather it should "consider whether the primary objectives of the doctrine – the need for specialized expertise and for uniformity of result – will be helpful." *People v. Port Distrib. Corp.*, 114 A.D.2d 259, 267 (1st Dept. 1986). Here, this Court does not consider the lawsuit to have triggered the Primary Jurisdiction Doctrine. Nor would the primary objectives of the doctrine be served by staying decision on the counterclaims until the NYS Public Service Commission weighs in on the reasonableness of Plaintiff's rates with the benefit of their special expertise.

Defendants do not attack the reasonableness of Plaintiff's rates in and of themselves. Rather, Defendants argue in their counterclaim that the rates charged, among other alleged facts, reflect the Plaintiff's 1) deceptive business practices, 2) false advertising, and 3) breach of contract. All three areas are well within this Court's area of expertise, and to resolve them will require an exploration of fact and law outside the relevant agency's determination on the reasonableness of Plaintiff's rates. Dismissing the counterclaims based on the Primary Jurisdiction Doctrine would therefore be premature and improper.

The Court has considered the Plaintiff's other arguments and finds them unavailing. Accordingly, it is hereby

ADJUDGED that plaintiff's motion to dismiss the counterclaims is denied.


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10/17/2024

 DATE

 LYLE E. FRANK, J.S.C.

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	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>	REFERENCE