

Directional Capital LLC v Butterfly Equity L.P.

2025 NY Slip Op 31353(U)

April 11, 2025

Supreme Court, New York County

Docket Number: Index No. 653741/2022

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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DIRECTIONAL CAPITAL LLC,

Plaintiff,

- v -

BUTTERFLY EQUITY L.P.,

Defendant.

INDEX NO. 653741/2022

MOTION DATE --

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 51, 55, 56

were read on this motion to/for DISMISS.

In motion sequence 003, defendant Butterfly Equity L.P. (Butterfly) moves pursuant to CPLR 3211 (a)(1) and (a)(7) to dismiss plaintiff Directional Capital LLC’s (Directional) amended complaint.

Background

The following facts are drawn from the amended complaint unless otherwise noted and are assumed to be true for purposes of the motion to dismiss.

In July 2021, Directional and nonparty Apollo Global Management LLC (Apollo) entered into Confidentiality Agreement in connection with Directional’s consideration of a transaction to acquire interests in nonparty Quidditch Topco, Inc. (Quidditch) owned by Apollo and/or one of Quidditch’s wholly owned subsidiaries, including Qdoba restaurant chain. (NYSCEF Doc. No. [NYSCEF] 25, Amended Complaint [AC] ¶¶ 20, 25, 28.) In September 2021, Directional and Apollo signed a letter of intent in connection with Directional’s contemplated purchase of Qdoba. (*Id.* ¶ 31.) Nonparty

King Street Capital Management, L.P. (King Street) committed to provide financing. (*Id.* ¶ 34.) Additionally, King Street suggested that Direction speak with Butterfly who ultimately also expressed an interest in financing the Qdoba deal. (*Id.* ¶¶ 37, 43.) Butterfly was joined into Confidentiality Agreement pursuant to October 27, 2021 Joinder Agreement between Directional and Butterfly. (*Id.* ¶¶ 16, 51; NYSCEF 26, Joinder Agreement¹ at 2/12.) The Joinder Agreement includes the following non-circumvention provision:

“for a period of 12 months [i.e. until October 27, 2022], you [i.e. Butterfly], your officers and directors will not contact, deal with or otherwise become involved with any entity or any other entities or parties introduced by or through by [Directional] and [Quidditch and/or one of its wholly-owned subsidiaries], its officers, directors, agents or associates, with respect to the Transaction, without the specific written approval of [Directional]; provided, nothing herein shall restrict contacts or communications made in the ordinary course of business unrelated to the Transaction.” (NYSCEF 26, Joinder Agreement at 2/12.)

In December 2021, Butterfly stated that it will not participate in the Qdoba deal. (NYSCEF 25, AC ¶ 65.) King Street remained committed to fund the Qdoba deal. (*Id.* ¶ 67.) Nonetheless, Apollo put the deal was put on pause in February 2022. (*Id.* ¶¶ 66, 69.) On July 18, 2022, Butterfly informed Directional that Butterfly was buying Qdoba directly. (*Id.* ¶ 103.) Directional alleges that without its knowledge,

“prior to and throughout its negotiations with Butterfly, Butterfly had been in contact with Qdoba, ... Quidditch ... and Apollo regarding its own deal to acquire Qdoba prior to entering the [Joinder] Agreement and, upon information and belief, during the time Directional was still actively working to close the deal to acquire Qdoba.” (*Id.* ¶ 70.)

¹ Although the submitted copy of the Joinder Agreement is only signed on behalf of Butterfly, the parties appear to concede that they are bound by the Joinder Agreement. (See NYSCEF 25, AC ¶ 51; NYSCEF 40, Moving Brief at 18/29.)

Directional alleges that Butterfly executed its own Confidentiality Agreement with Quidditch in November 2019 when Apollo was exploring sale of Qdoba, which agreement was still effective when the Joinder Agreement was entered. (*Id.* ¶¶ 71-75.) Butterfly's Confidentiality Agreement was extended in February 2022 when Directional's contemplated acquisition of Qdoba was put on hold. (*Id.* ¶¶ 94, 96; NYSCEF 28, Extension Agreement at 2/4.)

Directional alleges a single cause of action for breach of the implied covenant of good faith and fair dealing against Butterfly by failing to disclose Butterfly's relationship with Qdoba, Quidditch, and Apollo prior to entering the Joinder Agreement or at any time thereafter. (NYSCEF 25, AC ¶¶ 77, 118-119.) Directional alleges that Butterfly's relationship with Qdoba, Quidditch, and Apollo "was a material fact that Butterfly was required to disclose prior to entering into" the Joinder Agreement and rendered the non-circumvention provision unenforceable. (*Id.* ¶ 121; *see id.* ¶ 122.) Directional allegedly relied on the absence of such relationships. (*Id.* ¶ 123.) Directional alleges that Butterfly's failure to disclose the relationship deprived Directional of the full benefit of the Joinder Agreement (*id.* ¶ 124) and "drastically undermined the contract such that its fundamental objective was subverted." (*Id.* ¶ 126.)

Procedural History

The court dismissed Directional's original complaint that alleged causes of action for breach of the non-circumvention provision and unjust enrichment. (NYSCEF 1, Complaint ¶¶ 57-71.) Specifically, the court concluded that the non-circumvention provision is limited to introductions and that "the documentary evidence shows Butterfly's independent contemplation of the merger and its dealings with" Qdoba,

Quidditch, and King Street years prior to meeting Directional. (NYSCEF 20, Decision and Order at 2 [mot. seq. no. 001].) The unjust enrichment claim was dismissed as duplicative of the breach of contract claim and for failure to plead any facts demonstrating misuse of Directional's confidential materials. (*Id.* at 3.)

Legal Standard

On a CPLR 3211 (a)(1) motion to dismiss, the movant has the “burden of showing that the relied upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim.” (*Fortis Fin. Servs. v Filmat Futures USA*, 290 AD2d 383, 383 [1st Dept 2002] [internal quotation marks and citation omitted].) “A cause of action may be dismissed under CPLR 3211(a)(1) only where the documentary evidence utterly refutes [the] plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” (*Art and Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014] [internal quotation marks and citation omitted].)

On a CPLR 3211 (a)(7) motion to dismiss, the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citation omitted].) “[B]are legal conclusions, as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence” cannot survive a motion to dismiss. (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted].)

Discussion

Butterfly argues that the breach of the implied covenant of good faith and fair dealing claim fails because this claim arises from Butterfly's alleged pre-contract behavior in failing to disclose its relationship with Qdoba, Quidditch, and Apollo.

Butterfly's alleged failure to disclose its relationship with Qdoba, Quidditch, and Apollo prior to entering the Joinder Agreement cannot form basis of the breach of the implied covenant claim. (See *Salescare, Inc. v SEIU 1199 Natl. Benefits Fund*, 222 AD3d 465, 466 [1st Dept 2023] ["Since there was no contract between plaintiffs and [defendants], plaintiffs ... cannot assert a claim for breach of the implied covenant of good faith and fair dealing against those defendants" (citation omitted)], *lv denied* 41 NY3d 909 [2024].) Indeed, the implied covenant does not exist absent a contract. (See *Van Valkenburgh, Nooger & Neville, Inc. v Hayden Pub. Co.*, 30 NY2d 34, 45 [1972] ["There is implicit in all contracts ... an implied covenant of fair dealing and good faith" (citations omitted)], *rearg denied* 30 NY2d 880 [1972].) Directional also alleges, however, that Butterfly breached the implied covenant by not disclosing its relationship with Qdoba, Quidditch, and Apollo at any time after executing the Joinder Agreement. (NYSCEF 25, AC ¶ 77.) Thus, this claim does not fail on the ground that it is based entirely on the pre-contract conduct.

Next, Butterfly argues that Directional seeks to impermissibly add in the Joinder Agreement a substantive and inconsistent obligation to disclose its relationship with Qdoba, Quidditch, and Apollo.

The implied covenant of good faith and fair dealing

"embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. While the duties of good faith and fair dealing do not imply obligations inconsistent with other terms of the contractual relationship, they do encompass

any promises which a reasonable person in the position of the promisee would be justified in understanding were included.” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153 [2002] [internal quotation marks and citations omitted].)

“The implied covenant of good faith and fair dealing is breached when a party to a contract acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement.” (*Prakhin v Fulton Towers Realty Corp.*, 122 AD3d 601, 602 [2d Dept 2014] [internal quotation marks and citation omitted].) However, the “covenant of good faith and fair dealing ... cannot be construed so broadly as effectively to ... create independent contractual rights.” (*Tour Cent. Park Inc. v Thor 38 Park Row LLC*, 223 AD3d 546, 547 [1st Dept 2024] [internal quotation marks and citation omitted].) The covenant “cannot add to, detract from, or alter the terms of the contract itself.” (*PT Kaltim Prima Coal v AES Barbers Point, Inc.*, 180 F Supp 2d 475, 483 [SD NY 2001] [internal quotation marks and citations omitted]; see *Mergers and Acquisition Services, Inc. v Eli Glob., LLC*, 2017 WL 1157132, *13, 2017 US Dist LEXIS 45028, *44 [SD NY, Mar. 27, 2017, No. 1:15-CV-3723-GHW] [plaintiff cannot use implied covenant to “add more protection against tricky termination than it negotiated in its express contract].)

The non-circumvention clause prohibits Butterfly to “contact, deal with or otherwise become involved with any entity or any other entities or parties introduced” by Directional or Quidditch and/or one of Quidditch’s wholly-owned subsidiaries. (NYSCEF 26, Joinder Agreement at 2/12.) As the court previously noted, the non-circumvention provision “is limited to introductions.” (NYSCEF 20, Decision and Order at 2 [mot. seq. no. 001].) Directional’s proposition to read into the non-circumvention provision a duty to disclose Butterfly’s relationship with the parties related to the contemplated Qdoba

deal has the effect of creating a new contractual obligation.² Such a brand-new disclosure obligation cannot be “presumed to have been intended by the parties.” (*M/A-COM Sec. Corp. v Galesi*, 904 F2d 134, 136 [2d Cir 1990]; see *Madison Apparel Group Ltd. v Hachette Filipacchi Presse, S.A.*, 2007 WL 4639450, 2007 NY Slip Op 34211[U] [Sup Ct, New York County 2007] “[plaintiff] claims [defendant] breached a duty under the License Agreement to apprise plaintiff of its negotiations with third parties about introducing new lines of ELLE-branded apparel. But the License Agreement does not impose that obligation on [defendant], and it has no direct bearing on [plaintiff]’s central right under the contract: to market ELLE-branded intimate apparel”), *mod in part* 52 AD3d 385 [1st Dept 2008] [“Applying the implied covenant of good faith and fair dealing in the manner urged by plaintiff would effectively create an independent contractual right that was not bargained for by the parties” (citation omitted)]; *Phoenix Racing, Ltd. v Lebanon Val. Auto Racing Corp.*, 53 F Supp 2d 199, 217 [ND NY 1999] [claim for breach of implied covenant of good faith and fair dealings based on failure to disclose fails where “[n]othing in the Agreement reasonably implies any obligation on the Defendants’ part to perform any kind of unilateral disclosure after formation of the contract” and “[f]urther, the implication of a right to disclosure is not necessary to the

² When dismissing the breach of contract and unjust enrichment claims, the court noted that in contrast to the non-circumvention provision of the Joinder Agreement, “the ‘Non-solicitation’ clause in the Confidentiality Agreement between the parties provides: ‘[Y]ou will not, nor will any of your Representatives, hire or solicit for employment any Company employees to whom you may be introduced or with whom you otherwise had contact as a result of your consideration of a Transaction....’ (NYSCEF 9, Confidentiality Agreement at 9.1) The provision in the Confidentiality Agreement ‘or with whom you otherwise had contact as a result of your consideration of a Transaction,’ absent from the Joinder Agreement, is meaningful. Plaintiff cannot import such a provision into the non-circumvention provision of the Joinder Agreement. Clearly, the parties knew how to draft broadly.” (NYSCEF 20, Decision and Order at 2 [mot. seq. no. 001].)

effectuation of the Agreement's terms ... [Plaintiffs] have also not suggested how disclosure of the alleged unsuitability of the property after the formation of the contract was necessary to effectuate any right expressly provided for by the Agreement".)

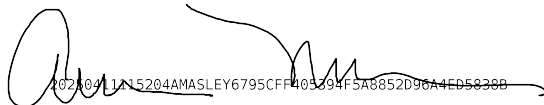
Indeed, given that the bargain here is narrow and limited to prohibiting Butterfly from contacting any third parties introduced by Directional or Quidditch with respect to the contemplated Qdoba deal, Directional's rights under that bargain is not injured by Butterfly's alleged failure to disclose its relationship with Qdoba, Quidditch, and Apollo after entering the Joinder Agreement. (*See Multibank, Inc. v Access Global Capital LLC*, 54 Misc 3d 1208[A], 2017 NY Slip Op 50048[U], *12 [Sup Ct, NY County 2017] [implied covenant claim failed where "the failure to disclose [debtor]'s financial situation cannot be said to have defeated [plaintiff]'s ability to recover the fruits of the [Finance Facility Contract]. The [insurance policy]'s purpose was to guard against [debtor]'s default because it was a known credit risk" (citation omitted)], *affd* 158 AD3d 458 [1st Dept 2018]; *H.S.W. Enters. v Woo Lae Oak, Inc.*, 171 F Supp 2d 135, 141 [SD NY 2001] ["The alleged trademarks did not prevent [counterclaim plaintiffs] from getting the benefit of the contract -- obtaining 100% ownership of [company], and [counterclaim defendant]'s failure to disclose the existence of the trademarks did not impair any contractual right accorded defendants in the Agreement" (citation omitted)]; *cf. JFK Hotel Owner, LLC v Hilton Hotels Corp.*, 42 Misc 3d 1237[A], 2014 NY Slip Op 50423[U], *11 [Sup Ct, NY County 2014] [plaintiff hotel owner "sufficiently avers that [bank]'s allegedly knowing concealment of the [bank]/Blackstone relationship ha[d] the effect of destroying or injuring the right of [plaintiff] to receive the fruits of the" loan agreement where Blackstone was affiliated with bank and plaintiff's counterparty on

franchise agreement[.]) Given the narrow language of the non-circumvention provision, Directional’s allegation that Butterfly’s failure to disclose “drastically undermined the contract such that its fundamental objective was subverted” is unavailing as a matter of law. (NYSCEF 25, AC ¶ 126.)

The court has considered the balance of the parties’ argument’s and finds them without merit or otherwise not warranting an alternate result.

Accordingly, it is

ORDERED that the motion to dismiss the amended complaint is granted.



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4/11/2025

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE