

**C. Richard Stafford IRA v SC Capital GP, LLC**

2017 NY Slip Op 31495(U)

June 29, 2017

Supreme Court, New York County

Docket Number: 656076/2016

Judge: David B. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN - Justice

PART 58

C. RICHARD STAFFORD IRA, C. RICHARD STAFFORD

INDEX NO. 656076/2016

Plaintiff,

MOTION DATE 2/27/2017

- v -

MOTION SEQ. NO. 002

SC CAPITAL GP, LLC,

DECISION AND ORDER

Defendant.

The following e-filed documents, listed by NYSCEF document number 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42

were read on this application to/for DISMISSAL

Upon the foregoing documents, it is

Decided that the defendant's motions seeking dismissal based upon documentary evidence and failure to state a cause of action are denied. In the Amended Complaint, C. Richard Stafford IRA (the "Stafford IRA") and C. Richard Stafford (together with the Stafford IRA, "Plaintiffs") allege that SC Capital GP, LLP ("Defendant" or "General Partner") intentionally and needlessly delayed the liquidation of SC Capital (P), LP (the "Partnership") for over 27 months. The Partnership was formed for the principal purpose of achieving long-term capital appreciation by acquiring, holding and disposing of investments in a company called Penumbra, Inc. ("Penumbra"). The Stafford IRA is a limited partner in the Partnership and C. Richard Stafford is the owner and beneficiary of the Stafford IRA. Plaintiffs allege that defendant breached its contract and fiduciary duty to them by failing to liquidate in an "orderly and reasonable manner that was in the best interest of all of the Partners," as set forth in the partnership agreement for the Partnership. Plaintiffs allege that defendant wrongfully delayed the liquidation to maximize the

General Partner's 20% share of the profits on the net gain on the Partnership's shares in Penumbra. As such, the Amended Complainant details that the delay was taken in bad faith at the expense of the limited partners. The Amended Complaint alleges four causes of action; (1) breach of contract, (2) breach of fiduciary duty, (3) accounting, (4) declaratory relief.

When deciding a motion to dismiss pursuant to CPLR § 3211, the court should give the pleading a "liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference" (*Landon v Kroll Laboratory Specialists, Inc.*, 22 NY3d 1, 5-6 [2013]; *Faison v Lewis*, 25 NY3d 220 [2015]). Defendant moved to dismiss based upon documentary evidence and failure to state a claim upon which relief can be granted.

A motion to dismiss pursuant to CPLR § 3211(a)(1), should not be granted unless the documentary evidence submitted is such that it resolves all factual issues as a matter of law and conclusively disposes of the claims set forth in the pleading (*Art & Fashion Grp. Corp. v Cyclops Prod., Inc.*, 120 A.D.3d 436, 438 [1st Dept. 2014]).

Under CPLR § 3211(a)(7), the court "accepts as true the facts as alleged in the complaint and affidavits in opposition to the motion, accords the plaintiff the benefit of every possible favorable inference, and determines only whether the facts as alleged manifest any cognizable legal theory" (*Elmaliach v Bank of China Ltd.*, 110 A.D.3d 192, 199 (1st Dept 2013) (quoting *Sokoloff v Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 414 [2001])).

As a threshold matter, many of defendant's arguments discuss the question of (a) C. Richard Stafford's standing to sue personally; and (b) that C. Richard Stafford did not allege that he was the trustee and had authority to bring this action on behalf of the Stafford IRA. The Amended Complaint clearly alleged that C. Richard Stafford is the owner and beneficiary of Stafford IRA. The Stafford IRA is a self-directed account. Several Courts that have heard

similar arguments have ruled that under the circumstances, to not permit the beneficiary of a self-directed account to maintain the suit “would substitute form over function and substantially prejudice” (*FBO David Sweet IRA v Taylor*, 4 F Supp 3d 1282, 1285 [MD Ala 2014]; *see also Deem v Baron*, 2016 WL 8230425 [D Utah Apr. 14, 2016]; *Lawrence v Am. IRA, LLC*, 2014 WL 11728723 [ND Ga Nov. 26, 2014]; *Vannest v Sage, Ruttly & Co., Inc.*, 960 F Supp 651 [WDNY March 31, 1997]; *Goldin v. Tag Virgin Islands, Inc.*, 2014 WL 2094125 (NY Sup NY Cty 2014). Further, in opposition to this motion, plaintiff submitted the affidavit of C. Richard Stafford which states “My IRA is held at Merrill Lynch, Pierce, Fenner & Smith, (the “Custodian”), which serves as the custodian for the account. The Custodian has executed a written Instrument of Delegation delegating to me any right that the Custodian has or might have, in its capacity as custodian for my IRA, to bring or participate in the bringing of the claims asserted in this litigation.” Taking these facts as true, C. Richard Stafford had authority to bring this action on behalf of the Stafford IRA.

The motion to dismiss for breach of contract is denied. Plaintiffs allege that the time taken by defendant to liquidate the Partnership was unreasonable and in direct violation of the partnership agreement. Defendant argues that there was no requirement to immediately liquidate, however, even if true, as that is a defense, it is not sufficient to dismiss for failure to state a claim or documentary evidence. Further, the partnership agreement required the liquidation to be performed in a reasonable time frame. Giving all possible inferences, the motion to dismiss for breach of contract is dismissed as the question as to whether 27 months was a reasonable amount of time to liquidate is a question of fact and not subject to dismissal at this juncture.

The motions to dismiss the third and fourth causes of action for accounting and declaratory relief are denied. A claim for an equitable accounting lies where there is a “confidential or fiduciary

relationship and a breach of the duty imposed by that relationship respecting property in which the party seeking an accounting has an interest” (*Ctr. for Rehab. & Nursing at Birchwood, LLC v S&L Birchwood, LLC*, 92 A.D.3d 711, 713 [1st Dept 2012]). As the Amended Complaint properly alleged that defendant owes a fiduciary duty to Stafford IRA, the motion to dismiss is denied.

Defendant alleges that the action for declaratory judgment must be dismissed as plaintiffs failed to allege facts showing intentional or criminal wrongdoing, gross negligence, or a disloyal act by defendant. However, the Amended Complaint properly alleges multiple examples of bad faith taken by defendant. Therefore, the motion to dismiss for declaratory relief is denied.

The motion to dismiss the second cause of action for breach of fiduciary duty is also denied. A claim for aiding and abetting a breach of fiduciary duty “requires: (1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damage as a result of the breach” (*Kaufman v Cohen*, 307 AD2d 113, 125 [1st Dept 2003]; *Wechsler v Bowman*, 285 NY 284 [1941]). As alleged in the Amended Complaint and discussed above, plaintiffs properly alleged the three required factors for breach of fiduciary duty. Accordingly, it is therefore

ORDERED, that defendant’s motion to dismiss is denied.

This constitutes the decision and order of the Court.

6/29/2017

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

DAVID BENJAMIN COHEN, J.S.C.

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT
- OTHER
- REFERENCE