SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 39

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CAPITAL ONE EQUIPMENT FINANCE CORP.

Plaintiff,

Index No.: 653726/2016

-against-

PATTON R. CORRIGAN, MICHAEL LEVINE, LAUREN CORRIGAN, PATTON M. CORRIGAN, MARJORIE LEVINE, TAXI APAQUOGUE LLC, EATERY TAXI CORP., YELLOW CAB PARTNERS LLC, AND JOHN DOES 1-10,

DECISION AND ORDER

Defendants.

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SALIANN SCARPULLA, J.:

In this action to recover damages for fraudulent conveyance, defendants Patton R. Corrigan, Lauren Corrigan, Patton M. Corrigan and Yellow Cab Partners ("the Corrigan defendants") move to dismiss the complaint insofar as asserted against them (motion sequence 001), and defendants Michael Levine, Marjorie Levine, Taxi Apaquogue LLC, and Eatery Taxi Corp. ("the Levine defendants") move to dismiss the complaint insofar as asserted against them (motion sequence 002).[1]

Transit Funding Associates, LLC ("TFA") is a Chicago taxi medallion financing business that lends money to Chicago taxi owners and drivers who need funding to purchase taxi medallions. To finance its business, TFA entered into agreements with financial institutions. On March 25, 2009, Capital One and TFA entered into a loan agreement in which Capital One provided TFA with $35 million in a revolving credit

[1] Defendant Patton M. Corrigan is the son of defendants Patton R. Corrigan and Lauren Corrigan.

facility, guaranteed by Patton R. Corrigan ("Corrigan") and Michael Levine ("Levine"). Pursuant to an April 6, 2012 agreement, the line of credit increased to $80 million.

Corrigan and Levine were allegedly principals of TFA. According to Capital One, at the time of the 2012 agreement, Levine owned 50% of TFA, Corrigan's wife Lauren Corrigan owned 27.5% of TFA, and Lauren Holding Inc., managed by Lauren Corrigan, owned 22.5% of TFA. Corrigan, Levine and other TFA related entities executed personal guarantees in conjunction with the 2012 agreement.

Pursuant to the agreement, which was renewed in August 2013 for a one year term, TFA could request advances from Capital One but Capital One could use its discretion in approving or denying such requests. At the beginning of 2014, Capital One began to deny TFA's funding requests, even though the loan was in good standing. When asked why, Capital One explained that it would no longer be lending in the Chicago medallion market. It would be partnering with the ride-sharing service Uber. According to TFA, because of Capital One's abrupt abandonment of the agreement, TFA has been unable to extend new medallion loans or to get new funding, and its business was destroyed. On December 1, 2014, the 2012 loan matured and TFA defaulted on its obligation.

According to Capital One, by late 2012 and early 2013, Corrigan and Levine knew they would be obligated to pay Capital One tens of millions of dollars under their personal guarantees of the 2012 Loan Agreement, and therefore, they orchestrated a scheme using LLCs, trusts and related parties to unlawfully transfer, and cause the

companies they control to unlawfully transfer, personal and corporate assets out of Capital One's reach.

TFA commenced an action alleging claims against Capital One, including breach of contract, breach of fiduciary duty and fraud. *See Transit Funding Associates LLC, et al. v. Capital One Equipment Finance Corp and Capital One, N.A.*, Index No. 652346/2015 (Scarpulla, J.). In an order dated July 15, 2016, I dismissed the causes of action for breach of fiduciary duty, fraud, unfair competition and breach of the letter agreement. In an order dated February 28, 2017, the Appellate Division additionally dismissed the causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and the declaratory judgment causes of action. The Appellate Division later denied TFA's motion for leave to appeal its decision. TFA amended its fraud claim, and Capital One moved to dismiss that amended claim.

In addition, in May 2015, Capital One moved for Summary Judgment in Lieu of Complaint against Corrigan and Levine on the guarantees they executed. *See Capital One Taxi Medallion Finance v. Patton R. Corrigan*, et al., Index No. 651841/2015 (Scarpulla, J.). I denied the motion, and the Appellate Division reversed on February 28, 2017, granting the motion for summary judgment in lieu of complaint. Capital One entered judgment for $57,201,109.22 plus interest from Corrigan and Levine. On September 14, 2017, the Court of Appeals granted leave to appeal from the final judgment.

Capital One commenced this action in July 2016, asserting causes of action for constructive and actual fraudulent conveyance. It alleged violations of Debtor and

Creditor Law Sections 273, 274, 275, 276, 276-a and 278. Capital One maintained that due to the fraudulent conveyances, Corrigan and Levine are unable to pay the debt owed.

Capital One listed numerous asset and property transfers in its complaint. For example, it alleged that between 2012 and 2014 Levine's assets declined by 81% from $154,417,650 to $28,647,930. Further, Capital One alleges that Levine transferred more than $45 million in assets and property to his wife Marjorie Levine for no consideration, including (1) a transfer of his 50% equity interest in Dove Capital Corp., valued at approximately $5 million, to Marjorie, for no consideration; (2) a transfer of his 50% equity interest in MAMM Realty Inc. valued at approximately $10 million, to Marjorie for no consideration; (3) a transfer of his 50% ownership in his $4.5 million residence in Scarsdale to Marjorie for no consideration; (4) a transfer of his 50% ownership interest in the $5 million property in East Hampton to Marjorie Levine, for no consideration; and (5) a transfer of his 50% equity interest in Taxi Lily Pond LLC to Marjorie for no consideration, which at the time owned real property in East Hampton valued at approximately $8 million.

Capital One also alleged that between December 2012 and December 2013, Corrigan's total assets declined from $162,765,130 to $11,417,920, and his net worth declined from $155,665,130 to $10,317,920. Further, in 2012 Corrigan's assets included over $22.5 million in cash and $22 million in marketable securities and in 2013, Corrigan's assets included only $1.1 million in cash and no marketable securities.

Finally, Capital One maintained that entities controlled by Corrigan and Levine sold approximately 540 medallions at a time when the average price per medallion was

$300,000 to $325,000. These entities realized gross proceeds of approximately $150,000,000 to $175,000,000 from the sale of these medallions, however, only $11 million of the proceeds went toward paying down TFA's obligations under the 2012 Loan Agreement. Rather than direct the proceeds to repay Capital One, Corrigan and Levine caused the entities they controlled to make at least $76,700,000 in distributions to family members and related entities.

The Corrigan defendants (motion sequence 001) and the Levine defendants (motion sequence 002) now move to dismiss the complaint.

The Corrigan defendants argue that Capital One fails to allege any specific conveyance from Corrigan to another person or entity. The allegation that Corrigan caused entities that he controls to sell assets and make distributions does not suffice as an allegation that he, as guarantor, transferred assets that he owns to another person or entity.

They next argue that Capital One fails to allege that Corrigan transferred assets (1) while insolvent or that rendered him insolvent; (2) that left him with unreasonably small capital as a result; or (3) at a time when he intended or believed he would incur debts beyond his ability to pay as they mature.

Finally, they argue that fraud was not pled with the requisite particularity and Patton M. Corrigan is not a proper defendant in this case because he was neither a beneficiary nor transferee of any alleged fraudulent transfers.

The Levine defendants first argue that the fact that TFA had collateral far in excess of its debt to Capital One with an almost 100% performing portfolio eight months

after the alleged transfers took place, and an offer to acquire its loan portfolio a month after the last of the alleged transfers, refutes any suggestion of insolvency, fraudulent intent, and "probable liability" on the guaranty.

They next maintain that the complaint merely contains boilerplate language reciting the statute, but contains no facts to support the allegations. Further, the allegations say nothing about Levine's solvency at the time of the transfers.

They further argue that the causes of action alleging actual and constructive fraudulent conveyance of the medallions do not allege that the Levine defendants owned the transferred property. Finally, as to the causes of action alleging actual and constructive fraudulent conveyance of Levine's assets, the complaint is too vague.

In opposition, Capital One first argues that defendants' affidavits are self-serving and the documentary evidence submitted does not support their argument. Rather, they have created their own version of the facts unsupported by any evidence.

It next argues that it adequately stated claims for constructive fraudulent conveyance. Capital One alleges conveyances of millions of dollars' worth of property—including specifically identified real estate and several valuable interests in corporate entities—from Levine to his wife for no consideration, conveyances of the proceeds from the sale of 540 of their entities' medallions to their family members and other closely related entities, and conveyances of tens of millions of dollars of cash and assets to persons or entities that are currently unknown to Capital One in order to diminish their assets.

Capital One argues that, to the extent defendants claim that they were solvent at the time of the transfers, they have merely raised an issue of fact that cannot be resolved now. Further, Capital One alleged that defendants believed that they were likely to be called upon to repay TFA's debt under the guarantees as of the time of the transfers because they believed that the uncertainty caused by Uber in the marketplace threatened to cause the medallion market to collapse.

Capital One next argues that it adequately states a claim for actual fraudulent conveyance by alleging multiple badges of fraud. Specifically, it argues that it alleged the close relationships between the parties, and the retention of control over the transferred property by the transferor, two common badges of fraud. It also pled the insufficiency of consideration (no consideration at all), transfers not in the ordinary course of business, and the transferor's knowledge that he would be liable to Capital One, but unable to pay his debt. For example, Capital One alleges that Levine transferred his ownership interest in his home to his wife for no consideration and then kept living in the home thereafter.

Finally, Capital One argues that by directing the proceeds of the medallion sales to their own family members and related entities, Corrigan and Levine clearly exercised control over the funds. By moving assets out of their control and beyond the reach of Capital One, Corrigan and Levine benefitted. Further, Capital One explicitly alleges that Patton M. Corrigan was one transferee of the $76,700,000 in distributions.

Discussion

Causes of action 21 and 22, which allege that Corrigan and Levine caused the entities they controlled to sell medallions and then make at least $76,700,000 in distributions from the proceeds of the sale to family members and closely related entities, are dismissed. Capital One fails to specifically allege that Corrigan and Levine had an ownership or beneficial interest in the transferred property, such that Corrigan or Levine would have benefitted in any way from these transfers. Rather, they just allege that they "controlled" the entities that sold the medallions and distributed the money.

In addition, causes of action 23 and 24 are dismissed. Capital One alleges that Corrigan and Levine transferred tens of millions of dollars to John Does without consideration, and were rendered insolvent. It also alleges that Corrigan and Levine transferred tens of millions of dollars to John Does in bad faith and with actual intent to hinder, delay or defraud Capital One. Capital One merely alleges a decline of Levine and Corrigan's assets because of a transfer of cash and assets, however, fails to allege how specific assets or moneys were fraudulently transferred or conveyed, and fails to allege specific recipients of any such fraudulent conveyance during a specific time frame.

However, the remaining causes of action asserted against the Levine defendants will not be dismissed. Capital One sufficiently states a claim against the Levine defendants for constructive fraudulent conveyance pursuant to DCL Sections 273, 274 and 275. These statutes do not require a showing of actual motive or intent to defraud and therefore dispense with the particularity of pleading requirement under CPLR §3016 (b). *See Gateway I Group, Inc. v. Park Ave. Physicians, P.C.*, 62 A.D.3d 141 (2nd Dept.

2009). Capital One alleges conveyances of millions of dollars' worth of assets and property from Levine to his wife for no consideration during the time that Uber was gaining control in the market and beginning to threaten the taxi medallion industry. Capital One alleges that the conveyances rendered Levine insolvent or left with small capital such that he would be unable, if required, to pay his debt pursuant to the guaranty. The allegations can support an inference that when making the conveyances, Levine believed that he would incur debts beyond his ability to pay. Further discovery will yield more information as to these allegations, but the pleadings are sufficient to survive Levine's motion to dismiss this claim.

Capital One also sufficiently states a claim against the Levine defendants for actual fraudulent conveyance pursuant to DCL 276 and 276-a. Debtor and Creditor Law §§ 276 and 276-a require proof that the transferor intentionally hindered, delayed, or defrauded present or future creditors. *See Zanani v. Meisels*, 78 A.D 3d 823 (2nd Dept. 2010). Due to the difficulty of proving actual intent to hinder, delay, or defraud creditors, the pleader is allowed to rely on "badges of fraud" to support its case, such as: a close relationship between the parties to the alleged fraudulent transaction; a questionable transfer not in the usual course of business; inadequacy of the consideration; the transferor's knowledge of the creditor's claim and the inability to pay it; and retention of control of the property by the transferor after the conveyance. *Wall Street Assocs. v. Brodsky*, 257 A.D.2d 526 (1st Dept. 1999). Here, Capital One pleads that the alleged conveyances were made from Levine to his wife, with no consideration, not in the ordinary course of business, and with knowledge that he could be liable under the

guaranty. The causes of action are pled with enough specificity to permit a reasonable inference of the alleged conduct. *See Englander Capital Corp. v Zises*, 2013 N.Y. Slip. Op. 32904(U) (N.Y. Sup. Ct., November 14, 2013).

In accordance with the foregoing, it is hereby

ORDERED that defendants Patton R. Corrigan, Lauren Corrigan, Patton M. Corrigan and Yellow Cab Partners' motion to dismiss the complaint insofar as asserted against them (motion sequence 001) is granted, and the complaint insofar as asserted against them is severed and dismissed and the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that defendants Michael Levine, Marjorie Levine, Taxi Apaquogue LLC, and Eatery Taxi Corp.'s motion to dismiss the complaint insofar as asserted against them (motion sequence 002) is granted only to the extent that causes of action 21, 22, 23 and 24 are dismissed as against them, and the remaining causes of action asserted against them are severed and shall continue.

This constitutes the decision and order of the court.

Dated: New York, New York
December 14, 2017

ENTER:

J.S.C. HON. SALIANN SCARPULLA