

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BAYERISCHE HYPO-UND
VEREINSBANK AG et al.,

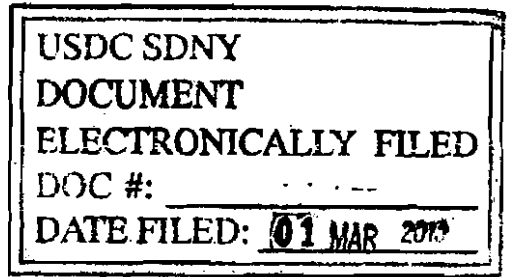
Plaintiffs,

-against-

AIG MATCHED FUNDING CORP. et al.,

Defendants.

No. 09 Civ. 8386 (LTS)(AJP)



MEMORANDUM OPINION AND ORDER

In this removed action, of which the Court has subject matter jurisdiction on the basis of diversity of citizenship, Plaintiffs allege that Defendants AIG Matched Funding Corp. (“AIGMFC”) and American International Group, Inc. (“AIG”) breached certain collateral posting-related obligations in connection with certain cross-border lease transactions. Defendants have moved to dismiss the Complaint. The Court has reviewed carefully all of the parties’ submissions in connection with this motion practice.

Defendants’ motion to dismiss the Complaint is denied with respect to Plaintiffs’ First through Fourth Causes of Action. The relevant contractual language is ambiguous with respect to the formula by which AIGMFC’s obligation to post collateral under the relevant circumstances is to be determined, as well as with respect to the nature and extent of AIG’s guaranty obligations in connection with AIGMFC’s collateral posting requirements, and Plaintiffs’ allegations are sufficient to state plausibly their causes of action for breach of contract and specific performance. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009), Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). As currently plead, however, Plaintiffs’ causes of action for declaratory judgment are duplicative of their breach of contract causes of action and are, thus, properly subject to dismissal.

Plaintiffs' opposition asserts that their intent was to plead causes of action for reformation of the relevant agreements to correct alleged scrivener's errors in the documents. Plaintiffs' Fifth and Sixth Causes of Action are hereby dismissed, without prejudice to the filing of an amended complaint reasserting the First through Fourth Causes of Action and adding causes of action for reformation and enforcement of the agreements as reformed.

CONCLUSION

Defendants' motion to dismiss the First, Second, Third, and Fourth Causes of Action is denied. Plaintiffs' Fifth and Sixth Causes of Action are hereby dismissed, without prejudice to the filing of an amended complaint reasserting the First through Fourth Causes of Action and adding causes of action for reformation and enforcement of the agreements as reformed, no later than **March 8, 2010**. Failure to file a timely amended pleading will result in the dismissal with prejudice of those causes of action (except to the extent they are subsumed in the First and Second Causes of Action), without further advance notice to the parties. This Memorandum Opinion and Order resolves docket entry no. 11.

SO ORDERED.

Dated: New York, New York
February 26, 2010



LAURA TAYLOR SWAIN
United States District Judge