Beta Holdings, Inc. v Goldsmith
2017 NY Slip Op 31194(U)
June 2, 2017
Supreme Court, New York County
Docket Number: 652401/2012
Judge: Jeffrey K. Oing
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48
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BETA HOLDINGS, INC., BETA INTERNATIONAL, INC., BETA HOLDINGS HOLDCO, LLC, BETA ACQUISITION I CO., INC., and BETA ACQUISITION II CO., INC.,

Plaintiffs,

-against-

ROBERT J. GOLDSMITH and RAFAEL RAMOS,

Defendants and Counterclaim Plaintiffs,

-against-

CORINTHIAN-BETA INVESTMENTS, LLC, CORINTHIAN CAPITAL GROUP, LLC, KENNETH CLAY, and ANTHONY PUCILLO,

Counterclaim Defendants.

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DECISION AND ORDER

JEFFREY K. OING, J.

Defendants, Robert J. Goldsmith and Rafael Ramos, move, pursuant to CPLR 2221(e), for leave to renew, and upon renewal, an order reinstating their dismissed allegations that plaintiffs are the alter egos of counterclaim defendants Corinthian Capital Group, LLC and Corinthian-Beta Investments, LLC (together, "Corinthian"). Defendants also seek an order allowing them to conduct discovery pertaining to those allegations.

Plaintiffs and counterclaim defendants oppose the motion arguing that defendants have long known the facts upon which they

base their instant motion. For the reasons that follow, the motion is denied.

CPLR 2221(e) provides, in relevant part:

> A motion for leave to renew:
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> ...
>
> 2. shall be based upon new facts not offered on the prior motion that would change the prior determination ... and
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> 3. shall contain reasonable justification for the failure to present such facts on the prior motion.

Plaintiffs note that defendants entered into "Letters of Intent" with Corinthian Capital Group , LLC, and that, when defendants sold Beta Holdings, Inc. ("BHI") to Beta Acquisition I Co., Inc. ("Acquisition I"), Beta Acquisition II Co., Inc. (Acquisition II), and the then newly formed Beta Holdings Holdco ("Holdco"), pursuant to the Stock Purchase Agreement ("SPA"), defendants were well aware that Corinthian was the corporate parent of Acquisition I and Acquisition II, and the majority owner of Holdco. Indeed, as plaintiffs point out, Goldsmith submitted an affidavit in this case, in May, 2014, in which he averred, without qualification, that Corinthian Capital Group, LLC bought BHI (see Thompson Affirm., Ex. B at 2). To be sure, the letters of intent notwithstanding, Corinthian did not purchase BHI. Rather, by agreement with defendants, it

interposed Holdco, Acquisition I, and Acquisition II between itself and the sales transaction.

Defendants' motion is predicated upon the statements, in plaintiffs' papers in the preceding motion, that: Corinthian paid the $3 million down payment for BHI, and promised to pay approximately $18 million more over time; Corinthian was given the right to setoff; and Corinthian was given the right to recover money placed in escrow, if Corinthian was required to pay any tax obligations of the sellers (see Siesser Affirm. (8/26/16), ¶¶ 3-4, NYCSCEF No. 401). While these statements are grist to defendants' mill, they are inaccurate, as defendants well know. Corinthian made a $7,375,000 capital contribution to Holdco (see Pearce Affirm., Ex. A to Ex. 1), but it made no payment to defendants. The provisions pertaining to the escrow fund, and to setoff, appear in the SPA, which does not mention Corinthian. At present, whatever funds plaintiffs ultimately recover on their motion for summary judgment will mostly flow to Corinthian, as the majority owner of Holdco, but that fact does not make Holdco, or the other plaintiffs, alter egos of Corinthian.

Defendants also note that plaintiffs' memorandum of law in support of their motion for summary judgment stated that Corinthian paid the taxes owed by BI. Defendants acknowledge,

however, that the check to the Internal Revenue Service was drawn by BI.

Corinthian has manifestly been the party in interest ever since it began negotiating with defendants for the purchase of BHI. For their own reasons, however, Corinthian and defendants agreed to structure the sale, as provided for in the SPA. At present, BI no longer functions, and BHI, and Acquisition I and II are shells. Nonetheless, the verbal conflation of Corinthian and plaintiffs, in plaintiffs' papers, does not retroactively nullify the separate corporate existence of the defendants from each other, and from Corinthian.

Finally, defendants argue that plaintiffs denied defendants' allegation in their second and third amended counterclaims that a March 24, 2009 letter of intent, entered into by Goldsmith and Corinthian Group, "set forth the parties' mutual interest in connection with the proposed acquisition by an affiliate of Corinthian Equity Fund, L.P. (which is itself an affiliate of Corinthian Capital group) of all the shares of BHI from Goldsmith and Ramos." A denial by one party, of its adversary's characterization of a document, while admitting the provenance and authenticity of that document, is standard procedure in discovery, and hardly shows that defendants were hiding Corinthian's role.

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Accordingly, it is hereby

ORDERED that the motion of defendants Robert J. Goldsmith and Rafael Ramos for leave to renew, and upon renewal, for an order reinstating their alter ego allegations, is denied.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 6/2/17

HON. JEFFREY K. OING, J.S.C.