Matter of Greensky, Inc. Sec. Litig.
2019 NY Slip Op 33515(U)
November 25, 2019
Supreme Court, New York County
Docket Number: 655626/2018
Judge: Jennifer G. Schecter

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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In re GREENSKY, INC. SECURITIES LITIGATION **DECISION & ORDER**

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JENNIFER G. SCHECTER, J.:

This consolidated putative class action involves claims under sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the 1933 Act) concerning statements made in connection with the initial public offering of GreenSky, Inc. (GreenSky). Defendants move to stay this action in deference to a putative class action pending in federal court that was commenced after this one. Alternatively, they seek a stay of discovery until determination of their motion to dismiss. Defendants' motion is granted in part.

On November 12, 2018, the first of multiple putative class actions concerning GreenSky was filed in this court (*see* Dkt. 1). A couple of months later, all of the actions pending in Supreme Court were consolidated and lead counsel was appointed (*see* Dkt. 13). Plaintiffs subsequently filed an amended complaint (*see* Dkt. 37). Defendants move to stay this case based on a later-filed, November 27, 2018 federal action that was consolidated with other federal cases involving virtually identical 1933 Act claims (Dkt. 47; *see In re GreenSky Sec. Lit.*, No. 18 Civ. 11071 [SDNY]).

New York State was plaintiffs' first choice of forum and there is no basis for a stay in favor of federal court adjudication (*see Island Intellectual Prop. LLC v Reich & Tang Deposit Sols., LLC*, 155 AD3d 542, 543 [1st Dept 2017]; *L-3 Communications Corp. v SafeNet, Inc.*, 45 AD3d 1, 7 [1st Dept 2007]). In *Cyan, Inc. v Beaver County*

Employees Retirement Fund (138 S Ct 1061 [2018]), the Unites States Supreme Court made clear that state courts can preside over 1933 Act cases and that "most unusually" Congress barred their removal to federal court so if a plaintiff chooses to bring a 1933 Act suit in state court, the defendant generally cannot change the forum (*id.* at 1066). Staying 1933 Act state court litigation in deference to federal court proceedings without a compelling reason to do so would undermine this principle. Additionally, pre-*Cyan*, most 1933 Act cases were brought in federal court; thus, those courts undeniably have more experience dealing with securities litigation. State courts are just as capable. Ceding responsibility to federal courts without good cause for doing so simply based on tradition would erode what Congress expressly intended as recognized by the Supreme Court in *Cyan*.

The stay in *Gordon v Gridsum Holding Inc.* (Index No. 653342/2018, 2019 WL 1593484 [Sup Ct, NY County Apr. 10, 2019]), which was issued in favor of a first-filed federal action, does not support a different result. There, plaintiff's counsel chose a federal forum first and, only after losing the lead-counsel contest, refiled in state court. A stay was warranted to avoid incentivizing gamesmanship Here, by contrast, plaintiffs never filed in federal court. There is no reason not to honor their selection of state court for resolution of their 1933 Act claims.

Discovery, however, will be stayed pending determination of defendants' motion to dismiss. Courts, even in this County, are split on whether the stay set forth in the Private Securities Litigation Reform Act of 1995 (the PSLRA) necessarily applies to state

proceedings (*compare Matter of Everquote, Inc. Sec. Litig.*, 65 Misc 3d 226 [Sup Ct, NY County 2019] [stay applies]; *with Matter of PPDAI Group Sec. Litig.*, 64 Misc 3d 1208[A] [Sup Ct, NY County 2019] [stay inapplicable] and *Hoffman v AT&T Inc.*, 2019 WL 2578360 [Sup Ct, NY County 2019]; *see also Anwar v Fairfield Greenwich Ltd.*, 728 F Supp 2d 462, 478 [SDNY 2010] [stay applies in courts; not to arbitration]; *Milano v Auhll*, 1996 WL 33398997, at *4 [Cal Super Ct Oct. 2, 1996] [stay applies in state court]; *Switzer v Hambrecht & Co.*, 2018 WL 4704776, at *1 [Cal Super Ct Sept. 19, 2018] [stay inapplicable in state court]; *see also* Dkt. 63 [*City of Livonia Retiree Health & Disability Benefits Plan v Pitney Bowes Inc.*, CV 18 6038160, Conn Super Ct May 15, 2019] [no stay in state court]).

This court is not convinced that the PSLRA, by its terms, expressly mandates a stay in state court. That said, where "discovery is an integral part of the legal framework governing" proceedings, the rules of the jurisdiction giving rise to the substantive cause of action apply in New York (*see, e.g. Lerner v Prince*, 119 AD3d 122, 128-29 [1st Dept 2014] [plaintiff's right to discovery in demand-refused case related to Delaware corporation presented "a substantive question going directly to the basis of the purported derivative suit"]). The important purpose underlying enactment of the automatic stay--ensuring that cases have merit at the outset--should not be disregarded merely because a federal cause of action is being prosecuted in state court (*see Westchester Putnam Heavy & Highway Laborers Local 60 Benefit Funds v Sadia S.A.*, 2009 WL 1285845, at *1 [SDNY May 8, 2009] ["One of the principal purposes of the PSLRA discovery stay is to

eliminate the cost of discovery before the potential merit of a case is assessed at the motion to dismiss phase"]; *see Cyan*, 138 S Ct at 1072 ["SLUSA's purpose was to prevent plaintiffs from seeking to evade the protections that Federal law provides against abusive litigation by filing suit in State, rather than in Federal, court"]). It is therefore appropriate to give effect to the PSLRA's policy of staying discovery until a plaintiff has demonstrated that its 1933 Act claims have merit.

Accordingly, it is

ORDERED that defendants' motion to stay the action is denied; and it is further

ORDERED that defendants' motion to stay discovery pending determination of their motion to dismiss is granted.

Dated: November 25, 2019

ENTER:

Jennifer G. Schecter, J.S.C.