

**Valero Refining-Meraux LLC v Murphy Oil Corp.**

2020 NY Slip Op 31835(U)

June 12, 2020

Supreme Court, New York County

Docket Number: 650673/2017

Judge: Marcy S. Friedman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

-----X  
VALERO REFINING-MERAUX LLC

Plaintiff,

- v -

MURPHY OIL CORPORATION,

Defendant.  
-----X

|                                   |             |
|-----------------------------------|-------------|
| INDEX NO.                         | 650673/2017 |
| MOTION DATE                       | 03/08/2018  |
| MOTION SEQ. NO.                   | 001         |
| <b>DECISION + ORDER ON MOTION</b> |             |

HON. MARCY S. FRIEDMAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 20, 25, 30, 31, 35

were read on this motion to/for

DISMISS

In this breach of contract action, plaintiff Valero Refining-Meraux LLC (Valero), the purchaser of a Refinery, alleges that defendant Murphy Oil Corp. (Murphy), the seller, breached representations and warranties, including that “the Refinery was not in material violation of any applicable Environmental Law.” (Compl., ¶ 92 [a].) Plaintiff alleges, among other things, that as a result of defendant’s breaches of Environmental Laws, an eight-inch pipe elbow in the crude unit failed in July 2012, approximately 10 months after Valero’s purchase of the Refinery, causing a “catastrophic fire.” (*Id.*, ¶¶ 27-50.) Defendant moves to dismiss the action, pursuant to CPLR 3211 (a) (1) and (7), for failure to state a cause of action and based on documentary evidence.

It is well settled that on a motion to dismiss pursuant to CPLR 3211(a)(7), “the pleading is to be afforded a liberal construction (*see*, CPLR 3026). [The court must] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]. *See 511 W. 232nd Owners Corp. v*

Jennifer Realty Co., 98 NY2d 144 [2002].) However, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration.” (Simkin v Blank, 19 NY3d 46, 52 [2012] [internal quotation marks and citation omitted].) When documentary evidence under CPLR 3211(a)(1) is considered, “a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (Leon v Martinez, 84 NY2d at 88.)

As a threshold matter, the court rejects defendant’s contention that the action is barred by the “as is” clause in the Asset Purchase Agreement, dated as of September 1, 2011, between the parties (the APA or Agreement). This clause provides in pertinent part:

“Buyer acknowledges and agrees that the Purchased Assets are sold ‘as is,’ ‘where is’ and ‘with all faults’ and Buyer agrees to accept the Purchased Assets and the Business in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters, including environmental matters, and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Seller, except as expressly set forth in this Agreement, the Transition Services Agreement and any other certificate delivered hereunder by Seller to Buyer at Closing.”

(APA, § 4.08 [NYSCEF Doc. No. 156].)

Elsewhere in the Agreement, Murphy as Seller made the representations and warranties that are the subject of this action. In section 3.16 (c), the Environmental Law Representation, Murphy represented in pertinent part that, except as disclosed in identified sections of the APA or attached Schedules, “neither Seller nor any of its Subsidiaries is in material violation of . . . , with respect to the operation of the Purchased Assets . . . , any applicable Environmental Law . . . .” In section 3.10 (c), Murphy represented in pertinent part: “. . . [T]he Purchased Assets . . . are generally adequate for the conduct of the Business as currently conducted.”

The contention that the “as is” clause bars this action effectively reads these representations and warranties out of the APA. In interpreting a contract, however, “[t]he court should construe the agreement[] so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose.” (Beal Sav. Bank v Sommer, 8 NY3d 318, 324-25 [2007] [internal quotation marks and citations omitted]; W.W.W. Assocs. v Giancontieri, 77 NY2d 157, 162 [1990] [reading the contract, “as a whole to determine its purpose and intent”].) The court accordingly holds that the “as is” clause is subject to the representations and warranties expressly referenced in that clause.

The court further holds that the complaint adequately pleads material violations of the Environmental Law Representation. The complaint sets forth in detail the respects in which Murphy allegedly violated Environmental Laws regarding “mechanical integrity,” including failure to properly install, test, and maintain equipment, and to correct deficiencies. (Compl., ¶¶ 68-77.) The complaint also identifies numerous laws and regulations that were allegedly violated. (Id.) The specific alleged violations include failure to perform inspections to ensure that equipment was installed consistent with design specifications (id., ¶ 69), and failure to ensure that the equipment was suitable for the process application for which it would be used. (Id., ¶ 70.)

Contrary to defendant’s contention (D.’s Memo. In Supp., at 13-14), the complaint alleges that material violations existed as of the time of the closing. (Compl., ¶ 67.) The court is not persuaded by defendant’s apparent further contention (D.’s Memo. In Supp., at 14), that the de minimis nature of the Environmental Protection Agency fine for the crude unit fire

demonstrates that any violations were not material. While factual issues exist as to whether plaintiff can establish the violations and their materiality, such issues must be determined on a fully developed record.

The allegations of the complaint regarding defendant's breaches of the Environmental Laws also support plaintiff's claim that defendant violated the representation as to the adequacy of the assets sold. Defendant asserts that section 3.10 (c) of the APA "represents that the Seller has good title to all of the land and assets used in the Business as it is currently conducted . . ." and does not pertain to "the condition of the Refinery." (D.'s Memo. In Supp., at 16.) This assertion is not supported on this briefing, which presents only cursory analysis of the text and proper interpretation of section 3.10 (c).

The court holds, in contrast, that the complaint does not adequately allege a violation of applicable laws other than the Environmental Laws discussed above. In this regard, the complaint does not identify other laws that were allegedly violated, and pleads merely that "Murphy contractually misrepresented to Valero that, to its knowledge, no circumstances or conditions exist that would reasonably be expected to constitute or result in a failure of the Refinery to comply with any applicable law." (Compl., ¶ 92 [c].) In opposition to the branch of the motion to dismiss, Valero also states merely that "to the extent Murphy contends" the laws and regulations identified in paragraphs 68-77 of the complaint are not Environmental Laws, they are Applicable Laws. (P.'s Memo. In Opp., at 16.) This conclusory allegation is insufficient to plead a violation of any other laws.

Finally, at this juncture the court does not find that the complaint fails to adequately plead damages. Section 13.02 of the APA provides that Seller agrees to indemnify Buyer against "any and all damage, loss and expense . . . actually suffered by Buyer . . . to the extent arising out of:

(i) any misrepresentation or breach of warranty (each such misrepresentation and breach of warranty a ‘Warranty Breach’); . . . [and] (iii) any Retained Liability. . . .” (bold type omitted.)

This section further provides that Seller shall not be liable for any Warranty Breach where the amount of damages with respect to such breach does not exceed \$75,000 (the ‘De Minimis Amount’), and Seller shall not be liable unless the aggregate amount of damages for Warranty Breaches exceeds \$6.5 million, subject to other limits on damages. Triable issues of fact exist as to whether Valero’s damages, including damages for its “Retro-PMI [positive material identification] Program” arose out of Murphy’s alleged misrepresentations or breaches of warranty. The damages, if any, that are recoverable must await determination on a fully developed record.

The court has considered defendant’s remaining contentions and finds that they do not support dismissal of the complaint, except to the limited extent set forth in this decision.

It is hereby ORDERED that the motion of defendant Murphy Oil Corp. (Murphy) to dismiss the complaint is granted only to the extent of dismissing the sole cause of action for breach of contract to the extent based on the allegation, pleaded in paragraph 92 (c), that “Murphy contractually misrepresented to Valero that, to its knowledge, no circumstances or conditions exist that would reasonably be expected to constitute or result in a failure of the Refinery to comply with any applicable law” other than an applicable Environmental Law.

6/12/2020  
DATE

  
MARCY S. FRIEDMAN, J.S.C.

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|-----------------------|--------------------------|----------------------------|-------------------------------------|-----------------------|--------------------------|
| CHECK ONE:            | <input type="checkbox"/> | CASE DISPOSED              | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |                          |
|                       | <input type="checkbox"/> | GRANTED                    | <input type="checkbox"/>            | GRANTED IN PART       | <input type="checkbox"/> |
|                       | <input type="checkbox"/> | SETTLE ORDER               | <input type="checkbox"/>            | SUBMIT ORDER          |                          |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/>            | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
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