Sodhi v IAC/Interactivecorp
2021 NY Slip Op 31220(U)
April 8, 2021
Supreme Court, New York County
Docket Number: 652390/2020
Judge: Nancy M. Bannon

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 42EFM

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NINA SODHI, AZEEM ANSAR, KAGISO BOND, FRANKIE CHEUNG, KUAN HUANG, STEVE KATZ, BOBBY MANUEL, and MATT STITZER

Plaintiffs,

- v -

IAC/INTERACTIVECORP,

Defendant.

INDEX NO. 652390/2020

MOTION DATE 11/24/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. NANCY M. BANNON:

I. INTRODUCTION

In this action to recover damages for breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud, the defendant moves pursuant to CPLR 3211(a)(1) and (5) to dismiss the complaint based on a defense founded on documentary evidence and the existence of a release barring the action. The plaintiffs oppose the motion. For the following reasons, the motion is granted.

II. BACKGROUND

The complaint alleges that the plaintiffs are all former employees of Hatch Labs, Inc. ("Hatch"), a division of IAC Mobile, which is a wholly owned subsidiary of defendant IAC/InterActiveCorp ("IAC"). Hatch was a startup incubator company that developed applications for mobile phones. Among other applications, Hatch launched Tinder, the highly popular mobile dating application, in 2012. At the time they were hired, the plaintiffs were

granted "phantom" equity units (the "Units") in Hatch pursuant to an Equity Incentive Plan (the "Plan"), which was incorporated by reference into the letters outlining the plaintiffs' terms of employment. The Plan provided for a one-time valuation (the "Appraisal Value") and payout to the plaintiffs, as participants in the Plan, for all vested Units on a date certain (the "Settlement Date") in 2015.

Nonparty Dinesh Moorjani, as the Plan participant holding the most Units and the majority of Units, was designated under the Plan as the "Senior Participant," the authorized representative of all Plan participants. In his capacity as Senior Participant, Moorjani was empowered to review the Appraisal Value provided by IAC, obtain an alternative appraisal of the value of the Units, communicate critical information to other Plan participants, and challenge IAC's Appraisal Value before an arbitrator, if necessary. In his capacity as majority Unit-holder, Moorjani also had the right to provide consent to amend, modify, change, suspend, or terminate the Plan on behalf of all participants. Conversely, all other Plan participants, including the plaintiffs, were "deemed to have joined in the actions and agreements of the Senior Participant and waived any claim with respect thereto," pursuant to the terms of the Plan.

In March of 2014, Moorjani, in his capacity as Senior Participant and majority Unit-holder, agreed with IAC to accelerate the Settlement Date. Pursuant to a written agreement submitted by the defendant, Moorjani also agreed that the Appraisal Value for each Unit would be $166,566.42. Moorjani notified the plaintiffs and other Plan participants of the acceleration on March 21, 2014. In accepting their payout, each of the plaintiffs signed a Settlement Letter agreeing to the Appraisal Value accepted by Moorjani, the number of vested Units to be settled, and the aggregate purchase price that IAC was to pay the participants as consideration for settling their vested Units. Each Settlement Letter further provided the plaintiffs a conditional

right to an upward adjustment of the amount of their payout if, before October 15, 2014, a "Third Party Equity Financing" occurred in Tinder that implied a higher valuation of Tinder than the original Appraisal Value. Finally, each Settlement Letter included a release that reads as follows:

> "By execution hereof and upon acceptance of the Settlement Amount, you hereby release and forever discharge IAC and [Hatch Labs] and their respective directors, officers and employees from any and all causes of action, suits, claims, charges, complaints, promises and contracts which you may now have, or hereinafter can, shall or may have against IAC and [Hatch Labs] and their respective directors, officers and employees with respect to your interest in the Units, except for any claim that may arise from the obligations contained in this letter."

One of the plaintiffs, Matthew Stitzer, signed an additional release in favor of IAC in August 2017 in connection with his departure from employment with an IAC affiliate. Stitzer released IAC from claims related to the "non-payment of wages or other compensation," "grants of stock options or any other equity compensation," and "stock or other interests."

Approximately six years after the plaintiffs received their payouts for their Units, the plaintiffs commenced this action against IAC, asserting causes of action to recover for breach of the Plan (first cause of action), breach of the implied covenant of good faith and fair dealing contained in the Plan (second cause of action), and fraud arising from IAC's alleged misrepresentation of the value of the Units (third cause of action). The plaintiffs contend, *inter alia*, that IAC misled Moorjani as to the true value of Tinder, which was the principal asset underlying the value of the Units, withheld information from Moorjani with respect to Tinder's value, and coerced Moorjani to accelerate the Settlement Date to March 2014. The defendant asserts that the complaint must be dismissed in its entirety in light of the contractual releases described herein.

III. DISCUSSION

"Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release." Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., 17 NY 3d 269, 276 (2011). Though the plaintiffs make much of whether the releases incorporated in the Settlement Letters were specific or general releases, the relevant question is merely whether the claims in this action are the subject of those releases. By their plain terms, the Settlement Letter releases applied to any and all claims related to the plaintiffs' "interest in the Units." In this action, the plaintiffs challenge the one-time valuation of the Units and ensuing payout, and the amendment of the Plan to accelerate the Settlement Date of the Units, as tainted by IAC's alleged misrepresentations, coercion, and fraud.

The plaintiffs aver that the Settlement Letter releases they signed do not cover the claims in this action because the claims relate to their entitlement to a payout under the Plan, and not to their basic possessory interest in the Units. This narrow interpretation of the scope of the releases is strained and unconvincing. The language of the releases indicates the parties' intention to bar "any and all" claims the plaintiffs "may now have, or hereinafter can, shall or may have" with respect to the plaintiffs' interests in the Units. As the complaint makes clear, the plaintiffs' interests in the Units are the basis for their participation in the Plan and the source of any claim they have to a payout at a certain time or in a certain amount. Thus, each of the plaintiffs' claims in this action, including their fraud claims, derive from their interests in the Units and are covered by the expansive language of the subject releases they signed. See Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., supra at 277 ("broad language" of release reaching "all manner of actions," whether "past present or future" arising out of the plaintiffs' "ownership of membership interests" in company held to bar the plaintiffs' claims that

they were fraudulently induced to sell their interests); Avnet, Inc. v Deloitte Consulting LLP, 187 AD 3d 430 (1st Dept. 2020) (release reaching "any and all claims," whether "known or unknown" in connection with the defendant's software system covered claim that the plaintiff was fraudulently induced to enter into work orders for the system).

Moreover, as the defendant correctly points out, the plaintiffs' proposed reading of the releases is nonsensical in the context of the Settlement Letters. It is beyond dispute that the Settlement Letters were meant to document the terms under which the plaintiffs would receive a payout as consideration for the Units. The inclusion of releases covering only the plaintiffs' ability to claim ownership of the Units would serve no purpose at that juncture, since the plaintiffs would no longer possess the Units after payment was made. Construing the releases in a commercially reasonable manner, (see Landmark Grp., Inc. v New York City Sch. Const. Auth, 148 AD3d 603 [1st Dept. 2017]), and relying on their plain, expansive terms, the court concludes that they do cover all of the claims included in the complaint. The court need not reach the issue of whether the additional release signed by Stitzer in 2017 separately forecloses his claims.

Notwithstanding the foregoing, the plaintiffs argue that they should be allowed to proceed in litigating their claims because the releases in the Settlement Letters were procured by fraud. Specifically, the plaintiffs allege that "IAC, either in conjunction with or utilizing Dinesh Moorjani, defrauded Plaintiffs by hiding the true value of Tinder (which was known to IAC at the time to be nearly $1 Billion) at the time of the settlement *and* accelerating that settlement to deprive Plaintiffs of settling their phantom equity one year later, as called for in the Plan, when Tinder's value had swelled to approximately $3 Billion."

"A signed release 'shifts the burden of going forward … to the [plaintiff] to show that there has been fraud, duress or some other fact which will be sufficient to void the release.'" Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., supra at 276 (quoting Fleming v Ponziani, 24 NY 2d 105, 111 [1969]). However, "a party that releases a fraud claim may later challenge that release as fraudulently induced only if it can identify a separate fraud from the subject of the release." Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., supra at 276 (citing Bellefonte Re Ins. Co. v Argonaut Ins. Co., 757 F 2d 523 [2d Cir. 1985]); see Avnet, Inc. v Deloitte Consulting LLP, supra; Davis v Rochdale Village, Inc., 109 AD 3d 867 (2nd Dept. 2013).

In Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., supra, the plaintiffs, in connection with the sale of their membership interests in an Ecuadorian mobile telephone company, had executed a release of "all manner of actions," whether "past, present or future" arising out of the plaintiffs' "ownership of membership interests" in the telephone company. The plaintiffs then commenced an action against the owner of the majority interest in the telephone company and its affiliates, alleging that they fraudulently induced the plaintiffs to sell their interests. The Court of Appeals held that the plaintiffs could "not now claim that defendants fraudulently misled them regarding the value of their ownership interests in [the telephone company] unless the release itself was induced by a separate fraud." Id. at 277. Notably, the plaintiffs' claim that they sold their interests based on false financial information provided by the defendants was not a "separate fraud" sufficient to set aside the release; the plaintiffs could not be relieved from the release "on the ground that they did not realize the true value of the claims they were giving up." Id. at 278 (internal quotation marks omitted).

Like the plaintiffs in Centro Empresarial, the plaintiffs in this action have alleged no fraud separate from that which was the subject of the releases they signed, whether known or unknown to the plaintiffs at the time. The plaintiffs nonetheless aver that the holding in Centro Empresarial should not be applied here because there was a lack of equal bargaining power and the plaintiffs, who were contractually obligated to join in Moorjani's actions, were "forced to accept the valuation and settlement date and were [sic] could not do anything about it." In the discussion the plaintiffs allude to in Centro Empresarial regarding bargaining power, the Court of Appeals rejected the contention that its conclusions should be altered by the fact that the parties in that case had a fiduciary relationship. In that context, the Court of Appeals emphasized that the parties were sophisticated entities advised by counsel. See Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., supra at 278-79. Here, in contrast, the plaintiffs do not argue that, as holders of phantom equity in Hatch, they had any sort of fiduciary relationship with IAC such that the special scrutiny given in Centro Empresarial should apply.

In any event, the plaintiffs acknowledge that the Plan, which they were parties to, provided Moorjani in his capacity as Senior Participant with exclusive responsibility for negotiating with IAC and agreeing to the final Appraisal Value, and in his capacity as holder of the majority of Units the exclusive right to provide written consent to amend the Plan on behalf of all participants. The plaintiffs make no factual, non-speculative allegations to suggest that Moorjani had any incentive to take a position adversarial to the plaintiffs in his representation of them in his dealings with IAC. Rather, as the defendant observes, all signs point to Moorjani's interests being wholly aligned with the plaintiffs' interests. For all of the foregoing reasons, the court declines to carve out an exception to the holding in Centro Empresarial in order to permit the plaintiffs to proceed on claims they duly released in 2014.

Finally, the plaintiffs aver that the defendants' motion must be denied at least in part insofar as the plaintiffs have plausibly alleged claims that were expressly excluded from any release. The plaintiffs refer in their opposition brief to a claim that their conditional right to an upward adjustment of the payout, as granted in the Settlement Letters, was violated. Though such a claim may be excluded from the Settlement Letter releases to the extent that it "arises under" the Settlement Letters, it does not appear anywhere in the complaint. Nor have the plaintiffs made any application to amend the complaint. The plaintiffs' allegations, made for the first time in opposition to a motion to dismiss, cannot form a basis for the survival of the complaint in its current form.

IV. CONCLUSION

Accordingly, it is

ORDERED that the defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (a)(5) is granted, and the complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk shall enter judgment and mark the file accordingly.

This constitutes the Decision and Order of the Court.

Dated: April 8, 2021 **ENTER:**

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON