IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WOODLANDS BANK, Plaintiff	:	NO. 07 – 02,759
	:	CIVIL ACTION - LAW
vs.	:	
EQUIPMENT FINANCE, LLC and STERLING FINANCIAL CORPORATION, Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the Court are preliminary objections filed by both defendants (hereinafter "EFI" and "Sterling" respectively) on March 6, 2008. Argument thereon was heard May 19, 2008.

Plaintiff (hereinafter "Woodlands") and EFI entered into four "Master Agreements" pursuant to the terms of which Woodlands purchased from EFI 98 equipment loans[1] and EFI agreed to be responsible for servicing the loans. In its Complaint, Woodlands alleges breach of the Agreements and also alleges counts of negligent misrepresentation, fraudulent misrepresentation, breach of fiduciary duty, conversion and aiding and abetting breach of fiduciary duty. Woodlands seeks damages of $7,848,210.99 (the purchase price of the loans), punitive damages, plus interest, costs and attorneys' fees. In their preliminary objections, EFI and Sterling[2] each raise various objections to all of the counts of the Complaint. For ease of discussion, each objection will be addressed seriatim.

First, EFI objects to Count I, Breach of Contract, on the basis that the Complaint provides the specifics of the four Master Agreements but does not provide detail with respect to each of the 55 loans. The Complaint alleges breach of Paragraph 7 of the Master Agreements, alleging a failure to act properly as Woodlands' fiscal agent in the administration of the loans, and breach of Paragraph 2, alleging EFI had actual knowledge of facts impairing Woodlands' rights but failed to notify Woodlands. The Court believes that in light of the allegations that

[1] Only 55 of those loans are the subject of this action.
[2] Sterling Financial Corporation is the indirect parent of EFI and, according to the Complaint, representatives of both Sterling and EFI participated in the negotiation of the Master Agreements.

EFI breached the *Master Agreements*, detailing of the individual loans in the Complaint is not necessary. This objection will, therefore, be overruled.

Second, EFI objects to Woodlands' demand for the return of the purchase price of the loans, effectively "rescission",[3] arguing Woodlands is not entitled to such under the Master Agreements, and even if entitled, that such remedy has not been properly pled. With respect to Count I, breach of Contract, it does appear the Master Agreements limit Woodlands remedy to indemnification of actual losses, including attorneys' fees, and, indeed, Woodlands has so pled in Paragraphs 48 and 49 of the Complaint. The Complaint seems to predicate its request for rescission on its further claim in Paragraph 45 that the breaches "affect the validity of the Master Agreements and empower Woodlands to demand repurchase of all of the outstanding loans." Since the terms of the Master Agreements do not provide for rescission, however, the request for such in Count I, Breach of Contract, is improper. This objection will, therefore, be sustained. With respect to the remaining counts, EFI objects to the lack of an allegation that Woodlands has tendered back to EFI the payments it has received under the loans. As the remaining balances can certainly be accounted for in fixing damages, the lack of such an allegation is not fatal to the claim for rescission. This objection will, therefore, be overruled.

Next, EFI objects to Counts II, III, IV and V based on the "gist of the action" doctrine, contending these tort claims must be dismissed as the action is simply one in contract. While Count I, Breach of Contract, does rely on the contract as its basis for liability, Counts II and III allege negligent misrepresentation of facts material to Woodlands' decision to enter into the contract, and fraudulent misrepresentation of such facts, respectively. These claims are not barred by the gist of the action doctrine. *See* Polymer Dynamics, Inc. v. Bayer Corp., 2000 U.S. Dist. LEXIS 11493 (E.D. Pa. August 14, 2000) (fraud claims not barred by gist of the action doctrine because they may relate to promises of future business not contemplated by the sales contract), and American Guarantee and Liability Insurance Co. v. Fojanini, 2000 U.S. Dist. LEXIS 3086 (E.D. Pa. March 14, 2000) (where plaintiff alleged defendant misrepresented the state of his company's business, court held claims sounded primarily in tort and not barred by gist of the action doctrine). Counts IV and V do appear, however, to be simply "alternative"

claims to the breach of contract claim. Count IV alleges breach of fiduciary duty in failing to disclose information about the loans during their administration, but since the duty to disclose arises from the relationship created by the contract, breach of that duty is a contract claim. Indeed, the allegations of Paragraph 75, that after Woodlands purchased the loans EFI failed to disclose information about the administration of the loans, are simply a general re-statement of the allegations of Paragraph 41(a), that EFI "failed to act properly as Woodlands' "Fiscal Agent" in the administration of the equipment loans" by "failing to tell Woodlands" certain information about the loans. Count IV also alleges that EFI made certain misrepresentations prior to the parties' entry into the Master Agreements but such cannot be considered breach of a fiduciary duty as a fiduciary relationship had yet to arise prior to entry into the contract. Thus, while not barred by the gist of the action doctrine, this part of the claim cannot be sustained.[4] Count V alleges conversion by EFI of the funds Woodlands provided to purchase the loans. This is clearly a breach of contract claim. The objections to Counts II and II will, therefore, be overruled, but the objections to Counts IV and V will be sustained.

Next, EFI objects to Counts II and III on the basis of the parol evidence rule, contending parol evidence is inadmissible to prove a claim of fraud in the inducement where the contract at issue is a fully integrated contract. While the Courts of this Commonwealth have at times held parol evidence admissible to prove fraud in the inducement, *See e.g*. Berger v. Pittsburgh Auto Equipment Co., 127 A.2d 334 (Pa. 1956), *and See* Betz Laboratories, Inc. v. Hines, 647 F.2d 402 (3d Cir. 1981), recent cases have limited that holding to cases involving the sale of real property where the buyer would be unable, upon visual inspection, to determine that the representations of the seller were false. HCB Contractors v. Liberty Place Hotel, 652 A.2d 1278 (Pa. 1995). The current state of the law prevents parol evidence from being introduced to prove fraud in the inducement of a fully integrated contract.[5] *See* North American Roofing &

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[3] The request for rescission is specifically made in Count II, but the remaining counts simply seek return of the purchase price.

[4] It may very well be that Plaintiff was simply repeating the allegations of previous counts for ease of reference and not intending to base Count IV on those allegations.

[5] There can be no dispute that the contract at issue here is a fully integrated contract; Paragraph 9 of such provides, in pertinent part, that "[t]his assignment represents the entire understanding of the parties. All prior negotiations have been merged herein" and also that "Assignee [Woodlands] acknowledges that Assignee has independently and without reliance upon any representation by Assignor (except as expressly set forth herein), relied upon its

Sheet Metal Co. v. Building & Construction Trades Council of Philadelphia, 2000 U.S. Dist. LEXIS 2040 (E.D. Pa. February 29, 2000); Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425 (Pa. 2004); Cottman Transmission Systems v. Kershner, 536 F.Supp.2d 543 (E.D. Pa. March 5, 2008). While Woodlands argues that it is not attempting to alter any of the terms of the contract, by alleging that they relied on certain misrepresentations of EFI and Sterling, they are indeed attempting to alter the provision of the contract which states that they entered the contract "without reliance upon any representation by Assignor". Therefore, the parol evidence rule does apply in this instance and the objection to Counts II and III based thereon will be sustained.

Finally,[6] EFI objects to Count I on the basis that such is not specific enough. The Court believes, however, that the Complaint sets forth enough information to provide EFI with notice of the claim against it. Discovery should suffice to flesh out the claim. This objection will, therefore, be overruled.

The additional objection[7] raised by Sterling to Counts II and III need not be addressed as those objections may be sustained on the grounds discussed above. With respect to Sterling's objection to Count VI, Aiding and Abetting Breach of Fiduciary Duty, although Sterling argues that this claim must be dismissed if the claim against EFI for breach of fiduciary duty is dismissed, as there remains viable a claim for breach of fiduciary duty under the contract, the aiding and abetting claim survives. Sterling also argues that Woodlands has failed to allege the necessary elements of such a claim, but a thorough reading of the Complaint reveals allegations that Sterling had knowledge of the alleged breach and that Sterling substantially assisted or encouraged the breach.[8] The objection to this Count will, therefore, be overruled.

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own credit analysis and judgment to accept this Assignment and all Specifications executed in connection herewith".

[6] In light of this Court's conclusion that Counts II, III, IV and V must be dismissed for the various reasons given above, the remaining objections to those Counts will not be addressed.

[7] Sterling incorporates the objections raised by EFI in its preliminary objections and also raises the additional, party-specific, objection that Woodlands has failed to state a claim for alter ego liabilty.

[8] See Paragraphs 89, 90 and 91 of the Complaint.

ORDER

AND NOW, this 16th day of June 2008, for the foregoing reasons, the preliminary objections filed by both defendants are hereby overruled in part and sustained in part. Counts II, III, IV and V are hereby DISMISSED. Count I is amended to strike the demand for judgment in the amount of the purchase price of the loans and to instead make a demand for the actual losses, including attorneys' fees, reasonably incurred, per the indemnification clause of the contract.

BY THE COURT,

Dudley N. Anderson, Judge

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