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Chadha v Wahedna
2021 NY Slip Op 50509(U)
Decided on June 2, 2021
Supreme Court, New York County
Ostrager, J.
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Decided on June 2, 2021

Supreme Court, New York County

Nilish Chadha, Individually, and Derivatively on Behalf of Wahed Inc. f/k/a Wahed Invest Inc., Plaintiff,

against

Junaid Wahedna, and Wahed Inc. f/k/a Wahed Invest Inc., Defendants.

652818/2020

Plaintiff Nilish Chadha was represented by:

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Defendant Junaid Wahedna was represented by:

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Barry Ostrager, J.

The Court heard oral argument on Defendants' pre-answer motion to dismiss the Amended Complaint (Motion 002) on May 27, 2021 via Microsoft Teams. Based on the papers submitted, and the proceedings on the record of May 27, 2021, the motion is granted, and the Amended Complaint is dismissed.

Background

Plaintiff Nilish Chadha is the co-founder of Defendant Wahed Inc. ("the Company"), a financial technology and services company that offers investment opportunities compliant with Islamic law. (Am. Compl. ¶ 10, NYSCEF Doc. No. 19.) Plaintiff is the former Chief Operating Officer ("COO") of Wahed and is also a former board member and shareholder of the Company. (*Id*. ¶¶ 4, 9.) Defendant Junaid Wahedna is and was at all relevant times the controlling shareholder, a director and CEO of Wahed Inc. Defendant Wahed Inc. was formerly known as Wahed Invest Inc. and is a Delaware corporation which was formed in June 2015, under the laws of the State of Delaware, and was duly authorized to conduct business in the State of New York.

The Amended Complaint alleges that starting on or about October 2016 through March 2017, Defendants engaged in a fraudulent scheme to purchase Plaintiff's shares in the Company at deeply discounted values by inducing Plaintiff to enter into a series of Common Stock Repurchase Agreements ("CSRAs"), by allegedly fraudulently misrepresenting to Plaintiff the value of his shares, and in breach of fiduciary duties owed to him, by failing to disclose higher share prices that were being negotiated with third-party investors at the time, in order to buy out Plaintiff's shares in the Company at lower prices.

Specifically, on October 14, 2016, Plaintiff entered into an agreement to sell Wahed 38 shares of common stock, for $49,400; on November 2, 2016, Plaintiff entered into a further agreement to sell another 300 shares to Wahed, for $399,900; on January 16, 2017, Plaintiff entered into a third and final agreement to sell Wahed his last 192 shares, for $200,000. (Am. Compl. ¶¶ 16-18).

The Amended Complaint acknowledges that after the CSRAs were executed, Plaintiff and Wahed entered into a Settlement Agreement and Release (the "Settlement Agreement") (Am. Compl. ¶ 19) which was made effective as of February 27, 2017.

Plaintiff filed this action in June 2020, more than three years after the sale of all his shares in the Company, seeking to recover damages for fraud, breach of fiduciary duty, misappropriation of one or more corporate opportunities, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, tortious interference, conversion, imposition of a constructive trust, and an equitable accounting, arising from the Plaintiff 's ownership of 530 shares of the Company, and the alleged surreptitious purchase by Defendants of Plaintiff's 530 shares through alleged fraud and failure to disclose one or more existing business opportunities.

Because Plaintiff Chadha seeks to rescind the CSRAs, Plaintiff alleges that he remains a shareholder of the Company and is alternatively suing Defendant Wahed Inc. derivatively, as a shareholder on behalf of Wahed Inc., because Defendants' purchases of Plaintiff Chadha's 530 shares are allegedly null and void.

Motion 002

Defendants move to dismiss the Amended Complaint on the basis that Plaintiff's claims are barred by a release. After the CSRAs were executed, Plaintiff and Wahed entered into a Settlement Agreement and Release (Am. Compl. ¶ 19) made effective as of February 27, 2017. In the Settlement Agreement, Plaintiff agreed to:

> irrevocably release and forever discharge [Wahed Invest Inc.], and its parents, subsidiaries and affiliates, their respective officers, directors, employees, shareholders, partners, members, agents, attorneys and representatives, and the predecessors, heirs, successors and assigns of each of the foregoing (collectively, the "Company Released Parties") *from any and all actions, causes of action, suits, debts, claims, complaints, liabilities, obligations, charges, contracts, controversies, agreements, promises, damages, expenses, counterclaims, cross-claims, claims for contribution and/or indemnity, claims of equity ownership, claims for advisory shares, claims for costs or attorneys' fees, judgments and demands whatsoever, in law or equity, known or unknown*, the Investor Released Parties ever had, now have, or may have against the Company Released Parties from the beginning of time to the date hereof.

Id. § 1(emphasis added). Defendants argue that this release encompasses the entire Amended Complaint.

The controlling authority on whether a signed release bars claims in the face of an allegation that the release itself was fraudulently induced is *Centro Empresarial Cempresa S.A. v. America Movil, S.A.B. de C.V.,* 952 N.E.2d 995 (NY 2011). Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release. Additionally, a release may encompass unknown claims, including unknown fraud claims, if the parties so intend and the agreement is "fairly and knowingly made." *Id* at 1000.

As a preliminary matter, there can be no dispute here that the above-quoted release encompasses unknown fraud claims as it refers to "any and all actions" "whatsoever" "known or unknown." *See id* at 1000 (finding "the phrase 'all manner of actions,' in conjunction with the reference to 'future' and 'contingent' actions, indicates an intent to release defendants from fraud claims, like this one, unknown at the time of contract."). Thus, the inquiry is whether the release was fairly and knowingly made.

Once a defendant meets the initial burden of providing an executed release, the burden shifts to the plaintiff to establish that the release is invalid because of traditional contract defenses such as duress, illegality, fraud, or mutual mistake. *Id*. To invalidate a release for fraud, however, plaintiff must "identify a *separate* fraud from the subject of the release." *Id* (emphasis added). If "[t]he fraud described in the complaint ... falls squarely within the scope of the release," then that fraud cannot nullify the release. "Were this not the case, no party could ever [release] a fraud claim with any finality." *Id* at 1001.

The *Centro* Court also held that the existence of a fiduciary relationship does not alter this analysis. *Id*. "A sophisticated principal is able to release its fiduciary from claims — at least where ... the fiduciary relationship is no longer one of unquestioning trust — so long as the principal understands that the fiduciary is acting in its own interest and the release is knowingly entered into." *Id*. However, *Centro* does not go so far as to hold that a relationship of unquestioning trust prevents a party from being able to release fraud claims. Indeed, nothing in *Centro* (or its progeny *Pappas v. Tzolis*, 20 NY3d 228 (2012)) requires that the parties have prior business disputes to be able to release fraud claims. *See Silver Point Capital Fund, L.P. v. Riviera Res., Inc.*, 69 Misc 3d 1213(A) (Sup. Ct. NY Cty. 2020); *Kafa Investments, LLC v. 2170-2178 Broadway, LLC*, 39 Misc 3d 385 (Sup. Ct. NY Cty. 2013),

aff'd, 114 AD3d 433 (1st Dep't 2014) (rejecting plaintiffs' attempt to distinguish *Centro* on the grounds that "their relationship of trust with the defendants was fully intact during contract negotiations").

The *Centro* Court further held that "[w]here a principal and fiduciary are sophisticated parties engaged in negotiations to terminate their relationship, [ ] the principal cannot blindly trust the fiduciary's assertions." *Centro* 17 NY3d at 1002. "The test, in essence, is whether, given the nature of the parties' relationship at the time of release, the principal is aware of information about the fiduciary that would make reliance on the fiduciary unreasonable." *Pappas* 20 NY3d at 579. The requirement that "the principal is aware of information about the fiduciary that would make reliance on the fiduciary unreasonable" means not only subjectively or *actually* aware but also whether plaintiff should have learned of such information by exercise of ordinary intelligence. If "the facts represented are not matters peculiarly within the party's knowledge, *and the other party has the means available to him of knowing*, by the exercise of ordinary intelligence, the truth or the real quality of the subject of the representation, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations" *Centro* 17 NY3d at 1001 (emphasis added).

Here, the Court finds that Plaintiff has not alleged a fraud *separate* from the subject of [*2]the release as required under the controlling case law cited above. The crux of the Amended Complaint is that Defendant allegedly concealed the existence of a future investment by a third-party that would have been favorable to the Company and presumably increased the value of Plaintiff's stock and that Defendant falsely represented that the Company was in financial trouble. Taking the allegations as true on a motion to dismiss the Amended Complaint, Plaintiff fails to allege a fraud *separate* from the broad cover of the release which is "any and all claims [ ] the Investor Released Parties ever had, now have, or may have against the Company Released Parties from the beginning of time to the date hereof." (Settlement Agreement § 1). While this failure alone is sufficient to dismiss the Amended Complaint, the Court addresses Plaintiff's arguments below.

The Court notes that because Plaintiff signed the release after selling all his shares in the Company, Mr. Wahedna no longer owed Plaintiff any fiduciary duties and the release was thus an arms-length transaction. However, even if fiduciary duties somehow still applied, the Court's analysis would be unchanged.

In its Opposition to the Motion, Plaintiff argues that it was reasonable to rely on Mr. Wahedna's representations because, unlike in *Centro* and *Pappas*, "the relationship between Plaintiff and Mr. Wahedna continued during the relevant period as one of trust and reliance. There were no disputes between Plaintiff and Mr. Wahedna during the relevant time period, and the relationship never became antagonistic; nor did Mr. Wahedna ever become intransigent. Plaintiff continued to regard Mr. Wahedna as being trustworthy, from September 2016 through most of August 2017. Put differently, Plaintiff did not understand that the fiduciary, Mr. Wahedna, was acting in his own interests, and diametrically opposite the interests of Plaintiff." (MOL in Opp. at 10, NYSCEF Doc. No. 38).

First, as discussed above, a lack of hostility between the parties to a release does not prevent the parties from being able to release claims including fraud claims. *See Silver Point Capital Fund, L.P. v. Riviera Res., Inc.*, 69 Misc 3d 1213(A) (Sup. Ct. NY Cty. 2020); *Kafa Investments, LLC,* 39 Misc 3d at 391. Second, Plaintiff's contention that he fully and unquestioningly relied on Mr. Wahedna is belied by the actual allegations in the Amended Compliant which claim that Mr. Wahed withheld compensation for back salary, that Mr. Wahedna failed to make required capital contributions, and that, when negotiating the Settlement Agreement, Mr. Wahedna threatened not to pay Plaintiff moneys owed under the January 2017 Repurchase Agreement. (Am. Compl. ¶¶ 121, 123; Affidavit of Nilish Chadha, NYCEF Doc. No. 39 ¶ 12.) Where the allegations of the Complaint themselves rebut the theory of the case, the action may be dismissed on the pleadings.

Third, and most importantly, contrary to Plaintiff's claim in opposition that Mr. Wahedna had "superior knowledge of essential facts" (MOL in Opp. at 20), as a corporate officer — the COO of the Company — as a matter of law Plaintiff had access to information relevant to the Company and relevant to valuing his interests. Under *Centro*, a party must exercise ordinary intelligence to determine the truth or the real quality of the subject of the representation. Where, as here, he fails to do so "he will not be heard to complain that he was induced to enter into the transaction by misrepresentations" *Centro* 17 NY3d at 1001.

Plaintiff should have performed his own diligence as to the value of his shares. Plaintiff sold his shares back at approximately four times the value for which he had bought them one to two years earlier. This fact stands in contrast to Plaintiff's claim that Mr. Wahedna represented the Company as being in dire financial trouble. *Cf Pappas* 20 NY3d at 579 " [p]ractically [*3]speaking, it is clear that plaintiffs were in a position to make a reasoned

judgment about whether to agree to the sale of their interests to Tzolis. The need to use care to reach an independent assessment of the value of the lease should have been obvious to plaintiffs, *given that Tzolis offered to buy their interests for 20 times what they had paid for them just a year earlier*." (emphasis added).

Plaintiff also attempts to raise issues of fact about Plaintiff's level of sophistication relative to Mr. Wahedna. It is true that much of the controlling authority involves sophisticated commercial entities who were represented by counsel. Nevertheless, there is no requirement that a party be represented by counsel to validly release a fraud claim.

Plaintiff argues that he was only twenty-six years old at the time he signed the release, that he was not as educated as Mr. Wahedna, and that Mr. Wahedna was his childhood friend whom he viewed as a brother. This argument is unavailing. Plaintiff has an undergraduate degree in Business Administration from The American University in Dubai and was sophisticated enough to serve as the Company's COO which inherently involved an understanding of the Company's financial status. *Cf Est. of Mautner v. Alvin H. Glick Irrevocable Grantor Tr.*, No. 19 CIV. 2742 (NRB), 2019 WL 6311520, at *5 (S.D.NY Nov. 25, 2019), *appeal withdrawn,* No. 20-170, 2020 WL 1887888 (2d Cir. Mar. 10, 2020) (finding the plaintiff's argument that he lacked sophistication unavailing even where plaintiff was a "a retired physician who inherited his family's real estate holdings and did not participate in the day-to-day operations of the Property LLC").

Plaintiff analogizes his position to this Court's decision in *MadeOf LLC v Bronson* 2019 NY Slip Op. 31058 (NY Sup. Ct. 2019) where this Court declined to dismiss fraud claims based on a release where there were questions about the plaintiff's business acumen and whether plaintiff understood that the released parties were acting in their own self-interest. This case is distinguishable. The plaintiff in *MadeOf* was the inventor of a product; she did not hold a business degree and did not serve as MadeOf's COO.

Finally, Plaintiff misconstrues the applicable law. A specific release of fiduciary duties is not required where, as here, there is a broad general release, reaching all claims among the parties.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted, and the Clerk is directed to dismiss this action with prejudice.

Dated: June 2, 2021

Barry R. Ostrager, JSC

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