UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GENERAL MOTORS CORPORATION,	:	**04cv120 (WWE)**
Plaintiff,	:	
v.	:	
WATSON ENTERPRISES, INC.,	:	
Defendant.	:	

RULING ON MOTIONS TO DISMISS

This action concerns a lease agreement and negotiations between plaintiff General Motors Corporation ("GM") and defendant Watson Enterprises, Inc. ("WEI") relevant to the purchase or long-term lease by GM of a certain property in Greenwich, Connecticut. GM has filed a seven-count complaint, alleging misrepresentation, fraud, tortious interference, interference with business expectancy, inducement to breach fiduciary duties, estoppel, and CUTPA.

After GM failed to file a timely opposition, the Court granted the motion to dismiss absent objection. Thereafter, the plaintiff filed a motion for reconsideration, which the Court granted, vacating its order on the motion to dismiss. Defendant subsequently filed a supplemental motion to dismiss plaintiff's claims of fraud and negligent misrepresentation. For the following reasons, the Court will grant in part the first-filed motion to dismiss, and deny the supplemental motion to dismiss.

Background

Consistent with the standard of review for a motion to

dismiss, the Court considers all of the factual allegations to be true.

Arthur Watson is the principal owner of Watson Enterprises, Inc. ("WEI"). Ronald Pecunis is a minority owner of WEI and is authorized to act on its behalf.

Greenwich Cadillac is owned by an individual dealer operator, Jack Grassi, and GM.

In 1993, Grassi, Greenwich Cadillac and WEI executed a five-year lease for Greenwich Cadillac to occupy the dealership facility owned by WEI at 217 Putnam Avenue in Greenwich, Connecticut. The lease commenced on February 1, 1994 and expired on January 31, 1999. The lease contained a single five-year renewal option, which option was exercised. Therefore, the term of the lease expired on January 31, 2004.

Prior to the lease's expiration, Grassi sought to negotiate with WEI to either purchase the dealership property or to execute a long-term lease extension. In April, 2003, Eric Rubin of GM's Worldwide Real Estate division began negotiations with WEI of a lease/sale transaction for the Greenwich property.

In May, 2003, Rubin met with Grassi to learn the details of the existing lease transaction. Grassi disclosed that the dealership had agreed to pay more than what was stated in the

existing lease, but did not disclose that the dealership was paying this higher rent pursuant to a written "side" agreement executed by Grassi and WEI in 1993.

A meeting between WEI and GM representatives was held on May 21, 2003, without Grassi attending. At that time, GM indicated its desire to execute a long-term lease in order to protect its interest in the Greenwich market. Watson and Pecunis indicated that, rather than discussing a lease, they wished to discuss a transaction whereby WEI would become the Cadillac dealer in Greenwich. Due in part to GM's relationship with Grassi, GM stated that the Cadillac dealership was not available. Watson became upset and sought to end the meeting.

GM then requested discussion of a short-term lease extension which would give Greenwich Cadillac time to locate alternative dealership premises. Mr. Pecunis responded that WEI was willing to discuss a short-term lease extension, and agreed to continue a dialogue with GM.

On June 6, 2003, a GM representative and Pecunis spoke by telephone regarding an extension. Pecunis raised the issue of WEI acquiring the Cadillac dealership. However, after the GM representative indicated that he would not discuss a possible acquisition, Pecunis responded that WEI was not interested in

the short-term lease extension, but that it would entertain a long-term tenancy of the premises. The conversation then turned to the terms of a lease and a potential purchase of the Greenwich property.

In June and July, GM made several unsuccessful attempts to discuss the transaction. However, in a discussion with a GM representative on July 31, Pecunis outlined a ten-year lease term with a five-year renewal option. He indicated that GM could lease the dealership property so long as the rent amount was acceptable. He discussed an annual rental in the amount of $700,000 but requested that Rubin, GM's representative, go back to GM with the proposed price terms and obtain the necessary approvals.

In August and September, GM's attempts to contact Pecunis were unsuccessful. However, in October, a meeting was set up between Watson, Pecunis and GM representatives, Rubin and Mark Valerio, GM's Regional Director for Dealership Network Planning and Investment.

At the meeting, Valerio proposed that GM purchase the property for $5.1 million. Pecunis rejected that offer, stating that GM would have to be more creative.

A meeting for further discussion of a transaction regarding the property was set for October 30, 2003. However,

Pecunis called shortly prior to the scheduled date to cancel the meeting due to Watson's travel schedule.

Thereafter, GM experienced difficulty in contacting Pecunis to schedule another meeting. In early November, Rubin and Pecunis spoke by telephone, at which time Pecunis indicated that WEI would entertain an offer but that GM had to improve its numbers from those made in the October 22 offer.

After unsuccessful contact attempts in November and December, Rubin had a conversation with Pecunis on December 19, 2003. During that conversation, Rubin told Pecunis that GM was prepared to make another offer, and he suggested a conference call. Pecunis responded by stating that he would get back to Rubin to schedule a meeting or conference call. He never called back.

On January 5 and 6, Rubin left messages for Pecunis. On January 6, 2004, Rubin received a message from Steven Phillips, whom Rubin understood to be an attorney for WEI. Phillips stated that WEI was terminating negotiations regarding either a lease or a purchase of the Greenwich dealership property, and that Greenwich Cadillac must vacate the building by the end of January.

Rubin returned Phillips' call that evening, and he expressed disappointment in the decision by WEI to terminate

the discussions, given the prior statements by Pecunis concerning the terms of a deal. Rubin then asked whether WEI would provide additional time to allow Greenwich Cadillac to wind down its operations and locate to an alternative facility.

By letter dated January 8, 2004, Phillips notified Grassi that the Cadillac lease was due to expire at the end of January and that the dealership needed to vacate the premises by that date.

Rubin later learned from Grassi that the rent in the lease was changed pursuant to the terms of a Side Agreement with WEI. Grassi informed Rubin that the Side Agreement (i) "obligated him to pay WEI during the option period a higher rent than the rent set forth in the Cadillac Lease; and (ii) concerned WEI potentially becoming partners in the Cadillac dealership with Grassi." Complaint, ¶ 41.

On January 13, 2004, Rubin received a faxed copy of the Side Agreement from Grassi. It provided that Grassi and WEI were to negotiate, in good faith, a proposed transaction "allowing WEI or its owner to become an equity owner" in Greenwich Cadillac. It also obligated WEI and Grassi to keep the existence of the Side Agreement secret from GM. Pursuant to the terms of the Side Agreement, Grassi and Greenwich

Cadillac paid WEI a total of $92,740.80 of additional rent as compared to the stated amount in the Cadillac Lease.

GM sets forth that WEI engaged in a calculated strategy to delay the sale/lease discussion, string GM along to a point where WEI could demand that GM make WEI, Watson and Pecunis the Cadillac dealer in Greenwich, and force Greenwich Cadillac to face closing without a dealership property from which to operate. GM contends that closure of Greenwich Cadillac benefits WEI's Mercedes Benz dealership by eliminating competition in the marketplace. GM asserts further that if it had known of the existence of the Side Agreement and its contents during the negotiation period, GM would not have continued its attempts to secure a lease but would have focused on securing an alternative dealership location.

Discussion

The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distribution v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984). When deciding a motion to dismiss, the Court must accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the pleader. Hishon v. King & Spalding, 467 U.S.

69, 73 (1984). A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Motion to Dismiss Estoppel Claim

Plaintiff's estoppel claim alleges that WEI promised GM that it would discuss in good faith a purchase of the Greenwich property or a long-term lease, and that WEI made various representations to GM concerning price and lease terms in order to induce GM to continue to discuss a purchase or lease.

Plaintiff does not specify whether it asserts equitable or promissory estoppel. The Court construes plaintiff's estoppel claim as one for both promissory and equitable estoppel. However, equitable estoppel is appropriately used as a shield rather than as a sword. Lake Garda Improv. Ass'n v. Lake Garda Co., 135 Conn. 240, 242 (1948). For example, a party was equitably estopped from arguing that it never agreed to arbitrate disputes where that party had participated in an arbitration without protest. Green v. Connecticut Disposal Serv., 62 Conn. App. 83, 91-95 (Conn. App. 2001); see also Covey v. Comen, 46 Conn. App. 46, 48 n. 5 (1997)(equitable estoppel is generally not considered a cause of action but

rather is pleaded as a special defense). Here, plaintiff is not asserting equitable estoppel to protect it from a challenge by WEI. Thus, the claim for equitable estoppel will be dismissed.

Defendant argues that plaintiff's claim of promissory estoppel fails as a matter of law because plaintiff has not alleged a clear and definite promise that would induce reasonable reliance.

The elements of promissory estoppel are: (1) a clear and definite promise which a promisor could reasonably have expected to induce reliance; (2) the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief; and (3) the other party must change its position in reliance on those facts, thereby incurring some injury. Torrington Farms Assn. v. Torrington, 75 Conn. App. 570, 576 n. 8, cert. denied, 263 Conn. 524 (2003).

In order to be binding, the promise must be clear and definite and must contain the material terms that are essential to the formation of a contract. D'Ulisse-Cupo v. Board of Dir. of Notre Dame High Sch., 202 Conn. 206, 213 (1987). The promise need not be the equivalent of an offer to

enter into a contract, but a "mere expression of intention, hope, desire, or opinion, which shows no commitment, cannot be expected to induce reliance and, therefore, is not sufficiently promissory." Stewart v. Cendant Mobility Servs. Corp., 267 Conn. 96, 105 (2003)(internal quotation marks and citations omitted). In Stewart, the Connecticut Supreme Court recognized that whether a representation rises to the level of a promise is generally a question of fact, to be determined in light of the circumstances under which the representation was made.

In D'Ulisse-Cupo, the Connecticut Supreme Court found as insufficiently promissory or definite an employer's statements that "everything looked fine for the next year," a notice on the school bulletin board stating that "all present faculty members would be offered contracts for next year," and a statement by the employer to the employee that she would have a contract for the following year. The Court explained that these statements lacked the requisite material contractual terms such as duration and salary, and that absent these terms, the statements were "no more than representations indicating that the defendants intended to enter into another employment contract with the plaintiff at some time in the future."

Taking the allegations as true and drawing all reasonable inferences most favorably to GM, the Court finds that GM's allegations survive this motion to dismiss. Here, the alleged promissory representations went at least one degree further than those made D'Ulisse-Cupo, when Pecunis allegedly set forth terms concerning duration of a lease, a renewal option, and discussed an acceptable price. Construed most generously in favor of the plaintiff, these representations manifest a present intention on the part of WEI to undertake immediate contractual obligations to the plaintiff. Therefore, the Court will deny the motion to dismiss the promissory estoppel claim.

Supplemental Motion to Dismiss

In its supplemental motion to dismiss, defendant moves for dismissal of the fraud and misrepresentation counts, arguing that GM could not have reasonably relied on WEI's allegedly false statements.

Fraud

The elements of fraud are as follows: (1) a false representation was made as a statement of fact; (2) the statement was untrue and known to be so by its maker; (3) the statement was made with the intent of inducing reliance thereon; and (4) the other party relied on the statement to

his detriment. Wallenta v. Moscowitz, 81 Conn. App. 213, 247 n. 2 (2004).

A false statement regarding an intention to engage in a certain future act may be actionable if it is reasonably interpreted as expressing a firm intention, and the recipient of the statement must be justified in his expectation that the intention will be carried out. See Omega Engineering, Inc. v. Eastman Kodak, 908 F. Supp. 1084, 1097 (D. Conn. 1995) Wishes or desires are not sufficient manifestations of future intent. Economu v. Borg-Warner Corp., 652 F. Supp. 1242, 1251 (D. Conn. 1987).

As explained in Omega, the above firm intention standard is analogous to the promissory estoppel's clear definite promise requirement. However, fraud requires an assessment of reasonable reliance from the perspective of the recipient of the statement. Whether GM was justified in relying upon WEI's representations presents a question of fact. Accordingly, the Court will deny the motion to dismiss on this claim.

Negligent Misrepresentation

The Connecticut Supreme Court has adopted the Restatement (Second) Torts Section 552 as governing the principles of negligent misrepresentation: "One who, in the course of his business, profession or employment ... supplies false

information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." D'Ulisse-Cupo, 202 Conn. at 218. Unlike an action for promissory estoppel, the plaintiff "need not prove that the representations made by the defendant were promissory, but only that they contained false information." Daley v. Aetna Life & Casualty Co., 249 Conn. 766, 793 (1999). This inquiry is more appropriate for consideration upon review of the evidence.

Conclusion

For the foregoing reasons, the motion to dismiss [doc. #10] is GRANTED only as to the claim for equitable estoppel. The supplemental motion to dismiss [doc. #19] is DENIED.

SO ORDERED this 27TH day of October, 2004, at Bridgeport, Connecticut.

_____/S/_____

WARREN W. EGINTON, SENIOR U.S. DISTRICT JUDGE