UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC.	CV 20-613 DSF
VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al., Plaintiffs, v. KALI P. CHAUDHURI, M.D., et al., Defendants.	Order DENYING Motion to Dismiss (Dkt. No. 39)

Defendants Strategic Global Management, Inc. (SGM), Kali P. Chaudhuri, and various Chaudhuri-related entities have moved to dismiss the first amended complaint (FAC). The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearing set for August 10, 2020 is removed from the Court's calendar.

The adversarial action is brought by various debtors related to Verity Health System of California, Inc. (Verity) over fallout from the failed attempt to sell several hospitals to SGM. Verity brings breach of contract and fraud claims against the Defendants.

Defendants argue that all of Plaintiffs' claims require that Plaintiffs had satisfied the conditions in the asset purchase agreement (APA), and that Plaintiffs failed to satisfy §§ 8.6 and 8.7 of the APA. The FAC

alleges that the conditions precedent were satisfied. FAC ¶ 121. "In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed." Fed. R. Civ. P. 9(c). Defendants nonetheless argue that the claims should be dismissed because judicially noticeable materials from the Bankruptcy Court proceedings conclusively demonstrate that Plaintiffs did not, in fact, satisfy all of the conditions precedent. Assuming that this avenue of attack on the FAC is available under Rule 9(c), the Court is not convinced that the record conclusively demonstrates that Plaintiffs failed to satisfy §§ 8.6 and 8.7 of the APA.

Nor does the litigation privilege provide a justification for dismissing Plaintiffs' promissory fraud claim. Defendants cite Silberg v. Anderson, 50 Cal. 3d 205 (1990), for the proposition that "To be protected, the communications just need to 'have some connection or logical relation to the action.'" Mem. at 18. But Silberg explicitly applies the "usual four-part test" for application of the litigation privilege. Id. at 219.

> The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.

Id. at 212, 219-20.

Plaintiffs alleged that Defendants represented that SGM would consummate the purchase of the relevant hospital properties according to the terms in the APA, but SGM/Defendants had no intention of ever doing so.[1] The only connection between the transaction at issue and

[1] Defendants' strange claim that Plaintiffs did not allege fraudulent intent is contradicted by the most cursory examination of the FAC. See FAC ¶¶ 60, 115, 124, 129. The allegations that Defendants supposedly believe contradict fraudulent intent do no such thing. The allegations are just explanations for why Defendants allegedly believed that they would never have to comply

any litigation is that the hospitals were being sold by a Chapter 11 debtor under the supervision of a bankruptcy court and that the transaction would have to be approved by the bankruptcy court. There was no litigation between the parties at the time of the representations and no prospect of litigation. Defendants' assertion of the litigation privilege here would be possible only under a rule that communications related to any transaction requiring judicial approval would be privileged from suit. Defendants provide no authority for this incredibly broad proposition, and the Court sees no reason to adopt it.

Defendants move to dismiss the tortious breach of contract claim and the tortious breach of the implied covenant of good faith and fair dealing claim because Defendants argue that those claims do not exist under California law. This is not the case. The California Supreme Court has explicitly acknowledged the existence of these torts even outside of the insurance context. See Robinson Helicopter Co. v. Dana Corp., 34 Cal. 4th 979, 990 (2004). The appellate cases relied on by Defendants precede Robinson Helicopter. Defendants' attempt to categorize Robinson Helicopter as involving the economic loss rule misses the point because the economic loss rule is about when tort remedies can be sought for breaches of contract expectations. "The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise." Id. at 988.

The motion to dismiss is DENIED.

IT IS SO ORDERED.

Date: August 4, 2020

Dale S. Fischer
United States District Judge

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with the fraudulent promise that they were making. See FAC ¶¶ 59, 78, and Preliminary Statement.