SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NATALIE GORDON, On Behalf of Herself and Others Similarly Situated

Plaintiff,

Index No. 653084/2013

vs

VERIZON COMMUNICATIONS, INC., LOWELL C. MCADAM, RICHARD L. CARRION REXACH, MELANIE L. HEALEY, MARTHA FRANCES KEETH, ROBERT W. LANE, M.D., SANDRA O. MOOSE, M.D., JOSEPH NEUBAUER, DONALD T. NICOLAISEN, CLARENCE OTIS, JR., HUGH B. PRICE, RODNEY EARL SLATER, KATHRYN A. TESIJA, and GREGORY D. WASSON,
Defendants.

AFFIRMATION OF GERALD WALPIN IN SUPPORT OF SUMMARY JUDGMENT DISMISSING PLAINTIFF'S COMPLAINT AND, IF NECESSARY, MOTION TO INTERVENE

GERALD WALPIN, being duly sworn, deposes and says:

1. I submit this Affirmation in support of my motion, pursuant to N.Y. CVP. LAW § 3212, for summary judgment dismissing Plaintiff's action for no merit, in that this Court, in its decision denying both approval of the settlement and attorneys' fees, has already decided that Plaintiff's complaint and amended complaint are without merit. If the Court holds that my status as an Objector provides insufficient standing to make this motion, I ask that this Court grant my supplemental motion to intervene, pursuant to N.Y. CVP. LAW § 1012.

2. Plaintiff's initial complaint, dated September 5, 2013 ("Complaint")[1], attacked solely the consideration obtained by Verizon in the Stock Purchase Agreement as "insufficient and inadequate to Verizon's public stockholders," with "Verizon shareholders … being shortchanged and their investment in Verizon … diminished and diluted as a result of the Stock Purchase Agreement" (Compaint ¶ 3).

3. Plaintiff's Amended Complaint, dated October 22, 2013 ("Amended Complaint"), retained that allegation against the consideration received by Verizon, but added allegations of "Materially Misleading and/or Incomplete" Disclosure (Amended Complaint ¶¶ 43-73).

4. Plaintiff's attorney, Juan E. Monteverde, described Plaintiff's causes of action in his "Affirmation … In Support Of Class Certification …," dated November 14, 2014 ("Monteverde Aff.") as two-fold: (i) "causing Verizon to pay an allegedly excessive and dilutive price in the Transaction" (*Id.* ¶ 7), and (ii) "Defendants' failure to disclose material information concerning the Transaction" (*Id.* ¶ 9).

5. The evidence establishes that Plaintiff dropped, and has not pressed, its first cause of action dealing with supposed insufficient consideration to Verizon on the transaction. Thus, Mr. Monteverde admits that the settlement provides no change in the monetary consideration, but is limited to "Supplemental Disclosures and Corporate Governance Reforms" (*Id.* ¶ 72). Even more telling is that Mr. Monteverde states that the settlement terms were reached after "consultation with

[1] Each of the documents cited in this Affirmation has already been filed with the Court in connection with earlier proceedings in this Court. Therefore, to avoid adding paper volume on this motion, they are cited and identified. If Your Honor prefers to have an additional copy of any referenced document, I will, on request, comply.

their financial advisor" (*Id.* ¶ 71). The 8-page Report of that financial advisor, M. Travis Keath, dated September 29, 2014 ("Keith Report"), which would have been where any possible support for the "insufficient consideration" would have been found, is totally devoid of any reference to the "insufficient consideration" cause of action.

6. As this Court held, for non-disclosure to be actionable, the non-disclosed information must be material (Court Opinion, dated December 19, 2014 ["Opinion"] p. 4). Plaintiff concedes that by admitting that the omissions have to be "material" in order to be actionable (Monteverde Aff. ¶¶ 43-44). Further, this Court already held that "[m]erely providing additional information – unless the additional information offers a contrary perspective on what has previously been disclosed – does not constitute material disclosure" (Opinion p. 5). This Court then analyzed each of the asserted non-disclosed bits of information, holding that "a number are so trivial or obviously redundant as to add nothing of material knowledge from a disclosure standpoint" (*Id.* p. 5). Then, the Court analyzed each of the other alleged non-disclosed facts in detail, describing each with such words as:

"a trivial piece of information that provides no incremental value;" (*Id.* p. 7)

"Because the reader is repeatedly told that the principal financial advisors had no part in providing a value for Omnitel, the statement that the parties chose the value themselves is plainly immaterial. Where else would the value come from?" (*Id.* pp. 7-8).

"the fact that AT&T was excluded was expressly stated in the Preliminary Proxy. The additional disclosure, at best, provokes a 'quibble' with a financial analyst's judgment. …. Precedent is clear that mere quibbles with investment bankers' judgments do not materially alter the total mix of information." (*Id.* pp. 8-9).

"The table is stark in its lack of consequence because it merely adds more unnecessary detail, without materially changing the textual presentation that had previously appeared in the Preliminary Proxy." (*Id.* p. 10).

7. This Court then summarized its analysis of the additional disclosures:

"In sum, these Supplemental Disclosures individually and collectively fail to materially enhance the shareholders' knowledge about the merger. They are unnecessary surplusage added to a disclosure document already filled with much that is detail for the sake of detail. They provide no legally congnizable benefit to the shareholder class ….." (*Id.* pp. 10-11).

8. Finally, this Court considered the three-year requirement of fairness opinion imposed by the settlement, and, after explaining, held that "it, too, cannot provide a basis for a determination that the Settlement is fair, adequate, reasonable, and in the best interest of the class members." (*Id.* p. 13).
9. Hence, this Court has already held that Plaintiff's complaint is without merit. That ruling, which is the law of this case, thus meets the criteria for granting summary judgment dismissing the complaint.

10. Given that undisputed finding of no merit to the Complaint, Plaintiff's attorney himself is duty-bound to seek to dismiss the complaint, and I call upon Plaintiff's attorney to end this litigation by doing so. Indeed, failure to dismiss the complaint is sanctionable conduct, under 22 NYCRR 130-1.1, because the lawsuit would be continued "primarily to delay or prolong the resolution of the litigation," already held by the Court to be without merit. The Rule makes clear its applicability to continuing the instant Complaint: continuing the lawsuit "when its lack of legal or factual basis was apparent … or was brought to the attention of counsel or the party." The Court's decision of December 19th explicitly brought that notice to Plaintiff and Plaintiff's counsel. If Plaintiff's counsel continue this lawsuit, and such finding is then made, sanction is mandatory. *Grasso v. Mathew,* 164 A.D.2d 476, 480, 564 N.Y.S.2d 602 (3d Dept. 1991).

11. If the defendant Corporation were really adversarial to Plaintiff, Verizon would today be moving for summary judgment dismissing the Complaint. However, Verizon terminated any adversarial relationship on agreeing with Plaintiff to settle the lawsuit and jointly submit the proposed settlement for Court approval.[2] Having signed the settlement agreement, it cannot withdraw from the agreement, and

[2] I do not wish my factual-reality statement, of the current non-adversarial relationship between Plaintiff and Defendants, as a criticism of either Verizon or Verizon's attorneys. While many (including I) would suggest that taking a strong defensive position in rejecting totally meritless complaints would be the best deterrent against such lawsuits, I recognize that a defendant corporation is caught between a rock and a hard place. If it refuses to settle, it may not be able promptly to consummate the purchase transaction and would likely incur millions of dollars in legal fees and expended time of its executives. It decides that accepting extortion of legal fees for the plaintiff's attorneys is a more efficient choice in which the alternative is an open-ended lawsuit. But despite this understanding, the result is that defendants are no longer adversarial to plaintiff.

instead has essentially been a silent supporter of Plaintiff's pressing for settlement approval.

12. Therefore, I have no alternative but to submit this motion in my capacity as an Objector. Unless I am able to protect the shareholder class (including myself) from further litigation expenses and attempts to circumvent this Court's ruling, the Court's ruling could end up to be a pyrrhic victory. I entered my Objection to prevent additional expense being imposed through this litigation on Verizon shareholders. Given the non-adversarial relationship on this settlement between Verizon and Plaintiff, there can be no realistic likelihood of Verizon taking advantage of this Court's ruling which, as explained, entitles Verizon to have the Complaint dismissed on summary judgment.

13. Standing to take action outside of the simple filing of an Objection, in order to protect the Objector's interest, has occurred in other cases. For example, following the Third Circuit's refusal to approve the settlement in *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,* 55 F.3d 768, 779 (3d Cir. 1995), the Objectors filed an emergency application with the Third Circuit Court of Appeal, seeking an order protecting that non-approval decision, through staying Louisiana State proceedings commenced by the settling parties to frustrate the Court of Appeals decision that rejected the settlement (See 1996 WL 683785 at *3).[3] My motion for Summary Judgment dismissing the Complaint is likewise made to protect

[3] While the Court of Appeals denied the relief, which it found would be contrary to providing full faith and credit to a State Court judgment (uninvolved here), the procedure by which the Objector sought the relief was not questioned.

my successful Objection and this Court's decision denying approval of the settlement agreement.

14. If, for any reason, my motion is denied for lack of standing, I move to intervene in this action, pursuant to N.Y. CVP. LAW § 1012, which authorizes allowing intervention "when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." Given the non-adversarial relationship between the Plaintiff and the Verizon Corporation on this settlement, it is clear that neither party adequately represents my interests and that I can be bound by any judgment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of January, 2015.

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Gerald Walpin