2014 IL App (1st) 131816-U

THIRD DIVISION
October 29, 2014

No. 1-13-1816

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JETT8 AIRLINES, PL, a corporation, Plaintiff-Appellant, vs. GENERAL ELECTRIC COMPANY, a corporation, Defendant-Appellee, THE BOEING COMPANY, a corporation, et al., Defendant.	)	Appeal from the Circuit Court of Cook County. Case No. 11 L 009917 The Honorable Ronald F. Bartkowicz Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

Order

¶ 1 *Held*: The circuit court properly dismissed plaintiff's claims for fraudulent misrepresentation and fraudulent concealment against jet engine manufacturer where complaint offered purely conclusory allegations that did not, with any particularity, provide a basis for finding fraud on the part of defendant in failing to redesign the involved engine. Affirmed.

¶ 2 This interlocutory appeal arises from the trial court's order granting a section 2-619.1 motion to dismiss filed by defendant the General Electric Company against plaintiff Jett8 Airlines, PL, an air cargo carrier based in Singapore (735 ILCS 5/2-619.1 (West 2012)). On appeal, plaintiff essentially contends that the trial court erroneously dismissed its claim for fraudulent misrepresentation because the court failed to accept an inference that defendant knowingly made a false statement of material fact regarding the flightworthiness of the involved engine. In addition, plaintiff contends that the trial court erroneously dismissed its claim for fraudulent concealment because defendant had a duty to disclose the involved engine's need for redesign. We affirm.

¶ 3 BACKGROUND

¶ 4 On December 17, 2009, an engine malfunctioned in an aircraft operated by plaintiff. Fortunately, there were no injuries or loss of life in this incident, but it did result in economic damages being sustained. The involved engine (Model CF6-50) was manufactured by defendant and its design had been in service nearly four decades as of the time of the engine failure. Following two unrelated engine failures in July 2008 and March 2009, the defendant manufacturer issued service bulletin SB 1307. This bulletin recommended cutting inspection times of the involved engine's blades from 450 flight cycles, initially recommended in defendant's Airplane Maintenance Manuel, to 200 flight cycles, in order to determine whether there was an issue with a low pressure turbine disk in the engine. On December 17, 2009, plaintiff's engine malfunctioned 15 flight cycles before it would have reached the suggested 200 level for inspection, resulting in significant economic loss. This particular incident prompted defendant to issue a revision of SB 1307 to further truncate, from 200 to 75 flight cycles, inspection and service on the

involved engine's blades. Although the United States National Transportation Safety Board (NTSB) issued a safety recommendation to the Federal Aviation Authority (FAA) recommending that it require defendant to redesign the involved engine model, the FAA never made the recommendation and the engine, as originally designed, remains in service.

¶ 5 On September 21, 2011, plaintiff filed its initial complaint against defendant and third party The Boeing Company (Boeing)[1], alleging strict liability and negligence stemming from the December 2009, engine malfunction. Defendant, along with Boeing, filed a motion to dismiss pursuant to Section 2-615 (735 ILCS 5/2-615 (West 2012)). The trial court granted this motion pursuant to the well-established *Moorman* economic loss doctrine and ruled that plaintiff's tort claims were thus barred. See *Moorman Manufacturing Co. v. National Tank Co.*, 91 Ill. 2d 69, 86 (1982). Plaintiff then filed an amended complaint to add theories unaffected by that restriction in Illinois law. These additional theories included negligent misrepresentation, breach of contract, fraudulent misrepresentation and fraudulent concealment. In response, defendant, along with Boeing, filed a combined motion to dismiss the amended complaint pursuant to Sections 2-615 and 2-619 (735 ILCS 5/2-619.1 (West 2012)). The trial court granted this motion, but allowed plaintiff time to replead the fraudulent misrepresentation and fraudulent concealment counts. The court specifically found that the complaint at issue failed to specifically allege "who" concealed "which" facts and "when" such concealment was alleged to have occurred. The court was also not persuaded that there were adequate allegations to support any conclusion that plaintiff relied on any specific misrepresentations to its economic detriment. In short, the trial court found that the

[1] Boeing is not subject to this appeal.

complaint was deficient because it was speculative, conclusory and devoid of any specific supporting facts.

¶ 6 On November 26, 2012, plaintiff filed its second-amended complaint alleging, in pertinent part, that defendant fraudulently concealed the need for the involved engine's redesign, and instead, fraudulently represented to operators that maintaining safe operation of the engine only required more frequent inspections. Defendant then moved to dismiss the second-amended complaint pursuant to Sections 2-615 and 2-619 (735 ILCS 5/2-619.1 (West 2012)), and successfully argued that plaintiff had added nothing in the way of new facts to support its conclusory allegations. The trial court agreed with defendant and held that plaintiff failed "with particularity" to plead the necessary elements of each of the claims of fraud and further that the facts as pleaded "[did] not tend to show a probable inference of negligent misrepresentation or fraudulent behavior." This timely appeal followed.

¶ 7 ANALYSIS

¶ 8 As originally pled, this case sounded in theories that were not recognized in Illinois law. Specifically, one cannot obtain purely economic damages in an action sounding in negligence or strict liability in tort. See *Moorman Manufacturing Co. v. National Tank Co.*, 91 Ill. 2d 69, 86 (1982). Recognizing this flaw in its initial pleading, plaintiff sought to broaden its approach by adding theories that would allow it to recover the purely economic losses that it suffered as a result of this engine failure.

¶ 9 On appeal, plaintiff contends that the trial court erroneously dismissed its claim for fraudulent misrepresentation because the court failed to draw the inference that defendant knowingly made a false statement of material fact regarding the

flightworthiness of the involved engine. Section 2-619.1 of the Code of Civil Procedure provides that a motion with respect to pleadings pursuant to sections 2-615 and 2-619 may be filed together as a single motion. 735 ILCS 5/2-619.1 (West 2012); *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. A motion to dismiss pursuant to section 2-615 tests the legal sufficiency of the complaint, whereas a motion to dismiss under section 2-619 admits the legal sufficiency of the complaint but asserts an affirmative defense that defeats the claim. *Solaia Technology LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 577-79 (2006). When reviewing a decision to grant a motion pursuant to section 2-615, our inquiry is whether the allegations of the complaint, construed in the light most favorable to the nonmoving party, are sufficient to establish a cause of action upon which relief may be granted. *Weidner v. Karlin*, 402 Ill. App. 3d 1084, 1086 (2010). Our review of a section 2-615 motion is *de novo*. *Brooks v. McLean County Unit District No. 5*, 2014 IL App (4th) 130503.

¶ 10 It is of paramount importance at the outset to note that fraud-based claims require an especially high standard of specificity with particular allegations of facts from which fraud is the *necessary or probable* inference. *Merrilees v. Merrilees*, 2013 IL App (1st) 121897, ¶ 15. In addition, a plaintiff must allege with sufficient particularity "what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made." *Board of Education of City of Chicago v. A C & S, Inc.*, 131 Ill. 2d 428, 475 (1989). This heightened burden is designed to fairly apprise defendants of what they will be called upon to answer, weed out unmeritorious suits, and protect defendants from harm to their reputations. *Id.* at 457. As the following analysis reveals, plaintiff's allegations do not even approach the level of particularity which

Illinois courts require. See *Connick v. Suzuki Motor Co., Ltd.*, 174 Ill. 2d 482, 496-97 (1996). Notably, plaintiff cannot rely on possible inferences to support its allegations but rather must supply "necessary or probable" inferences. *Id.* at 497.

¶ 11 To prevail on a claim for fraudulent misrepresentation, a plaintiff must allege: (1) the defendant made a false statement of material fact; (2) the defendant knew or believed the representation was untrue; (3) the plaintiff had a right to and did rely on the representation; (4) the representation was made with the purpose of inducing the plaintiff to act; and (5) the representation led to the plaintiff's injury. *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 804 (2005).

¶ 12 Here, the record supports the trial court's determination that plaintiff failed to plead specific allegations of facts from which fraud was the probable inference. Taken in light most favorable to plaintiff, the allegations in its second-amended complaint, at most, establish that (1) GE purportedly became aware of the potential defect in the engine "as early as the 1970's;" (2) from the 1970s to August 29, 2009, an Airplane Maintenance Manuel recommended that operators conduct engine inspections every 450 flight cycles; (3) on July 4, 2008 and March 26, 2009, the first two instances of engine failure occurred, approximately 216 and 350 flight cycles, respectively, since the last inspections; (4) after these two incidents, defendant issued service bulletin SB 1307, which recommended inspection every 200 flight cycles; (5) in December 2009, plaintiff's incident occurred 185 flight cycles after the engine's last inspection; and (6) six months after the December incident, the NTSB issued a safety recommendation that the FAA require defendant to redesign the engine.

¶ 13 We next observe that plaintiff's identification of defendant's purported false statements lacks specificity. Plaintiff suggests that the inspection recommendations in the Airplane Maintenance Manual and SB 1307 were false statements because defendant knew the involved engine needed to be redesigned. Plaintiff, however, fails to plead any supporting facts to establish that defendant *knew* these inspection recommendations were inadequate. Plaintiff generally claims that defendant was aware of the involved engine's need for redesign since the 1970's, but offers no further allegations to support this contention or even a report of engine failure until 2008. Thus, plaintiff's complaint fails to connect the dots and provide the court with facts to draw a probable inference that defendant knew the involved engine needed to be redesigned and deliberately issued the deficient inspection recommendations to conceal this fact from plaintiff. This suggested inference is simply a conclusion and plaintiff fails to plead the necessary elements to establish fraud. See *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 771 (2007) (the trial court correctly dismissed the plaintiff's fraud claim as conclusory where the plaintiff did not specify with any degree of particularity what actual misrepresentations were made, who made the misrepresentations, when the misrepresentations were made, or who the misrepresentations were made to).

¶ 14 Furthermore, the fact that the NTSB recommended to the FAA that it should order defendant to redesign the subject engine is in no way dispositive. The FAA never issued this recommendation, and in any event, NTSB reports are inadmissible in civil litigation for damages. See 49 U.S.C. § 1154(b) (West 2012) ("no part of a report of the [NTSB], related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report"); see

also *Chiron Corp. and PerSeptive Biosystems, Inc. v. National Transportation Safety Board*, 198 F.3d 935, 940 (1999) ("NTSB investigatory procedures are not designed to facilitate litigation, and Congress has made it clear that the Board and its reports should not be used to the advantage or disadvantage of any party in a civil lawsuit"). Moreover, there is nothing in the complaint that suggests plaintiff relied on any alleged misrepresentations to its economic detriment. See *Kurti v. Fox Valley Radiologist, Ltd.*, 124 Ill. App. 3d 933, 938 (1984) (it is essential to a finding of fraud that the plaintiff has been induced by the fraud to act to his detriment). Accordingly, we find that the trial court did not err in dismissing defendant's claim for fraudulent misrepresentation because the allegations contained in plaintiff's second-amended complaint were indeed conclusory.

¶ 15 Plaintiff next contends that the trial court erred in dismissing its claim for fraudulent concealment because defendant had a duty to disclose the involved engine's need for redesign. To prevail on a claim for fraudulent concealment, a plaintiff must allege that a defendant concealed a material fact when he was under a duty to disclose that fact to the plaintiff. *Hirsch v. Feuer*, 299 Ill. App. 3d 1076, 1087 (1998). Based on our above conclusion that plaintiff failed to plead sufficient facts to establish that defendant knowingly concealed the involved engine's alleged need for redesign, we need not consider whether defendant owed plaintiff a duty. See *Phillips v. DePaul University*, 2014 IL App (1st) 122817, ¶¶ 83-87 (the court did not consider whether a fiduciary relationship existed between the plaintiff and the defendant when the plaintiff failed to adequately state a cause of action for fraudulent misrepresentation). Therefore, the trial court did not err in dismissing plaintiff's claim for fraudulent concealment.

¶ 16 CONCLUSION

¶ 17 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.