

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,

Order GRANTING IN PART and  
DENYING IN PART Motion to  
Dismiss Counterclaims (Dkt. No.  
61)

v.

KALI P. CHAUDHURI, M.D., et  
al.,  
Defendants.

Plaintiffs and Debtors are various entities related to Verity Health System of California, Inc. (Verity). This adversarial action concerns the aftermath of a failed sale of Verity hospitals to Defendant Strategic Global Management, Inc. (SGM). Defendants SGM, Kali P. Chaudhuri, and various Chaudhuri-related entities have alleged counterclaims relating to the failure of Verity to return a \$30 million deposit after the sale was abandoned. Verity has moved to dismiss the counterclaims. 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 October 5, 2020 is removed from the Court's calendar.

Verity's primary argument is that SGM cannot recover its deposit because Section 1.2 of the asset purchase agreement (APA) makes the



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deposit non-refundable except in certain circumstances not alleged to be present here.

The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon.

#### APA § 1.2

However, Defendants point out that despite the language of Section 1.2, Section 11.2 of the APA appears also to allow for a refund of the deposit in the case of a “material default” by Verity:

If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

#### APA § 11.2.

These potentially conflicting provisions make the APA at the very least ambiguous on the question of whether SGM is entitled to have the deposit returned in the circumstances alleged in the counterclaim. Defendants have also adequately alleged the so-called “Other Alleged Breaches.” Defendants allege various failures by Verity that Defendants claim are breaches of Section 4.6 of the APA. This is sufficient to state a claim without any requirement that Defendants explicitly cite a relevant APA section for each alleged breach. The only affirmative argument by Verity that the “Other Alleged Breaches” are not actually breaches is that the APA contains a broad “as is” clause, but a general “as is” clause cannot excuse failures to perform under specific provisions of the APA.

Verity's argument that it could not have breached the contract because the Bankruptcy Court ordered it to retain the deposit is an affirmative defense, not a challenge to Defendants' affirmative case that can be considered on a motion to dismiss.

While the contract claims are adequately alleged, the tortious breach of contract claim is not. A claim of tortious breach of contract must allege tortious conduct beyond the mere breach of the contract. See Robinson Helicopter Co. v. Dana Corp., 34 Cal. 4th 979, 989-90 (2004). The only fraudulent misrepresentations alleged in the counterclaims are contained in letters from Verity's counsel to SGM's counsel in November 2019 as the transaction was falling apart. While Defendants claim that their fraudulent breach of contract claim is essentially the same as Verity's that the Court declined to dismiss, the two claims are substantially different. First, the November 2019 letters from Verity's counsel are more likely to be covered by the litigation privilege because they are potentially more closely connected to the resolution of the ongoing dispute between the parties in the Bankruptcy Court than the allegedly fraudulent statements made by SGM in connection with entering into the APA.<sup>1</sup> Second, it is not clear from the allegations that the alleged fraud is sufficiently independent from the alleged breach of contract to state a claim for tortious breach. Third, there is no indication that Defendants relied on any of the allegedly fraudulent statements in the letters or that Defendants suffered any loss from the statements other than loss stemming from the alleged breach of contract itself. Given these deficiencies, the tortious breach of contract claim is dismissed with leave to amend.

The motion to dismiss Defendants' counterclaims is GRANTED with respect to the tortious breach of contract claim. It is DENIED in all other respects. Defendants may amend their counterclaims consistent with this order no later than October 19, 2020. Failure to file by that date will waive the right to do so. The Court does not grant leave to

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<sup>1</sup> At this point, the Court cannot definitively decide whether the letters would be non-actionable due to the litigation privilege, if for no other reason, because the letters do not appear to have been submitted by either party.

add new defendants or new claims. Leave to add defendants or new claims must be sought by a separate, properly noticed motion. Defendant's response is due November 2, 2020.

IT IS SO ORDERED.

Date: September 30, 2020



Dale S. Fischer  
United States District Judge