

Saiber Helps Secure Dismissal of Tortious Interference, Fraud and NJRICO Action Against Banking Executives

July 23, 2021

Saiber attorneys Arnold B. Calmann, Jakob B. Halpern and Catherine Soliman, along with lead co-counsel Maynard Cooper & Gale, recently helped to obtain dismissal with prejudice of a complaint filed by Verify Smart Corporation (“Verify”) in the United States District Court for the District of New Jersey alleging tortious interference, fraud and NJRICO violations against several banks as well as several individuals (the “individual defendants”) who held executive positions at those banks; the Clearing House LLC, an association of major commercial banks; and Askeladden, an entity formed by the Clearing House. Saiber represented two of the individual defendants (in addition to Askeladden, which had been previously dismissed from the matter).

The allegations in Verify’s complaint were based on an underlying patent infringement lawsuit it brought against the banks. In that litigation, each bank entered into a settlement agreement with Verify that prohibited them from challenging a certain patent. Verify later filed the present litigation, alleging that the banks subsequently breached the settlement agreements by causing Askeladden to challenge the patent through *inter partes* review, and that the various defendants, including Saiber’s clients, engaged in tortious conduct due to their alleged role in that process.

The defendants moved to dismiss for failure to state a claim and one of Saiber’s clients also moved to dismiss for lack of personal jurisdiction. Saiber’s client, as well as others, successfully argued that Verify was unable to establish personal jurisdiction over him because it could not connect his alleged tortious conduct or its effects to New Jersey, the forum state.

The Court also granted the defendants’ motion to dismiss for failure to state a claim as to the remaining defendants, including dismissal of the tortious interference, fraud and NJRICO claims that were asserted against Saiber’s remaining client.

For the tortious interference claim, Saiber’s remaining client argued that Verify failed to allege that he engaged in any wrongful conduct related to his executive position with Askeladden and the underlying patent challenge. The Court agreed, holding that the complaint failed to allege an agency relationship between Askeladden and the banks under which Saiber’s client had any obligation under the earlier settlements.

As to the common law fraud claims, the individual defendants, including Saiber’s client, argued that Verify failed to allege facts that would establish the tort participation theory of liability, which was a requirement given that Verify was suing the individual defendants in their corporate capacity. To allege the tort participation theory of liability, Verify had to allege that it was owed a duty of care by the individual defendant and that the duty was breached, but it could plead neither absent an agency relationship between the banks and Askeladden.

Finally, Verify's NJRICO claim was also dismissed for failure to state a claim because it did not adequately allege conduct affecting the trade or commerce of New Jersey.

This was the third time Verify's pleading has been dismissed in this matter.