UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BROOK MIMBRE, LLC,	:	04CV914 (WWE)
BUNKER HILL VENTURES, LLC,	:	
BUTTERFLY MILKWOOD, LLC,	:	
CHILI PEPPER, LLC,	:	
COLUMBIA HAWTHORNE, LLC,	:	
COMMON MARIGOLD, LLC,	:	
MULBERRY POINT, LLC,	:	
RESERVOIR GROUP, LLC,	:	
THOMASTON GROUP, LLC,	:	
WIGGUM GROUP, LLC,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NEW ALLIANCE BANCSHARES, INC.,	:	
Defendant.	:	

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

The genesis of this action is the conversion of New Haven Savings Bank ("NHSB") from a mutual savings bank to a capital stock corporation renamed NewAlliance Bancshares, Inc. ("NewAlliance").[1] Plaintiffs, which are limited liability companies, assert that defendant NewAlliance breached the terms of the public stock offering arising from that conversion.

The parties have filed cross motions for summary judgment. For the following reasons, the defendant's motion for summary judgment will be granted.

[1]Although the complaint names defendant as New Alliance Bancshares, Inc., the correct name of defendant is NewAlliance Bancshares, Inc.

Background

The parties have filed memoranda, statements of fact, and affidavits, which reveal that the following facts are not in dispute.

Plaintiffs are ten limited liability companies that are wholly owned subsidiaries of NLH Associates, a limited liability company organized under the laws of the Commonwealth of Pennsylvania. Plaintiffs were formed for the purpose of opening and maintaining deposit accounts at mutual banks within Connecticut that had the potential to convert to a stock form of ownership.

Defendant NewAlliance is a corporation organized under the laws of Delaware, with its principal place of business in New Haven, Connecticut.

On January 7, 2000, NLH entered into a services contract with Olde City Services Corp., a company that provides administrative services to establish and maintain multiple deposit accounts with mutual savings associations throughout the country. Generally, Olde City provides these services to clients that maintain such deposit accounts in order to increase the likelihood of these clients' participation on a first priority basis in a mutual to stock conversion.

In March 2000, Olde City, on behalf of plaintiffs, opened

deposit accounts with NHSB. At this time, plaintiffs' deposits at NHSB totaled $109,000. Olde City provided administrative services such as the forwarding of bank statements and other communications to NLH.

On January 16, 2004, the Connecticut Banking Commissioner issued a certificate of approval of NHSB's plan of conversion from a mutual savings bank into a capital stock bank. The conversion was completed and closed on April 1, 2004. As a result of the conversion, NewAlliance became the holding company for NHSB.

As part of the conversion, NewAlliance offered a public offering of shares of its common stock. The terms and conditions of that offering were set forth in the Prospectus dated February 9, 2004.

The Prospectus provided that NewAlliance was offering between 65,875,000 and 89,125,000 shares of its common stock for sale. A subscription offering was first made to NHSB's eligible depositors, its employee stock ownership plan, and its directors, officers, employees and corporators. Shares not sold in the subscription offering were to be made available to the public in a direct community offering. A purchase price of $10 per share was established for all investors.

The Prospectus imposed the following restrictions on the transfer of subscription rights and shares during the offering:

> Applicable regulations and the plan of conversion prohibit any person with subscription rights, including the eligible account holders, supplemental eligible account holders, and officers, directors, employees and corporators of New Haven Savings Bank, from transferring or entering into any agreement or understanding to transfer the legal or beneficial ownership of the subscription rights issued under the plan of conversion or the shares of common stock to be issued upon their exercise. These rights may be exercised only by the person to whom they are granted and only for his or her account. When registering your stock purchase on the order form, you should not add the name(s) of persons who qualify only in a different purchase priority than you. Doing so may jeopardize your subscription rights. Each person exercising subscription rights will be required to certify that he or she is purchasing shares solely for his or her own account and that he or she has no agreement or understanding regarding the sale or transfer of such shares. The regulations also prohibit any person from offering or making an announcement of an offer or intent to make an offer to purchase subscription rights or shares of common stock to be issued upon their exercise.

The Prospectus also provided that, with the exception of the employee stock ownership plan:

> no person, together with associates or persons acting in concert with such person ... may purchase more than $2,100,000 of common stock in all categories of the offering combined. In the subscription offering, no persons exercising subscription rights through qualifying deposits registered to the same address may purchase more than this amount.

It further stated:

> No person, or person exercising subscription rights through a single qualifying deposit account held jointly, may purchase more than 70,000 shares of common stock ($700,000) in the offering. If any of the following persons purchase stock, their purchases when combined with your purchases cannot exceed 210,000 share ($2,100,000) in all categories of the offering, combined:
>
> - Your parents, spouse, sisters, brothers, children,

or anyone married to any of these persons, who live in the same house as you;

- Your parents, spouse, sisters, brothers, children, or anyone married to any of these persons, who is one of our officers or directors;
- Persons exercising subscription rights through qualifying deposits registered to the same address;
- Companies, trusts or other entities in which you have a financial interest or hold a management position; or
- Other persons who may be acting together with you as associates or persons acting in concert.

The term "associate" is defined as:

> (1) any corporation or organization, other than NewAlliance Bancshares, New Haven Savings Bank or majority-owned subsidiary of New Haven Savings Bank, of which the person is an officer, partner or 10% shareholder;
>
> (2) any trust or other estate in which the person has a substantial beneficial interest or serves as a trustee or in a similar substantial beneficial interest or serves as trustee or in a similar fiduciary capacity; and
>
> (3) any relative or spouse of the person, or any relative of the spouse, who either has the same home as the person or is a Director or officer of NewAlliance Bancshares or New Haven Savings Bank or its parent or any of its subsidiaries.

The term "acting in concert" is defined as:

> a combination of pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

Pursuant to the Prospectus, NewAlliance had the "right to reject" any order submitted in the offering by a person that NewAlliance believed was making false representations or who

NewAlliance otherwise believed, either alone or acting in concert with others, was violating, evading, or circumventing or intending to violate, evade or circumvent the terms and conditions of the plan of conversion. The Prospectus afforded NewAlliance "the right to determine whether prospective purchasers are associates or acting in concert..." It provided further that NewAlliance's "interpretation of the terms and conditions of the plan of conversion and of the acceptability of the order forms will be final."

In the subscription offering, eligible NHSB account holders were given first priority. According to the Prospectus, an eligible account holder was a NHSB depositor with aggregate deposit account balances of $50 or more on June 30, 2003. Eligible account holders received nontransferable subscription rights to purchase up to the lesser of $700,000 (70,000 shares) of common stock or .05% of the total offering of common stock, subject to the limitation on common stock purchases as set forth in the Prospectus.

The Prospectus required an eligible account holder seeking to purchase stock in the subscription offering to list on the stock order form all deposit accounts in which that account holder held an ownership interest on June 30, 2002.

The offer expired at 10:00 AM on March 11, 2004.

Each of the ten plaintiffs responded to the subscriber

offering by submitting stock order forms to buy collectively the maximum allowable shares of commons stock, a total of 210,000 shares. Plaintiffs' stock order forms were sent on March 8, 2004.

Each of plaintiffs' stock order forms had the qualifying deposits registered to the same address at 42 Lake Avenue, Ext., Mill Plain Road, #237, Danbury, Connecticut, 06811. Each stock order form also requested stock registration to that same address.

NewAlliance also received stock orders from fifty other limited liability companies (the "Fifty Mill Plain Road Subscribers") requesting the maximum allowable allocation of shares. Each order form registered their qualified deposits to five different box numbers or subaddresses at 42 Lake Ave., Ext., Mill Plain Road, Danbury, CT. These Fifty Mill Plain Road Subscribers also requested stock registration to these five different box numbers or subaddresses at 42 Lake Ave., Ext., Mill Plain Road.

Ryan Beck & Co., a full service investment banking and brokerage firm that NewAlliance had retained as a financial advisor for the conversion, was responsible for providing administrative services, managing the Stock Information Help Line, reviewing all stock orders and "scrubbing" the forms to ensure compliance with the terms of the Prospectus.

The stock order forms from the sixty subscribers using

nearly identical addresses at Mill Plain Road prompted scrutiny from Ryan Beck, NewAlliance and their respective attorneys. Document review of the order forms, the LLC resolutions authorizing the opening of the savings accounts, accompanying W-9 Elections and/or signature cards indicated that the sixty subscribers had virtually identical addresses, common members, and common managers or officers. Of significance to defendant, Jennifer Errichetti's signature appeared on the resolutions and cards of six of the ten plaintiffs and also on thirty-seven of the Fifty Mill Plain Road Subscribers. Karen Dunn's name appeared as an authorized signer for four of the ten plaintiffs and for seven of the Fifty Mill Plain Road Subscribers.

Merrill Blankensteen, the Chief Financial Officer of NewAlliance, avers that, based upon this information, NewAlliance made a determination that the plaintiffs and the other Fifty Mill Plain Road Subscribers 1) were acting in concert due to their mutual association with Jennifer Errichetti and/or Karen Dunn; 2) had common ownership interests and common members since Jennifer Errichetti was indicated as a member, manager and/or officer of six of the ten plaintiff limited liability companies and of thirty-seven of the Fifty Mill Plain Road Subscribers; 3) had failed to disclose on their respective stock order forms all deposit accounts in which they had an ownership interest; and 4) were attempting to circumvent the limitations on common stock purchases for subscribers registered to the same address by (a) having their qualified deposits registered to the six different

subaddresses at 42 Lake Avenue, (b) trying to register their stock to six different subaddresses at 42 Lake Avenue, and (c) purchasing the maximum allowable allocation of shares of stock for each of the six subaddress numbers at 42 Lake Avenue.

Dennis Krings, a Vice President of the Bank Services Group at Ryan Beck, avers that, prior to the closing, he called one of the plaintiffs, Common Marigold, LLC, and left a message concerning the limitation of its stock allocation.

In fact, plaintiffs were "acting in concert" with each other, although not with the other Fifty Mill Plain Road Subscribers. The similarities shown by the documents relevant to the deposit accounts and share orders of plaintiffs and the other Fifty Mill Plain Road Subscribers were attributable to their mutual association with Olde City. However, NewAlliance had no understanding of Olde City's relationship to the plaintiffs and the Fifty Mill Plain Road Subscribers.

On April 1, 2005, NewAlliance delivered the plaintiffs' and the other Fifty Mill Plain Road Subscribers a combined purchase of 210,000 shares. Thus, the plaintiffs received stock purchases of 35,229 shares rather than 210,000 shares. NewAlliance also refunded the difference between the amount of funds that plaintiffs had tendered and the amount needed to purchase the 35,229 shares. The stub portion of all NewAlliance's refund checks stated:

> Thank you for investing in NewAlliance Bancshares, Inc.'s common stock offering. All shares were sold at a purchase price per share of $10. The offering was oversubscribed in the first eligibility category, depositors with at least $50

> on deposit at New Haven Savings Bank at June 30, 2002. Therefore, we allocated all available shares among those subscribers, following the allocation procedures described in the NewAlliance Bancshares Inc. prospectus dated February 9, 2004. As a result of allocation, you will receive fewer shares than you requested. If you paid for shares through a combination of check and withdrawal authorization, we first applied the funds you submitted by check. The attached check represents a partial refund of the check payment you submitted with your stock order. It also includes interest earned at New Haven Savings Bank's passbook savings rate of .35% annual percentage yield, calculated from the date we received your check through the date on this check.

On April 2, 2004, plaintiffs sold their 35,229 share of NewAlliance at an average price, net of commissions, of $15.15 per share, thereby realizing an average profit, net of commissions, of $5.15 a share. If plaintiffs had received all of the shares they had ordered, they would have realized an additional net profit of $900,070.65.

Discussion

A motion for summary judgment will be granted where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F. 2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991).

The burden is on the moving party to demonstrate the absence of any material factual issue genuinely in dispute. American International Group, Inc. v. London American International Corp., 664 F. 2d 348, 351 (2d Cir. 1981). In determining whether a genuine factual issue exists, the court must resolve all

ambiguities and draw all reasonable inferences against the moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). If a nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof, then summary judgment is appropriate. Celotex Corp., 477 U.S. at 323. If the nonmoving party submits evidence which is "merely colorable," legally sufficient opposition to the motion for summary judgment is not met. Anderson, 477 U.S. at 249.

Plaintiffs move for summary judgment on their claim that NewAlliance breached its obligations pursuant to the terms of the Prospectus when it limited plaintiffs' stock purchase order from 210,000 to 35,229 shares. Specifically, plaintiffs argue that, pursuant to the terms of the Prospectus, NewAlliance never actually determined if plaintiffs were "acting in concert" with the other Fifty Mill Plain Road Subscribers, and that it should not have acted to limit plaintiffs' share allocation based on its suspicion that plaintiffs were "acting in concert" with the other Fifty Mill Plain Road Subscribers.

Defendant cross moves for summary judgment. NewAlliance argues that it had the right to determine if prospective purchasers were "acting in concert," and it had the right to reject any order which it believed represented an attempt to evade the terms and conditions of the offering.

The parties agree that the Prospectus fixed the rights of the parties. See Shulman v. Hartford Pub. Library, 119 Conn.

428, 434 (1935). At issue is the effect of the Prospectus' terms. In interpreting contract terms, the Court must afford the language used "its common, natural and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract." Wolosoff v. Wolosoff, 91 Conn.App. 374 (Conn.App. 2005). Where the language of the contract is clear and unambiguous, the contract should be given effect according to its terms. Breiter v. Breiter, 80 Conn.App. 332, 336 (2003). "A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity and words do not become ambiguous simply because lawyers or laymen contend for different meanings." Barnard v. Barnard, 214 Conn. 99, 110 (1990). The question of whether a contractual provision is ambiguous presents a question of law. LMK Enterprises, Inc. v. sun Oil Co., 86 Conn.App. 302, 306 (2004).

Plaintiffs argue that the Prospectus terms providing defendant the "right to determine" if subscribers were "acting in concert" required that defendant conduct a full and reasonable investigation of the facts leading to a definitive and reasonable conclusion. Plaintiffs contend that their orders were reduced rather than rejected, and therefore defendant's conduct does not fall within the term providing defendant the "right to reject any order submitted in the offering by a person [it] believe[s] is making false representation or who [it] otherwise believe[s], either alone or acting in concert with others, is violating, evading, circumventing, or intends to violate, evade or

circumvent, the terms and conditions of the plan of conversion." Plaintiffs assert that defendant's reliance upon its rights pursuant to the Prospectus is a sham contrived for purposes of litigation in light of its previous justification based on oversubscription.

"Determine" means "to settle or decide by choice of alternatives or possibilities; . . . to find out or come to a decision about by investigation, reasoning, or calculation." Merriam-Webster Online Dictionary, http://www.m-w.com. Defendant's conduct leading to its decision that plaintiffs and the other Fifty Mill Plain Road Subscribers were acting in concert falls within this definition. Given the time constraints prior to the closing, defendant made a reasonable determination that plaintiffs were "acting in concert" after investigation of the available documentation, which showed common members or officers, signatories, and virtually identical addresses. As Blanksteen testified in his deposition, at the time, defendant was "unable to determine any additional information that would lead us to a different conclusion." No term of the Prospectus details the scope of an investigation required prior to defendant's determination of the "acting in concert" question. The Court cannot impose the obligations connoted by the term "full investigation" into the Prospectus' terms where no such language exists.[2]

[2] Plaintiffs assert that Blanksteen's deposition admits that defendant never made a determination that plaintiffs were in violation of any of the Prospectus' restrictions. However,

Plaintiffs' contention that defendants were required under the Prospectus to make a "full investigation" is essentially an argument that defendant should have conducted a better investigation, e.g., by writing or telephoning the subscribers. However, the Prospectus provides no support for this interpretation of the terms affording defendant the "right to determine" whether any subscribers were "acting in concert."

Regardless of whether defendant properly determined that plaintiffs were "acting in concert," defendant's conduct is consistent with its "right to reject any order" of a subscriber it believed was "making false representations," "acting in concert" or "violating, evading or circumventing" the terms and conditions of the conversion plan or intending to do so.

"Reject" means "to refuse to accept, consider, submit to, take for some purpose, or use; to refuse to hear, receive, or admit." Merriam-Webster Online Dictionary, http://www.m-w.com. In this instance, defendant rejected the portion of plaintiffs' and the other Fifty Mill Plain Road Subscribers' stock orders that it believed was nonconforming with the limitations of the Prospectus. No term in the Prospectus requires rejection of the entire amount of an order.

Further, the evidence does not support an inference that defendant's justification based on the Prospectus' limitations is

---

Blanksteen's testimony indicates that defendant made its decision based on all of the applicable restrictions, although not one of the restrictions was dispositive for the final decision to reject the order.

a sham. Plaintiffs point to the statement on the refund check stub, which alerted subscribers that they would receive fewer shares than ordered since the offering was oversubscribed. However, the stub also explained that "all available shares" had been allocated "following the allocation procedures described in the NewAlliance Bancshares Inc. prospectus dated February 9, 2004." Thus, the stub statement incorporated by reference to the Prospectus' allocation procedures defendant's right to reject offers based on belief that certain orders contravened the restrictions provided by the Prospectus. Prior to the closing a vice president at Ryan Beck telephoned one of the plaintiffs and left a message concerning the limitation on the stock order. This fact dispels any inference that defendant has shifted or contrived its explanation of why it limited the subscription order.

Accordingly, the Court finds that defendant has not breached its obligations to plaintiffs, and summary judgment will be granted in defendant's favor. Plaintiffs' motion for summary judgment will be denied.

CONCLUSION

For the foregoing reasons, defendant's motion for summary judgment [#47] is GRANTED; and plaintiffs' motion for summary judgment [#41] is DENIED. The clerk is instructed to close this case.

So Ordered.

_____/s/_____

Warren W. Eginton, Senior U.S. District Judge

Dated this 3rd day of November, 2005 at Bridgeport, Connecticut.