

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTHONY H. N. SCHNELLING, as	:	
Trustee of the Bankruptcy Estate of Epic	:	
Resorts, LLC and EPIC MASTER	:	
FUNDING CORPORATION,	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	
	:	
PRUDENTIAL SECURITIES, INC., et al.:	:	No. 03-6021
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

June 3, 2004

Plaintiffs Anthony H. N. Schnelling, as trustee of the bankruptcy estate of Epic Resorts, LLC, and Epic Master Funding Corp. (“EMFC”) bring this action against Defendants Prudential Securities Inc., Prudential Financial Inc., and Prudential Securities Credit Corp., LLC (“PSCC”) alleging breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, tortious interference with contract, fraud and fraudulent inducement, and negligent misrepresentation. Presently before this Court is Defendants’ motion to dismiss Plaintiffs’ First Amended Complaint. As demonstrated by the numerous exhibits attached to Defendants’ submissions and the arguments in both parties’ briefs, the majority of the issues raised are more appropriately resolved at summary judgment. Accordingly, and for the reasons that follow, this Court grants Defendants’ motion as to Plaintiff’s claim against Defendant PSCC for breach of the implied covenant of good faith and fair dealing and denies Defendants’ motion in all other respects without prejudice to raise the issues again at summary judgment.

It is unnecessary at this time to engage in a full exposition of the factual background underlying Plaintiffs’ claims. For purposes of this Memorandum, the following facts, set out in the

light most favorable to the Plaintiffs, are relevant. Plaintiff Epic Resorts was a nationwide developer and marketer of vacation resorts. (Am. Compl. ¶ 6.) Epic Resorts sold time-share interests in its resorts, typically receiving a cash down payment of ten percent of the value of the time-share. (*Id.* ¶ 7.) The remaining ninety percent of the value of the time-share was financed over an eighty-four month period. (*Id.*) As Epic Resorts was engaged in a “cash intensive industry,” it was crucial for Epic Resorts to develop a reliable lending relationship. (*Id.*) On February 25, 2000, Plaintiffs entered into an agreement with PSCC, the “2000 Credit Agreement,” whereby PSCC would provide a warehouse lending facility from which Plaintiffs could withdraw funds in exchange for time share notes.¹ (*Id.* ¶ 17.) According to Plaintiffs, a further related agreement, the “2000 Securitization Agreement,” obligated Prudential Securities to sell securities backed by those receivables, the proceeds of which would be used by Epic Resorts to repay the credit facility. (*Id.* at ¶¶ 9, 17.)

In Count III of Plaintiffs’ First Amended Complaint, Plaintiffs allege that Defendant PSCC breached the implied covenant of good faith and fair dealing by “calling due the warehouse credit facility [in December 2000] knowing that the source of repayment for that facility was not available.” (Pls.’ Resp. at 27; *see also* Am. Compl. ¶ 53.) Under New York law,² every contract includes an implied covenant of good faith and fair dealing which “precludes each party from engaging in conduct that will deprive the other party of the benefits of the agreement.” *Filner v. Shapiro*, 633 F.2d 139, 143 (2d Cir. 1980) (*citing Kirke La Shelle Co. v. Paul Armstrong Co.*, 188 N.E. 163, 167

1. As a result of certain agreements between the parties, Epic Resorts formed Epic Master Funding Corp. (“EMFC”) as a wholly-owned subsidiary. (Am. Compl. ¶ 8.) Thereafter, Epic Resorts sold its time-share receivables to EMFC, who then pledged those receivables as security for the credit facility.

2. Both Plaintiffs and Defendants agree that this Court’s interpretation of the contract terms is governed by New York law. (Defs.’ Mot. to Dismiss at 3 n.2; Pl.’s Resp. at 8, 24.)

(N.Y. 1933)). Although a party can breach the implied covenant of good faith and fair dealing without breaching any terms of the contract itself, “it is axiomatic that an implied covenant must comport with the parties’ intent and be consistent with the written provisions of the contract.” *Canpartners Invs. IV, LLC v. Alliance Gaming Corp.*, 981 F. Supp. 820, 824 (S.D.N.Y. 1997). Plaintiffs cannot successfully allege that PSCC breached the implied covenant of good faith and fair dealing by calling the credit facility due because PSCC’s actions comported with the express termination provision in the contract.³ Under the terms of the 2000 Credit Agreement, PSCC’s obligation to extend funds expired on the commitment termination date, (Defs.’ Mot. to Dismiss Ex. 2 (Credit Agreement at § 1.6)), which, absent a default or funding termination event, would be the maturity date (*id.* (Definitions Section)). Pursuant to “Amendment No. 4” of the 2000 Credit Agreement, the maturity date was December 27, 2000. (*Id.* Ex. 3 (Amendment No. 4).) Furthermore, despite the December 27 termination date, Plaintiffs admit that PSCC provided several extensions to the credit facility through June 14, 2001 in order to enable Plaintiffs to locate a substitute lender. (Am. Compl. ¶ 30; Defs. Mot. to Dismiss Ex. 15 (Amendment No. 15).) Thus, PSCC’s termination of the credit facility complied with the express terms of the contract, and therefore cannot constitute a breach of the implied covenant of good faith and fair dealing. Accordingly, Plaintiffs’ have not stated a claim for breach of the implied covenant of good faith and fair dealing against Defendant PSCC. An appropriate Order follows.

3. Although, in deciding a motion to dismiss, courts generally consider only the allegations in the complaint, exhibits attached to the complaint, and matters of public record, a court may also consider an undisputably authentic document attached to a defendant’s motion where plaintiff’s claims are based on the document. *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

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PRUDENTIAL SECURITIES, INC., et al.:	:	No. 03-6021
Defendants.	:	

ORDER

AND NOW, this 3rd day of **June, 2004**, upon consideration of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, Plaintiffs' response thereto, and Defendants' reply thereon, and upon consideration of Plaintiffs' Motion to Strike Exhibit A to Defendants' Reply Brief, Defendants' response thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Plaintiffs' Motion to Strike Exhibit A to Defendants' Reply Brief (Document No. 21) is **GRANTED**.
2. Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Document No. 13) is **GRANTED in part** and **DENIED in part** as follows:
 - a. Defendants' Motion to Dismiss Plaintiff's claim for breach of the implied covenant of good faith and fair dealing against Defendant PSCC is **GRANTED**.
 - b. In all other respects, Defendants' motion is **DENIED** without prejudice to raising the issues on summary judgment.

BY THE COURT:

Berle M. Schiller, J.