UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

C S BIO CO., et al. v. COMERICA BANK

C S Bio · No. 22-cv-05033-RS · Decided December 4, 2025

SUMMARY

The United States District Court for the Northern District of California continued the hearing on Comerica Bank's motion for summary judgment and requested supplemental briefing under Federal Rule of Civil Procedure 56(f). The court explained that the central issue was whether plaintiffs could show damages caused by alleged misrepresentations concerning loan funding, payment of a contractor invoice, waiver of a financial covenant, and Intarcia's financial condition. The court cautioned that plaintiffs appeared to be relying primarily on benefit-of-the-bargain damages rather than damages caused by reliance on the alleged misrepresentations, and allowed supplemental briefing on causation and damages.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Richard Seeborg
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 4, 2025
DOCKET	22-cv-05033-RS
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs opposed Comerica Bank's motion for summary judgment. The court continued the hearing and requested supplemental briefing under Federal Rule of Civil Procedure 56(f) because it may enter summary judgment on causation and damages grounds not fully presented in the motion.
STANDARD OF REVIEW	Summary judgment may be entered when the record shows no triable issue of material fact and the movant is entitled to judgment as a matter of law. Under Federal Rule of Civil Procedure 56(f), the court must provide notice and a reasonable opportunity to respond before granting summary judgment on grounds not fully presented by the movant.
PRECEDENTIAL VALUE	Unknown

PARTIES C S Bio Co., CCS Management, LLC v. Comerica Bank

TOPICS

summary judgment · civil procedure · commercial litigation · damages · consequential damages

PRACTICE AREAS

Civil procedure · Commercial litigation · Fraud · Damages · Remedies

QUESTIONS PRESENTED

1. Whether plaintiffs identified a triable issue of fact establishing damages caused by their reasonable reliance on Comerica's alleged misrepresentations, false promises, failures to disclose, or concealments.
2. Whether plaintiffs' proposed damages measure improperly sought the financial benefits they allegedly would have received if the loan had been approved and funded.
3. Whether the court could consider causation and damages as grounds for summary judgment without additional notice and briefing under Federal Rule of Civil Procedure 56(f).

HOLDINGS

1. The relevant damages inquiry is what damages plaintiffs suffered as a result of reasonable reliance on the alleged misrepresentations, false promises, failures to disclose, or concealments, not the position plaintiffs would have occupied if the loan had been approved and funded.
2. Before entering summary judgment on causation or damages grounds that were not fully presented in Comerica's motion, the court must provide plaintiffs notice and an opportunity to submit supplemental briefing under Federal Rule of Civil Procedure 56(f).

KEY QUOTATIONS

> *"Accordingly, the question is not what position CS would have been in had the loan gone through. Rather, the issue is what, if any, damages CS can show it suffered as a result of its reasonable reliance on the alleged misrepresentations/false promises/failures to disclose/concealments."* (at 2)

> *"In an abundance of caution, however, and to ensure a clear record and that due process is satisfied, CS is advised under Rule 56(f) of the Federal Rules of Civil Procedure that summary judgment may be entered against it on the grounds discussed in this order, whether or not those grounds are fully presented in Comerica's motion."* (at 4)

FACTUAL BACKGROUND

Plaintiffs alleged that Comerica represented in November 2020 that they could pay a contractor's $738,000 October invoice without jeopardizing loan funding and that the payment would be reimbursed from loan proceeds. Plaintiffs also alleged that Comerica represented that any violation of the FCCR covenant would be waived and that Intarcia's financial condition would not preclude final loan approval. After the loan was not approved or funded, plaintiffs claimed damages based primarily on construction delays, lost leasing opportunities, and higher interest rates.

PROCEDURAL HISTORY

The court previously denied in part and granted in part Comerica's motion to dismiss the Second Amended Complaint, concluding that certain alleged misrepresentations concerning payment of a contractor invoice, waiver of the FCCR covenant, and Intarcia's financial condition could support viable claims. The court later denied plaintiffs leave to file a Third Amended Complaint, explaining that the proposed allegations could be pursued under the existing pleading. After Comerica moved for summary judgment and plaintiffs opposed, the court issued this amended order continuing the hearing and allowing supplemental briefing under Rule 56(f).

DISPOSITION

other

CASES CITED

- Bushell v. JPMorgan Chase Bank, N.A., 163 Cal. Rptr. 3d 539, 550 (Cal. App. 2013)

OPINION

C S BIO CO., et al. v. COMERICA BANK

PER CURIAM.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

C S BIO CO., et al., Case No. 22-cv-05033-RS Plaintiffs,

v. AMENDED ORDER CONTINUING

HEARING AND REQUESTING

COMERICA BANK, FURTHER BRIEFING

Defendant.

The hearing set for December 4, 2025, is hereby continued to January 8, 2025, to permit further briefing, as specified below. Defendant Comerica Bank’s motion for summary judgment contends plaintiffs CS Bio Co. and CCS Management, LLC (collectively “CS”) lack evidence to show a triable issue of fact that they suffered damages caused by Comerica’s alleged misrepresentations. The order granting in part and denying in part the motion to dismiss the Second Amended Complaint found that CS had viable claims based on two basic alleged misrepresentations: (1) assurances Comerica allegedly gave on November 20, 2020, and again on November 23, 2020, that CS could and should pay its contractor’s October invoice in the amount of $738,000 without jeopardizing funding of the loan, and that the payment would therefore be reimbursed through the loan proceeds, and (2) an assurance on November 24, 2020, that any violation of the FCCR covenant would be waived. See Dkt. No. 64. The order explained that liability for those assurances could either be pursued under the first claim for relief for “Fraud — relief. The order noted the same alleged misrepresentations were recast as concealments/failures to disclose in the fourth claim for relief, which was also viable, although it added nothing of substance.

CS subsequently moved for leave to file a third amended complaint, arguing, among other things, that discovery had revealed further evidence related to (1) the alleged falsity, when made, of assurances that the FCRR issue would not preclude final loan approval, and (2) the actual impact of the financial condition of CS customer Intarcia on Comerica’s decision not to go forward with the loan. The order denying leave to amend stated:

The existing complaint adequately sets out a basis for plaintiffs to present at trial (or in response to any summary judgment motion) the arguments it is now making regarding Intarcia and the FCCR, as well as the evidence on those issues that has come to light in discovery. While plaintiffs’ proposed amendments arguably would state the claims with slightly more clarity and with greater factual detail, they do not represent new, unpleaded, claims, and they are not required for plaintiffs to go forward.

Dkt. 95.

Comerica’s motion for summary judgment expressly addressed only the November 20, 23, and 24, 2020, alleged assurances mentioned above regarding payment of the contractor invoice and waiver of the FCRR covenant. In opposition, CS argued the order denying leave to file a third amended complaint effectively left it free to argue any number of purported misrepresentations in September of 2020, and thereafter, are actionable. To be clear, the effect of the order denying leave to file a third amended complaint is only that CS may pursue a claim that Comerica falsely promised Intarcia’s financial condition would not preclude final loan approval, to the extent such a claim was not otherwise explicitly set out in the Second Amended Complaint.[1]

That said, Comerica’s reply in support of its motion for summary judgment shows its arguments as to lack of causation and damages are intended to apply equally to all of the viable misrepresentation claims. The issue, therefore, is whether there is a triable issue of fact that CS suffered damages resulting from the alleged misrepresentations/false promises/failures to disclose/concealments.

As noted, Comerica’s motion asserts CS can show no causally related damages. Comerica’s moving papers appear to satisfy its initial burden to show CS lacks the requisite evidence, such that the burden shifts to CS to show at least a triable issue of fact. Even assuming, however, that Comerica did not meet its initial burden, and/or that its causation and damages arguments do not expressly focus on all of the potentially dispositive issues, the present record suggests CS may have no basis to recover damages here.

CS’s opposition to the motion for summary judgment characterizes its alleged damages in two section headings: “F. As a Result of Loan Termination,

[1] The proposed amendments related to waiver of the FCRR indisputably at most were further factual allegations in support of an existing claim, not expansion of the claims.

CS Bio Needed to Secure a New 13 Lender, Construction Was Delayed, and Lucrative Leasing Opportunities Vanished,” and 14 “G. CS Bio Was Also Damaged Through Higher Interest Rates.” As reflected in these headings 15 and in the text of CS’s briefing, its damages theories largely are premised on contrasting what CS 16 contends would have happened if the loan had been approved, with what happened when it was 17 not. This appears to be the wrong measure of damages for the alleged fraud. 18 CS seems to understand correctly that it cannot contend there was ever any enforceable 19 promise to fund the loan. This is not a breach of contract action, seeking either specific 20 performance or contractual damages.2 Accordingly, the question is not what position CS would 21 have been in had the loan gone through. Rather, the issue is what, if any, damages CS can show it 22 suffered as a result of its reasonable reliance on the alleged misrepresentations/false 23 promises/failures to disclose/concealments. Some of CS’s existing briefing seems to recognize this 24 point. See e.g., Dkt. 129-2 at ECF p. 18. (“But for Comerica’s false statements, CS Bio would not 25 26 2 Contrast a case cited by CS, Bushell v. JPMorgan Chase Bank, N.A.,163 Cal. Rptr. 3d 539, 550 (Cal. App. 2013), in which a promise to provide a permanent loan modification upon satisfaction 27 of specified conditions was held potentially enforceable as a breach of contract. 1 have proceeded with construction.”’) 2 The primary focus of CS’s argument, however, is on financial benefits it contends it would 3 have received if the Comerica loan had been approved and funded. See, e.g., id., at ECF p. 27 4 || (“the primal cause of all delays was Comerica’s cancellation of the Term Sheet, which delayed 5 || final construction of the Buckeye Property.”) Furthermore, even to the extent CS asserts it was 6 || damaged by relying on the alleged misrepresentations (as opposed to alleged damages arising 7 from the fact the loan was not approved and funded), it has offered little evidence supporting or 8 quantifying those damages, or showing there are at least triable issues of fact. 9 These issues of causation and the existence of damages are plainly implicated by 10 Comerica’s motion. In an abundance of caution, however, and to ensure a clear record and that 11 due process is satisfied, CS is advised under Rule 56(f) of the Federal Rules of Civil Procedure 12 || that summary judgment may be entered against it on the grounds discussed in this order, whether 5 13 or not those grounds are fully presented in Comerica’s motion. 14 Accordingly, pursuant to Rule 56(f), CS may file a supplemental brief, not to exceed 18 3 15 pages, within one week of December 2, 2025, the date on which the original, misdated, version of 16 || this order was actually entered. Comerica may file a supplemental reply, also not to exceed 18 5 17 pages, within one week thereafter. 19 20 || ITISSO ORDERED. 21 22 Dated: December 4, 2025 23

RICHARD SEEBORG _

Chief United States District Judge 25 26 27 CasE No. 22-cv-05033-RS