UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Eminence Capital, LLC v. Aspeon, Inc.

168 F. App'x 836 (9th Cir. 2006) · Decided February 23, 2006

SUMMARY

The Ninth Circuit affirmed dismissal with prejudice of Eminence Capital's securities-fraud complaint against Aspeon, Inc. under Federal Rule of Civil Procedure 12(b)(6). The court held that the allegations concerning audit obstruction, GAAP violations, deficient internal controls, restatements, and insider stock purchases did not create a strong inference of scienter under the PSLRA. Because the § 10(b) claim was dismissed, the related § 20(a) controlling-person claim was also dismissed.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Beezer; Gould; Nelson
JURISDICTION	Federal
DECIDED	February 23, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	The lead plaintiff appealed the district court's dismissal with prejudice under Federal Rule of Civil Procedure 12(b)(6) of its third amended complaint asserting claims under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934.
STANDARD OF REVIEW	De novo review of a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The allegations were accepted as true and construed in the plaintiff's favor, subject to the PSLRA's heightened pleading requirements and consideration of reasonable inferences unfavorable to the plaintiff.
PRECEDENTIAL VALUE	Unpublished, nonprecedential memorandum disposition
PARTIES	Eminence Capital, LLC v. Aspeon, Inc.

TOPICS

securities fraud · motions to dismiss · pleadings · standard of review · appellate procedure

PRACTICE AREAS

securities litigation | commercial litigation | civil procedure | appellate procedure

QUESTIONS PRESENTED

1. Whether the third amended complaint pleaded facts giving rise to a strong inference that Aspeon's defendants acted with deliberate or conscious recklessness, as required for a Securities Exchange Act § 10(b) securities-fraud claim under the PSLRA.
2. Whether the § 20(a) controlling-person liability claim could survive after dismissal of the underlying § 10(b) claim.

HOLDINGS

1. The complaint failed to allege particularized facts giving rise to a strong inference that the defendants acted with deliberate or conscious recklessness in issuing Aspeon's financial statements.
2. The § 20(a) claim was dismissed because the underlying § 10(b) claim was properly dismissed.

KEY QUOTATIONS

> *"When making a claim of securities fraud under § 10(b), the PSLRA requires that the complaint "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.""* (at 838)

> *"Generic allegations showing at most that Defendants engaged in a "hands on" management style within the company will not give rise to a strong inference of conscious or deliberate recklessness without particularized allegations indicating involvement in or knowledge of the fraud."* (at 839)

> *"The totality of Eminence Capital's allegations are insufficient under the heightened pleading standard of the PSLRA to raise a strong inference that Defendants acted with deliberate or conscious recklessness in issuing the financial statements."* (at 840)

FACTUAL BACKGROUND

Eminence Capital alleged that Aspeon's financial reports and press releases for three quarters in 1999 and 2000 contained materially false and misleading information that inflated the company's stock price. The complaint alleged audit obstruction, GAAP violations, inadequate internal controls, financial restatements, and insider stock purchases as evidence that Aspeon's defendants acted with scienter. The alleged restatements reduced revenue by only 1.57 percent overall, and Aspeon's CEO purchased stock during the period in which the alleged revenue inflation occurred.

PROCEDURAL HISTORY

Eminence Capital brought a securities-fraud action against Aspeon, Inc. The district court dismissed the third amended complaint with prejudice for failure to allege facts supporting a strong inference of scienter. The Ninth Circuit reviewed the dismissal de novo and affirmed; it also dismissed the § 20(a) controlling-person claim because the § 10(b) claim was properly dismissed.

DISPOSITION

affirmed

CASES CITED

- In re Daou Sys., Inc. Sec. Litig., 411 F.3d 1006 (9th Cir. 2005)
- Gompper v. VISX, Inc., 298 F.3d 893 (9th Cir. 2002)
- In re Silicon Graphics Inc. Sec. Litig., 183 F.3d 970 (9th Cir. 1999)
- In re Vantive Corp. Sec. Litig., 283 F.3d 1079 (9th Cir. 2002)
- Nursing Home Pension Fund v. Oracle Corp., 380 F.3d 1226 (9th Cir. 2004)
- In re Ramp Networks, Inc. Secs. Litig., 201 F. Supp. 2d 1051 (N.D. Cal. 2002)
- In re MicroStrategy, Inc. Sec. Litig., 115 F. Supp. 2d 620 (E.D. Va. 2000)
- No. 81 Employer-Teamster Joint Council Pension Trust Fund v. America West Holding Corp., 320 F.3d 920 (9th Cir. 2003)