

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PASHA S. ANWAR, et al., :
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 Plaintiffs, :
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 -against- :
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 FAIRFIELD GREENWICH LIMITED, :
 et al., :
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 Defendants. :
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09-cv-118 (VM)

ORDER

VICTOR MARRERO, United States District Judge.

By letter dated August 29, 2014, Defendants Standard Chartered Bank International (Americas) Ltd., Standard Chartered International (USA) Ltd., Standard Chartered Bank, and Standard Chartered PLC (collectively, the "Standard Chartered Defendants") requested a pre-motion conference regarding the Standard Chartered Defendants' contemplated motion for summary judgment in eleven of the actions consolidated in the Standard Chartered Action¹ ("August 29, 2014 Standard Chartered Defendants' Letter"). (Dkt. No. 1314.) The Standard Chartered Defendants sought summary judgment on the following grounds: (1) all of the Standard Chartered Plaintiffs'² claims are barred by the Securities

¹ The Standard Chartered Action describes the 56 cases consolidated in this Court in which claims have been asserted against the Standard Chartered Defendants.

² The term Standard Chartered Plaintiffs denotes the 74 plaintiffs in the Standard Chartered Action.

Litigation Uniform Standards Act of 1998 ("SLUSA"); (2) the Standard Chartered Plaintiffs' claims of breach of fiduciary duty, negligence, and gross negligence (collectively, the "Due Diligence Claims") fail because the Standard Chartered Defendants conducted sufficient due diligence prior to recommending investment in the Fairfield Sentry Ltd. and Fairfield Sigma Ltd. Funds (collectively, the "Funds"); (3) the allegations that the Standard Chartered Defendants made a material omission by failing to disclose that Bernard Madoff was executing the split-strike conversion strategy ("Omission Claims") fail because the Standard Chartered Defendants disclosed Bernard Madoff's role in the Funds and the Standard Chartered Plaintiffs cannot establish scienter, reliance, or proximate cause; and (4) individual claims are untimely under the applicable statute of limitations. (Id.)

By letter dated September 12, 2014, the Standard Chartered Plaintiffs responded to the August 29, 2014 Standard Chartered Defendants' Letter, arguing that the Standard Chartered Defendants would be unable to demonstrate the non-existence of a genuine dispute as to any material fact ("September 12, 2014 Standard Chartered Plaintiffs' Letter") (filed under seal).

During a pre-motion conference held on September 29, 2014, this Court noted it was "skeptical that the defendants

are going to be able to make a case that as a matter of law every one of these plaintiff's claims is subject to dismissal on summary judgment[] . . . given the nature of the claims and the extent to which there is substantial evidence cited by [the Standard Chartered Plaintiffs] that a reasonable jury might very well agree with the plaintiff's theory." (Tr. of Proceedings, Dkt. No. 1329.) Furthermore, the Court stated that the Standard Chartered Defendants faced "an uphill battle in persuading [the] Court that there are no issues of [fact] what[so]ever on these theories of negligence and standard of duty." (Id.) The Court then ordered the parties to submit further correspondence regarding these issues for the Court's consideration. (Id.) The Standard Chartered Defendants submitted a letter dated October 31, 2014 (Dkt. No. 1333) with the Standard Chartered Plaintiffs responding on November 17, 2014 (Dkt. No. 1349).

On May 6, 2015, after the Second Circuit decision in In re Kingate Mgmt. Ltd. Litig., 784 F.3d 128 (2d Cir. 2015), the Court requested further submissions from the parties regarding SLUSA preemption of the remaining state law claims. (Dkt. No. 1375.) Both parties submitted letter briefs on May 29, 2015 (Dkt. Nos. 1384, 1385) with simultaneous replies filed on June 8, 2015 (Dkt. Nos. 1390, 1391).

On July 29, 2015, this Court issued a Decision and Order

finding that the state law claims of misrepresentation and fraud were precluded by SLUSA but the Due Diligence Claims were not precluded ("July 29, 2015 Order").³ (Dkt. No. 1396.) The Standard Chartered Defendants moved for reconsideration of the July 29, 2015 Order insofar as it denied Standard Chartered Defendants' motion to dismiss the Due Diligence Claims (Dkt. No. 1399), which the Court denied in part ("August 13, 2015 Order," Dkt. No. 1403) and granted in part ("August 28, 2015 Order," Dkt. No. 1407).

By letter dated August 31, 2015 ("August 31, 2015 Standard Chartered Plaintiffs' Letter"), the Standard Chartered Plaintiffs requested that the Court formally deny the Standard Chartered Defendants' request to file a motion for summary judgment on the remaining issues not resolved by the July 29, 2015 Order, the August 13, 2015 Order, or the August 28, 2015 Order (collectively, the "SLUSA Orders"). (Dkt. No. 1412.)

The Court has examined the parties' correspondence regarding the Standard Chartered Defendants' request to file a motion for summary judgment in light of the posture of the

³ The Court also made findings in the July 29, 2015 Order related to the Anwar Action in which a class of plaintiffs representing shareholders and partners in the Funds have asserted state and federal law claims against the Funds' administrators and custodians and state law claims against the Funds' auditors. Those findings are not relevant here and are therefore not discussed.

Standard Chartered Action following the SLUSA Orders. (See Dkt. Nos. 1396, 1403, 1407.) The Court remains persuaded that the Standard Chartered Defendants would be unable to "show[] that there is no genuine dispute as to any material fact" such that they would be entitled to judgment as a matter of law on the remaining claims of breach of fiduciary duty, negligence, and gross negligence. See Fed. R. Civ. P. 56(a). Standard Chartered Defendants' pursuing summary judgment practice at this time in the light of the extensive prior proceedings, the current status of the litigation, and the Court's familiarity with the issues would be counterproductive and serve to unnecessarily add to costs and delay.

ORDER

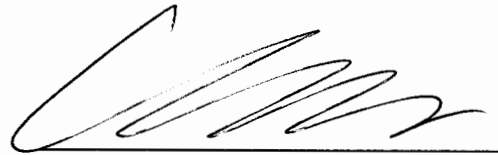
Accordingly, it is hereby

ORDERED that the request of Defendants Standard Chartered Bank International (Americas) Ltd., Standard Chartered International (USA) Ltd., Standard Chartered Bank,

and Standard Chartered PLC (collectively, the "Standard Chartered Defendants") for a pre-motion conference regarding the Standard Chartered Defendants' contemplated motion for summary judgment is **DENIED**.

SO ORDERED.

Dated: New York, New York
7 October 2015

A handwritten signature in black ink, appearing to read "Victor Marrero", written over a horizontal line.

Victor Marrero
U.S.D.J.