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This case was not selected for publication in the Federal Reporter.

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Please use FIND to look at the applicable circuit court rule before citing this opinion. Second Circuit Rules § 0.23. (FIND CTA2 s 0.23.)

United States Court of Appeals,
Second Circuit.

CREDIT LYONNAIS S.A., Societe Generale S.A.,
Societe Generale Alsacienne
De Banque, Natexis Banques Populaires S.A., Banca
Nazionale Del Lavoro
International, Commerzbank International S.A. and
Banque Et Caisse D'Epargne De
L'Etat Luxembourg, Plaintiffs-Appellants,

v.

KOREA ASSET MANAGEMENT
CORPORATION and Namsan Restructuring No. I
Co., Ltd.,
Defendants-Appellees.

No. 03-9171.

Sept. 21, 2004.

Background: Financial institutions sued debt purchaser and Korean government agency to which debt purchaser had assigned power to reconcile debt, alleging claims for breach of contract and tortious interference based on debt purchaser's failure to reconcile and buy loans tendered in connection with buy-out of non-Korean debt of Korean conglomerate. The United States District Court for the Southern

District of New York, Denny Chin, J., [2003 WL 22241136](#), granted summary judgment for defendants. Institutions appealed.

Holdings: The Court of Appeals held that:

(1) under New York law, debt purchaser had obligation to endeavor in good faith to reconcile and purchase contested debt;

(2) debt purchaser satisfied its obligation to endeavor in good faith to reconcile and purchase contested debt; and

(3) agency was not liable for tortious interference with contract or under alter ego theory of liability.

Affirmed.

West Headnotes

[1] Contracts  **194**

[95k194 Most Cited Cases](#)

Under New York law, debt purchaser had obligation to endeavor in good faith to reconcile and purchase contested debt in connection with buy-out of non-Korean debt of Korean conglomerate.

[2] Contracts  **280(1)**

[95k280\(1\) Most Cited Cases](#)

Debt purchaser satisfied any obligations under contract and New York law to endeavor in good faith to reconcile and purchase contested debt in connection with buy-out of non-Korean debt of Korean conglomerate when Korean agency to which debt purchaser had assigned right to make reconciliation decisions, acting on advice of counsel and in response to serious potential legal defects, decided not to reconcile tendered debt.

[3] Torts  **242**

[379k242 Most Cited Cases](#)

(Formerly 379k12)

Given that debt purchaser did not breach its contract with financial institutions respecting buy-out of non-Korean debt of Korean conglomerate, Korean agency to which debt purchaser had assigned right to make reconciliation decisions, pursuant to contract, could not be held liable to institutions for tortious interference with contract or under alter ego theory of liability.

*45 Appeal from the United States District Court

for the Southern District of New York (Chin, J.).

[Cyrus Benson III](#), White & Case, LLP, New York, NY, for Plaintiffs-Appellants.

[Steven J. Shore](#), Ganfer & Shore, LLP ([James R. Anderson](#), on the brief), New York, NY, for Defendant-Appellee Namsan Restructuring No. I. Co., Ltd.

[Robert A. Weiner](#), McDermott, Will & Emery (B. Ted Howes, [Chryssa V. Valletta](#), on the brief), New York, NY, for Defendant-Appellee Korea Asset Management Corporation.

Present: [NEWMAN](#), [CALABRESI](#), and [HALL](#), Circuit Judges.

SUMMARY ORDER

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and it hereby is **AFFIRMED**.

Plaintiff financial institutions brought this suit in the Southern District of New York (Chin, J.) against Defendants Namsan Restructuring No I. Co., Ltd. ("Namsan") and Korea Asset Management Corporation ("KAMCO"). [\[FN1\]](#) Plaintiffs alleged various claims arising from the failure of Defendant Namsan to "reconcile" [\[FN2\]](#) and purchase certain loans tendered in the context of a buy-out of the foreign (i.e., non-Korean) debt of the Korean conglomerate Daewoo. In their complaint, Plaintiffs argued that Defendant Namsan breached its contract with the tendering institutions, and that Defendant KAMCO--a non-signatory to the contract, to whom Namsan had assigned the power to reconcile the debt--should be held liable for tortious interference or pursuant to alter ego liability. Plaintiffs appeal from the decision of the District Court, granting summary judgment to the Defendants.

[FN1](#). In their complaint, Plaintiffs alleged jurisdiction under the Foreign Sovereign Immunities Act (FSIA), [28 U.S.C. § § 1330\(a\), 1603\(a\)](#). KAMCO has admitted that it is a foreign "government agency," which suffices for jurisdiction under the FSIA, and we see no reason to doubt that pendent party jurisdiction was properly exercised with respect to Namsan. *See* [28](#)

[U.S.C. § 1367\(a\)](#).

[FN2](#). The word "reconcile" is used as a term of art in the contract between Plaintiffs and Defendant Namsan. Under the contract, tendered debt was "reconciled" once its legal and financial suitability for purchase was verified and confirmed.

[\[1\]\[2\]](#) We agree with the Plaintiffs that Defendant Namsan was obligated to endeavor in good faith to reconcile and purchase the contested debt. *See, e.g., 511 West 232nd Owners Corp. v. Jennifer Realty Co.*, [98 N.Y.2d 144, 746 N.Y.S.2d 131, 773 N.E.2d 496, 500-01 \(2002\)](#). But, we also conclude that whatever requirements of good faith existed under the contract or, more generally, under New York law were met here as a matter of law. KAMCO, to whom Namsan had assigned the right to make reconciliation decisions, was acting on advice of counsel, and in response to serious potential legal defects when it decided not to reconcile the tendered debt. Under these circumstances, the Plaintiffs have failed to create a material issue of fact as to whether the decision not to reconcile was made in good faith. *Cf. Dalton v. Educational Testing Service*, [87 N.Y.2d 384, 639 N.Y.S.2d 977, 663 N.E.2d 289, 291 \(1995\)](#) (discussing the requirements of good faith under New York law).

[\[3\]](#) Because Defendant Namsan did not breach its contract with the Plaintiffs, the Plaintiffs, as a matter of law, cannot ***46** make out their claims against Defendant KAMCO.

We have considered all of the Plaintiffs' arguments, including the claim that the debt was automatically reconciled as a result of some statements of Namsan's counsel, and find them to be without merit. Accordingly, we AFFIRM the judgment of the district court.

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- [2004 WL 3525511](#) (Appellate Brief) Reply Brief for Plaintiffs-Appellants (Jun. 14, 2004)Original Image of this Document (PDF)
- [2004 WL 3525512](#) (Appellate Brief) Brief for

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Defendant-Appellee Namsan Restructuring No. I
Co., Ltd. (May. 28, 2004)Original Image of this
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- [2004 WL 3525513](#) (Appellate Brief) Brief for
Defendant-Appellee Korea Asset Management
Corporation (May. 28, 2004)Original Image of this
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- [2004 WL 3365945](#) (Appellate Brief) Brief for
Plaintiffs-Appellants (Apr. 14, 2004)Original Image
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- [03-9171](#) (Docket) (Nov. 06, 2003)

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